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C I T Y C O U N C I L

C I T Y O F W I C H I T A
K A N S A S

City Council Meeting
09:30 a.m. September 27, 2011

First Floor Board Room
455 North Main

OPENING OF REGULAR MEETING

-- Call to Order

-- Approve the minutes of the regular meeting on September 20, 2011

II. CONSENT AGENDAS (ITEMS 1 THROUGH 17)

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 AGENDA

VIII. COUNCIL MEMBER AGENDA

1. Approval of travel expenses for Mayor Carl Brewer, Vice Mayor Lavonta Williams, Council Member Pete Meitzner, Council Member James Clendenin, Council Member Michael O'Donnell II, Council Member Jeff Longwell, and Council Member Janet Miller to attend the National League of Cities Congress of Cities and Exposition Conference in Phoenix, Arizona, November 8-13, 2011.

   RECOMMENDED ACTION: Approve the travel expenditures.

IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

   RECOMMENDED ACTION: Approve the Appointments.

Adjournment

Workshop to follow

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 17)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated September 26, 2011.

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

2. Applications for Licenses:

Name	Event	Date	Address
Wayne L Smith	Wichita Canteen Company Inc.	10/8/2011	225 West Douglas

   RECOMMENDED ACTION: Approve the licenses.

3. Applications for Licenses to Retail Cereal Malt Beverages:

Renew	2011	(Consumption off Premises)
Bao Q Tran	B&H Fast Trips***	2796 South Seneca
Tom Huynh Vo	T&D Discount Cigarette***	10409 West Maple
Cari Spainhour	Quik Trip #369F***	625 South Hillside

Renew	2011	(Consumption on Premises)
Armando de Santiago	ElPerron**	3824 East Harry
Geman Granados	Usuluteco Restaurant**	1714 East Northern

   **General Restaurant 50% or more gross revenue from sale of food
   ***Retailer Grocery Stores, Convenience Stores, etc.

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

4. Preliminary Estimates: (See Attached)

   RECOMMENDED ACTION: Receive and file.

5. Consideration of Street Closures/Uses.
   a. Community Events - 20th Annual Frostbite Regatta. (District VI)
   b. Community Events - Fire Prevention Week, Fallen Fighters Memorial. (District I)
   c. Community Events - Wichita Toy Run. (Districts I, V and VI)
   d. Community Events - Prairie Fire Marathon and Fun Run.
   e. Community Events - Prairie Fire Half Marathon.

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

6. Design Services Agreement:
   a. Agreement for Design Services for Water System, Sanitary Sewer, and Paving Improvements in Fox Ridge Addition, north of 29th Street North, between Maize and Tyler. (District V)

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

7. Property Acquisitions:
   a. Partial Acquisition of 13728 West Kellogg for the West Kellogg Freeway Project. (Districts IV and V)
   b. Acquisition of 1601 South Broadway for the Harry and Broadway Intersection Improvement Project. (Districts I and III)
   c. Partial Acquisition of 320 East Harry for the Harry and Broadway Intersection Improvement Project. (Districts I and III)
   d. Acquisition of a Temporary Easement at 1443 North Ridge Road for the West 13th Street and Ridge Road Improvement Project. (District V)

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

8. Minutes of Advisory Boards/Commissions

   Board of Code Standards and Appeals, August 1, 2011.
   Library Board, August 16, 2011

   RECOMMENDED ACTION: Receive and file.

9. Use of City Self-Insurance Health and General Funds for 2011 Flu Shots.

   RECOMMENDED ACTION: Approve the Agreement between the City of Wichita and Sedgwick County Health Department (SCHD).

10. S-Well and M-Well Repairs Design Build Contract.

    RECOMMENDED ACTION: Approve the design/build agreement, approve the amended resolution and authorize the necessary signatures.

11. Litigation Settlement/Claim for Damages Approval.

    RECOMMENDED ACTION: Authorize payment of $12,635.91 as a settlement of this claim against the City of Wichita arising out of the event which is the subject of the claim.

12. Repair or Removal of Dangerous and Unsafe Structure. (District I)

Property Address:	District
a. 1821 East 23rd Street North	I

RECOMMENDED ACTION: Adopt the attached resolution to schedule a public hearing before the City Council on November 15, 2011 at 9:30 a.m. or soon thereafter, to consider condemnation of the structure deemed dangerous and unsafe per Kansas State Statutes and local ordinances.

13. Resolutions Authorizing Congestion Mitigation and Air Quality (CMAQ) Grants from the Federal Transit Administration.

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

14. Second Reading Ordinances: (First Read September 13th and 20th, 2011)
List of Second Reading Ordinances. (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

II. CONSENT PLANNING AGENDA ITEMS

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

None

II. CONSENT HOUSING AGENDA ITEMS

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

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

15. *Veterans Affairs Supportive Housing Funding.

RECOMMENDED ACTION: Authorize a grant budget increase of $250,178 for Veterans Affairs Supportive Housing (VASH) grant renewal funds received during the 2011 calendar year.

16. *Application for Conversion of Riverwalk and Victoria Park Housing Choice Vouchers.

RECOMMENDED ACTION: Approve the application, approve the grant award upon receipt, and authorize the necessary signatures.

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.

17. *Agreement - U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services.

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

Agenda Item No. II-5a

City of Wichita
City Council Meeting
September 27, 2011

TO: Mayor and City Council

SUBJECT: Community Events – 20th Annual Frostbite Regatta (District VI)

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 Jay Pfeiffer, Wichita Rowing Association, is coordinating with staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

20th Annual Frostbite Regatta November 6, 2011 6:30 am – 6:00 pm

- Nims Street, Central Avenue to Roundabout.

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Events Coordinator.

Agenda Item No. II-5b

City of Wichita
City Council Meeting
September 27, 2011

TO: Mayor and City Council

SUBJECT: Community Events – Fire Prevention Week: Fallen Firefighters Memorial (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 Brad Crisp, Fire Marshall Wichita Fire Department, is coordinating with staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Fire Prevention Week: Fallen Firefighters Memorial October 22, 2011 12:00 pm – 4:00 pm

- Broadway Avenue, Lincoln Street to Harry Street

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; and (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department.

Agenda Item No. II-5c

City of Wichita
City Council Meeting
September 27, 2011

TO: Mayor and City Council

SUBJECT: Community Events – Wichita Toy Run (Districts I, V and VI)

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 Holly Potelle, Wichita Toy Run, is coordinating with staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Wichita Toy Run November 6, 2011 10:00 am – 3:00 pm

- Sycamore Street, Texas Street to Maple Street
- Maple Avenue, Sycamore Street to McLean Boulevard
- Maple/Lewis Street, McLean Boulevard to Wichita Street
- Waterman Street, Wichita Street to Broadway Avenue
- Broadway Avenue, Waterman Street to Forty-fifth Street North

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Events Coordinator.

Agenda Item No. II-5d

City of Wichita
City Council Meeting
September 27, 2011

TO: Mayor and City Council

SUBJECT: Community Events – Prairie Fire Marathon and Fun Run (All Districts)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events Procedure, the event promoter Bob Hansen, President CEO, Greater Wichita Area Sports Commission is coordinating with area business owners and making arrangements with staff, subject to final approval by the City Council. This item was approved by City Council on September 13, 2011, however, the race course and beginning time has been adjusted to accommodate the event promoter's needs.

Analysis: The following street closure requests have been submitted:

Prairie Fire Marathon October 9, 2011 12:00 am – 5:00 pm

- Lewis/Waterman Street, Main Street to McLean Boulevard
- McLean Boulevard, Maple Avenue to Douglas Avenue
- Douglas Avenue, McLean Boulevard to Clifton Avenue
- Clifton Avenue, Douglas Avenue to Waterman Street
- Waterman Street, Clifton Street to Bluff Street
- Bluff Street, Waterman Street to Fountain Street
- Fountain Street, Bluff Street to Lewis Street
- Lewis Street, Fountain Street to Glendale Street
- Glendale Street, Lewis Street to Waterman Street
- Waterman Street, Glendale Street to Edgemoor Street
- Edgemoor Street, Waterman Street to South Lexington Street
- South Lexington Street, Edgemoor Street to South Ridgecrest
- South Ridgecrest Street , South Lexington Street to Lynwood Street
- Lynwood Street, South Ridgecrest Street to Hampton Street
- Hampton Street, Lynwood Street to Lakeside Boulevard
- Lakeside Blvd., Hampton Street to South Mission Drive
- South Mission Drive, Lakeside Boulevard to Douglas Avenue
- Douglas Avenue, South Mission Drive to Rutland Street
- Rutland Street, Douglas Avenue to Huntington/Armour Avenue
- Huntington/Armour Avenue, Rutland Street to Central Avenue
- Central Avenue, Armour Avenue to Broadmore Avenue
- Broadmore Avenue, Central Avenue to Doreen Street
- Doreen Street, Killarney Street to Donegal Street

- Donegal Street, Doreen Street to Rock Road
- Rock Road, Donegal Street to Polo Drive
- Polo Drive, Rock Road to South Magill Street
- South Magill Street, Walking Path to Tallyrand Street
- Tallyrand Street, Walking Path to Gretchen Lane
- Gretchen Lane, Tenth Street to Magill Street
- Magill Street, Gretchen Lane to Whitfield Lane
- Whitfield Lane, Magill Street to Eleventh Street
- Eleventh Street, Whitfield Lane to Willow Lane
- Willow Lane, Eleventh Street to Edgemoor Street
- Edgemoor Street, Polo Drive to Second Street
- Second Street, Edgemoor Street to Oliver Avenue
- Oliver Avenue, Second Street to Oakland Street
- Oakland Street, Oliver Street to Dellrose Street
- Dellrose Street, Oakland Street to English Street
- English Street, Dellrose Street to Clifton Avenue
- Clifton Avenue, English Street to Douglas Avenue
- Douglas Avenue, Clifton Avenue to Emporia Street
- Emporia Street, Douglas Avenue to Pine Street
- Pine Street, Emporia Avenue to Santa Fe Street
- Santa Fe Street, Pine Street to Murdock Avenue
- Murdock Avenue, Santa Fe Street to Main Street
- Main Street, Murdock Avenue to Eighth Street
- Eighth Street, Main Street to Back Bay Boulevard
- Back Bay Blvd., Eight Street to Ninth Street
- Ninth Street, Back Bay Blvd. to Oak Park Drive
- Oak Park Drive, Ninth Street to Forest Avenue
- Forest Avenue, Oak Park Drive to Eleventh Street
- Eleventh Street, Forest Avenue to Carlos Street
- Carols Street, Eleventh Street to Twelfth Street
- Twelfth Street, Carlos Street to Oak Park Drive
- Oak Park Drive, Twelfth Street to Eleventh Street
- Eleventh Street, Oak Park Drive to Woodrow Street
- Woodrow Street, Eleventh Street to Twelfth Street
- Twelfth Street ,Woodrow Avenue to Amidon Avenue
- Amidon Avenue, Twelfth Street to Sim Park Drive
- Sim Park Drive, Amidon Avenue to Museum Boulevard
- Museum Boulevard, Sim Park Drive to Stackman Drive
- Sim Park Drive, Museum Boulevard to Stackman Drive
- Stackman Drive, Sim Park Drive to Nims Avenue
- Nims Avenue, Stackman Drive to West River Boulevard
- West River Boulevard, Nims Avenue to Murdock Avenue
- Murdock Avenue, West River Boulevard to Main Street
- Main Street, Murdock Avenue to Second Street
- Second Street, Main Street to Greenway Boulevard
- Greenway Boulevard, Second Street to Central Avenue
- Central Avenue, Greenway Boulevard to Seneca Street
- Seneca Street, Central Avenue to McLean Boulevard
- McLean Boulevard, Seneca Street to Lewis Street

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Events Coordinator.

Agenda Item No. II-5e

City of Wichita
City Council Meeting
September 27, 2011

TO: Mayor and City Council

SUBJECT: Community Events – Prairie Fire Half Marathon (All Districts)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closures.

Background: In accordance with the Community Events Procedure, the event promoter Bob Hansen, President CEO, Greater Wichita Area Sports Commission is coordinating with area business owners and making arrangements with staff, subject to final approval by the City Council. This item was approved by City Council on September 13, 2011, however, the race course and beginning time has been adjusted to accommodate the event promoter's needs.

Analysis: The following street closure requests have been submitted:

Prairie Fire Half Marathon October 9, 2011 12:00 am – 5:00 pm

- Lewis/Waterman Street, Main Street to McLean Boulevard
- McLean Boulevard, Maple Avenue to Douglas Avenue
- Douglas Avenue, McLean Boulevard to Clifton Avenue
- Clifton Avenue, Douglas Avenue to Waterman Street
- Waterman Street, Clifton Street to Circle Drive
- Circle Drive, Waterman Street to Bluff Street
- Bluff Street, Circle Drive to Waterman Street
- Waterman Street, Bluff Street to Fountain Street
- Fountain Street, Waterman Street to Lewis Street
- Lewis Street, Fountain Street to Glendale Street
- Glendale Street, Lewis Street to Waterman Street
- Waterman Street, Glendale Street to Ridgewood Street
- Ridgewood Street, Waterman Street to Second Street
- Second Street, Ridgewood Street to Dellrose Street
- Dellrose Street, Second Street to English Street
- English Street, Dellrose Street to Circle Drive
- Circle Drive, English Street to Oakland Street
- Oakland Street, Circle Drive to Clifton Drive
- Clifton Drive, Oakland Street to Douglas Avenue
- Douglas Avenue, Clifton Avenue to Emporia Avenue
- Emporia Avenue, Douglas Avenue to Pine Street
- Pine Street, Emporia Avenue to Santa Fe Street
- Santa Fe Street, Pine Street to Via Christi entrance

- Via Christi Entrance, Santa Fe to St. Francis Street
- St. Francis Street, Via Christi entrance to Murdock Avenue
- Murdock Avenue, St. Francis Street to Main Street
- Main Street, Murdock Avenue to Second Street
- Second Street, Main Street to Greenway Boulevard
- Greenway Boulevard, Second Street to Central Avenue
- Central Avenue, Greenway Boulevard to Seneca Street
- Seneca Street, Central Avenue to McLean Boulevard
- McLean Boulevard, Seneca Street to Lewis

The event promoter will arrange to remove the barricades as necessary to allow emergency vehicle access during the entire designated time period. The barricades will be removed immediately upon completion of the event.

Financial Consideration: The event promoter is responsible for all costs associated with the special event.

Goal Impact: Enhance the Quality of Life for citizens through special events and activities.

Legal Consideration: There are no legal considerations.

Recommendation/Actions: It is recommended that the City Council approve the request subject to; (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Securing a Certificate of Liability Insurance on file with the Community Events Coordinator.

City of Wichita
City Council Meeting
September 27, 2011

TO: Mayor and City Council

SUBJECT: Agreement for Design Services for Water System, Sanitary Sewer, and Paving Improvements in Fox Ridge Addition (north of 29th Street North, between Maize and Tyler) (District V)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the agreement.

Background: On August 23, 2011, the City Council approved petitions for water system, sanitary sewer, and paving improvements in Fox Ridge Addition.

Analysis: The proposed Agreement between the City and MKEC Engineering Consultants, Inc. (MKEC) provides for the design of the improvements. In accordance with Administrative Regulation 1.10, staff recommends that MKEC be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to MKEC will be on a lump sum basis of $56,830 and will be paid by special assessments.

Goal Impact: This agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of public improvements in a new subdivision.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve the Agreement and authorize the necessary signatures.

Attachments: Agreement.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

MKEC ENGINEERING CONSULTANTS, INC.

for

FOX RIDGE ADDITION

THIS AGREEMENT, made this _____ day of _____, 2011, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and MKEC ENGINEERING CONSULTANTS, INC., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 89839 serving Lots 147 through 190, Block 1, Fox Ridge Addition (north of 29th Street North, between Maize and Tyler) (Project No. 448 89839).

LATERAL 9, NORTHWEST INTERCEPTOR SEWER serving Lots 147 through 190, Block 1, Fox Ridge Addition (north of 29th Street North, between Maize and Tyler) (Project No. 468 83647).

BRUSH CREEK CIRCLE/BRUSH CREEK COURT serving Lots 147 through 173, Block 1, from the north line of Westlakes Parkway to and including the cul-de-sac; **WESTLAKES COURT** serving Lots 174 through 190, Block 1, from the north line of Westlakes Parkway to and including the cul-de-sac (north of 29th Street North, between Maize and Tyler) (Project No. 472 83791).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for designing improvements in Fox Ridge Addition and perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).
B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.
C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.
D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

E. To maintain books, documents, papers, accounting records and other evidence pertaining to costs incurred by ENGINEER and, where relevant to method of payment, to make such material available to the CITY.

F. To comply with all Federal, State and local laws, ordinances and regulations applicable to the work, including Title VI of the Civil Rights Act of 1964, and to comply with the CITY'S Affirmative Action Program as set forth in Exhibit "B" which is attached hereto and adopted by reference as though fully set forth herein.

G. To accept compensation for the work herein described in such amounts and at such periods as provided in Article IV and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work.

H. To complete the services to be performed by ENGINEER within the time allotted for the PROJECT in accordance with Exhibit A; EXCEPT that the ENGINEER shall not be responsible or held liable for delays occasioned by the actions or inactions of the CITY or other agencies, or for other unavoidable delays beyond control of the ENGINEER.

I. Covenants and represents to be responsible for the professional and technical accuracies and the coordination of all designs, drawings, specifications, plans and/or other work or material furnished by the ENGINEER under this agreement. ENGINEER further agrees, covenants and represents, that all designs, drawings, specifications, plans, and other work or material furnished by ENGINEER, its agents, employees and subcontractors, under this agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

J. ENGINEER shall procure and maintain such insurance as will protect the ENGINEER from damages resulting from the negligent acts of the ENGINEER, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this agreement. Such policy of insurance shall be in an amount not less than $500,000.00 subject to a deductible of $10,000.00. In addition, a Workman's Compensation and Employer's Liability Policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Workman's Compensation Law. The liability limit shall be not less than:

Workman's Compensation – Statutory
Employer's Liability - $500,000 each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the ENGINEER that shall be written in a comprehensive form and shall protect ENGINEER against all claims arising from injuries to persons (other than ENGINEER'S employees) or damage to property of the CITY or others arising out of any negligent act or omission of ENGINEER, its agents, officers, employees or subcontractors in the performance of the professional services under this agreement. The liability limit shall not be less than $500,000.00 per occurrence for bodily injury, death and property damage. Satisfactory Certificates of Insurance shall be filed with the CITY prior to the time ENGINEER starts any work under this agreement. In addition, insurance policies applicable hereto shall contain a provision that provides that the CITY shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or canceled.

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

A. To furnish all available data pertaining to the PROJECT now in the CITY'S files at no cost to the ENGINEER. Confidential materials so furnished will be kept confidential by the ENGINEER.

B. To provide standards as required for the PROJECT; however, reproduction costs are the responsibility of the ENGINEER, except as specified in Exhibit A.

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.

D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.

E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written

notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.

F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

A. Payment to the ENGINEER for the performance of the professional services required by this agreement shall be made on the basis of the lump sum fee amount specified below:

Project No. 448 89839	$6,930.00
Project No. 468 83647	$10,700.00
Project No. 472 83791	$39,200.00
TOTAL	$56,830.00

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:
   1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
   2. Additional design services not covered by the scope of this agreement.
   3. Construction staking, material testing, inspection and administration related to the PROJECT.
   4. A major change in the scope of services for the PROJECT.

   If additional work should be necessary, the ENGINEER will be given written notice by the CITY along with a request for an estimate of the increase necessary in the not-to-exceed fee for performance of such additions. No additional work shall be performed nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.

B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.

C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.

D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.

E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.

F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.

G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.

H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this agreement as of the date first written above.

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

MKEC ENGINEERING CONSULTANT, INC.

_____
(Name & Title)

ATTEST:

_____

SCOPE OF SERVICES

The ENGINEER shall furnish engineering services as required for the development of plans, supplemental specifications and estimates of the quantities of work for the PROJECT in the format and detail required by the City Engineer for the City of Wichita. Engineering plans shall be prepared per Attachment No. 1.

In connection with the services to be provided, the ENGINEER shall:

A. PHASE I – PLAN DEVELOPMENT

When authorized by the CITY, proceed with development of Plans for the PROJECT based on the preliminary design concepts approved by the CITY.

1. Field Surveys. Provide engineering and technical personnel and equipment to obtain survey data as required for the engineering design. Utility companies shall be requested to flag or otherwise locate their facilities within the PROJECT limits prior to the ENGINEER conducting the field survey for the PROJECT. Utility information shall be clearly noted and identified on the plans.
2. Storm Water Pollution Prevention. On projects that disturb one acre or more, the ENGINEER will prepare a storm water pollution prevention plan, prepare the necessary permit application(s) and include any provisions or requirements in the project plans and special provisions. The storm water pollution prevention plan shall also include submittal of a NOI prior to bidding; site-specific erosion control plan; and standard BMP detail sheets per Attachment No. 1.
3. Soils and Foundation Investigations. The CITY'S Engineering Division of the Department of Public Works shall provide subsurface borings and soils investigations for the PROJECT. However, the CITY may authorize the ENGINEER to direct an approved Testing Laboratory to perform subsurface borings and soils investigations for the PROJECT, which shall be reported in the format and detail required by the City Engineer for the City of Wichita. The Testing Laboratory shall be responsible for the accuracy and competence of their work. The ENGINEER'S contract with the Testing Laboratory shall provide that the Testing Laboratory is responsible to the City for the accuracy and competence of their work. The cost of soils and boring investigations shall be passed directly to the City of Wichita.
4. Review Preliminary Design Concepts. Submit preliminary design concepts for review with the City Engineer or his designated representative prior to progressing to detail aspects of the work unless waived by the City Engineer.
5. Drainage Study. When applicable, conduct a detailed study to explore alternative design concepts concerning drainage for the PROJECT. Present the findings in writing identifying recommendations to the CITY, including preliminary cost estimates, prior to development of final check plans. Such written findings and recommendations must be in a format which is self explanatory and readily understood by persons with average backgrounds for the technology involved.
6. Prepare engineering plans, plan quantities and supplemental specifications as required. Engineering plans will include incidental drainage where required and permanent traffic signing. The PROJECT'S plans and proposed special provisions shall address the requirements included in the City's Administrative Regulations 6.5, "Cleanup, Restoration or Replacement Following Construction." Also, final plans, field notes and other pertinent project mapping records are to be submitted per Attachment No. 1. The files are to be AutoCAD drawing files or DXF/DXB files. Layering, text fonts, etc. are to be reviewed and approved during the preliminary concept development phase of the design work. Text fonts other than standard AutoCAD files are to be included with drawing files. In addition to supplying the electronic files of the AutoCAD drawing files of the final plans, ENGINEER will also need to supply electronic files of the drawings in PDF format.
7. Prepare right-of-way tract maps and descriptions as required in clearly drawn detail and with sufficient reference to certificate of title descriptions. ENGINEER will perform all necessary survey work associated with marking the additional right-of-way easements. This shall include the setting monuments of new corners for any additional right-of-way and a one time marking of the right-of-way for utility relocations.
8. Identify all potential utility conflicts and provide prints of preliminary plans showing the problem locations to each utility. ENGINEER shall meet with utility company representatives to review plans and coordinate resolution of utility conflicts prior to PROJECT letting or, if approved by the City Engineer, identify on plans conflicts to be resolved during construction. Provide to CITY utility status report identifying utility conflicts with dates by which the conflicts will be eliminated with signed utility agreements from each involved utility company. ENGINEER shall meet with involved utility company/ies and project contractor to resolve any conflicts with utilities that occur during construction that were not identified and coordinated during design.

9. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. When applicable, this coordinate information will be used by the CITY for construction staking purposes.
10. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.
11. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
12. The ENGINEER shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.
13. Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT.
14. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.
    a. Plan Development for the water improvements by 120 days from notice to proceed. (Project No. 448 89839).
    b. Plan Development for the sewer improvements by120 days from notice to proceed. (Project No. 468 83647).
    c. Plan Development for the paving improvements by 120 days from notice to proceed. (Project No. 472 83791).

Attachment No. 1 to Exhibit "A" – Scope of Services

Plan Submittal

Water projects plans shall be submitted with (1) set of mylar plans; and a CD of the .dwgs and .pdfs. This includes projects that have the water plans incorporated into that project, for which the cover sheet should also be included.

Storm Sewer, Sanitary Sewer and Paving plans shall be submitted in a .dwg and .pdf format on a CD.

Paper plan submittals for KDOT projects (i.e. Field Check, ULCC, Final Check, etc.) will not change and the cover sheet mylar will be required for all projects for signature purposes. Projects that have water lines incorporated into the project are required to have those pages in a mylar format. The complete project must be submitted in a scalable .pdf format.

In addition, two (2) sets of 11"x17" plans will be submitted at the time of final .pdf submittal for ALL projects, regardless of the type.

Storm Water Pollution Prevention

For any project disturbing one acre of ground or more, the design Consultant must prepare a Notice of Intent and a Storm Water Pollution Prevention Plan and submit them to the KDHE for approval. Complete copies of the approved NOI and SWP3 must be provided to the City, prior to bidding. One hard copy should be provided to the project engineer upon approval, one electronic copy should be included with your transmittal of PDF plan files, and one additional electronic copy should be sent to the attention of Mark Hall at the following address:

City of Wichita
Environmental Services
1900 E. 9th St. North
Wichita, KS 67214

THIS INCLUDES **ALL** PROJECTS DISTURBING ONE ACRE OR MORE – I.E. NEW DEVELOPMENT, ARTERIAL STREETS, DIRT STREETS, BIKE PATHS, SEWER MAINS, ETC.

The City of Wichita will, under no circumstance, bid any project without first receiving copies of the KDHE approved NOI and SWP3.

The design of all City of Wichita construction projects must include the development of a site-specific erosion control plan. The site-specific erosion control plan must be included in the project plans. Every component and requirement of the erosion control plan must be separately and accurately accounted as a measured quantity bid item in the engineer's estimate.

Please note that careful consideration must be given to the transition of BMP maintenance responsibilities throughout the course of multi-phased projects. All intended responsibilities must be clearly demonstrated by the bid items. For example, if it is intended that the contractor of a subsequent waterline project be responsible for the maintenance of silt fence installed with a preceding sanitary sewer project, a measured quantity bid item must be submitted for x-lf of silt fence maintenance.

The City's current BMP standard detail sheets shall be included in all plans. These five sheets must be included in every plan set developed for the City of Wichita, regardless of project size.

CITY OF WICHITA
City Council Meeting
September 27, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 13728 West Kellogg for the West Kellogg Freeway Project (Districts IV and V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On January 6, 2009, the City Council approved the design concept for the Kellogg Freeway, between 111th Street West and 143rd Street West. The proposed improvements include widening the freeway from two lanes in each direction to three lanes in each direction, frontage roads, and grade separation at 119th Street West and 135th Street West. There are 43 tracts which will be impacted by the project. The properties consist of single-family residences, commercial properties, vacant land, and billboards. The property located at 13728 West Kellogg is vacant and zoned General Commercial. The project requires the southern portion of the tract. The acquisition area consists of 26,571 square feet.

Analysis: The acquisition area consists of 26,571 square feet however, the appraiser assumed a fifty foot roadway dedication in the analysis thus reducing the area to be analyzed down to 11,571. The owner rejected the appraised offer of $24,910, or $2.15 per square foot for the 11,571 square foot area. After negotiation, the owner agreed to accept $93,000, or $3.40 per square foot for total taking of 26,571 square feet. The unit value of $3.40 per square foot is the lower part of the comparable sales range used by the appraiser to determine land value. Settlement at $93,000 avoids the risk associated with eminent domain and saves the associated administrative costs and the time involved in the process.

Financial Considerations: A budget of $94,500 is requested. This includes $93,000 for the acquisition and $1,500 for the closing costs and other administrative costs. The funding source is Local Sales Tax (LST) and, State and Federal grant funds administered by the Kansas Department of Transportation.

Goal Impact: The acquisition of this easement is necessary to ensure Efficient Infrastructure by improving an arterial street through a developed part of the City.

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

Recommendation/Action: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Real Estate Purchase Agreement; and 3) Authorize the necessary signatures.

Attachments: Aerial map, real estate purchase agreement and tract map.

PROJECT: West Kellogg **DATE:** _____

COUNTY: Sedgwick **TRACT NO.:** 21

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this _____ day of _____, 2011, by and between

CathyMark Colorado, LLC (as to an undivided one-third Interest)
PO Box 273335, Fort Collins, CO 80527

AND

Global Services, Inc. (as to an undivided one-third interest)
2721 William Neal Parkway, Fort Collins, CO 80525

AND

Highlander Enterprises, LLC (as to an undivided one-third interest)
~~1630 S LEMAY SUITE 5, Fort Collins, CO 80525~~
(Name and Address)
1702 ROLLING GATE RD FORT COLLINS, CO 80526

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:
26,571.60 (Sq. Ft.) $ 93,000.00
Temporary Easement for construction:
N/A (Sq. Ft.) $ N/A

Improvement & Buildings acquired with right of way:
None

TOTAL: $ 93,000.00

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.

Seller is a licensed real estate agent in the State of Colorado.

LANDOWNERS:

By: Manager
By: CathyMark Colorado Investments, LLC

By: President - Global Services Inc
By:
Formerly Highlander Enterprises, LLC

THE CITY OF WICHITA

By:
Mayor

ATTEST:

By:
City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:
CathyMark Colorado Investments, LLC AND Global Services, Inc. AND Highlander Enterprises, LLC
If mortgage or other liens, show names of holders:
Larry D. Coleman and Patricia Coleman

REMARKS:

PIN/APN 147260430000100
Security Title File Number 2002235

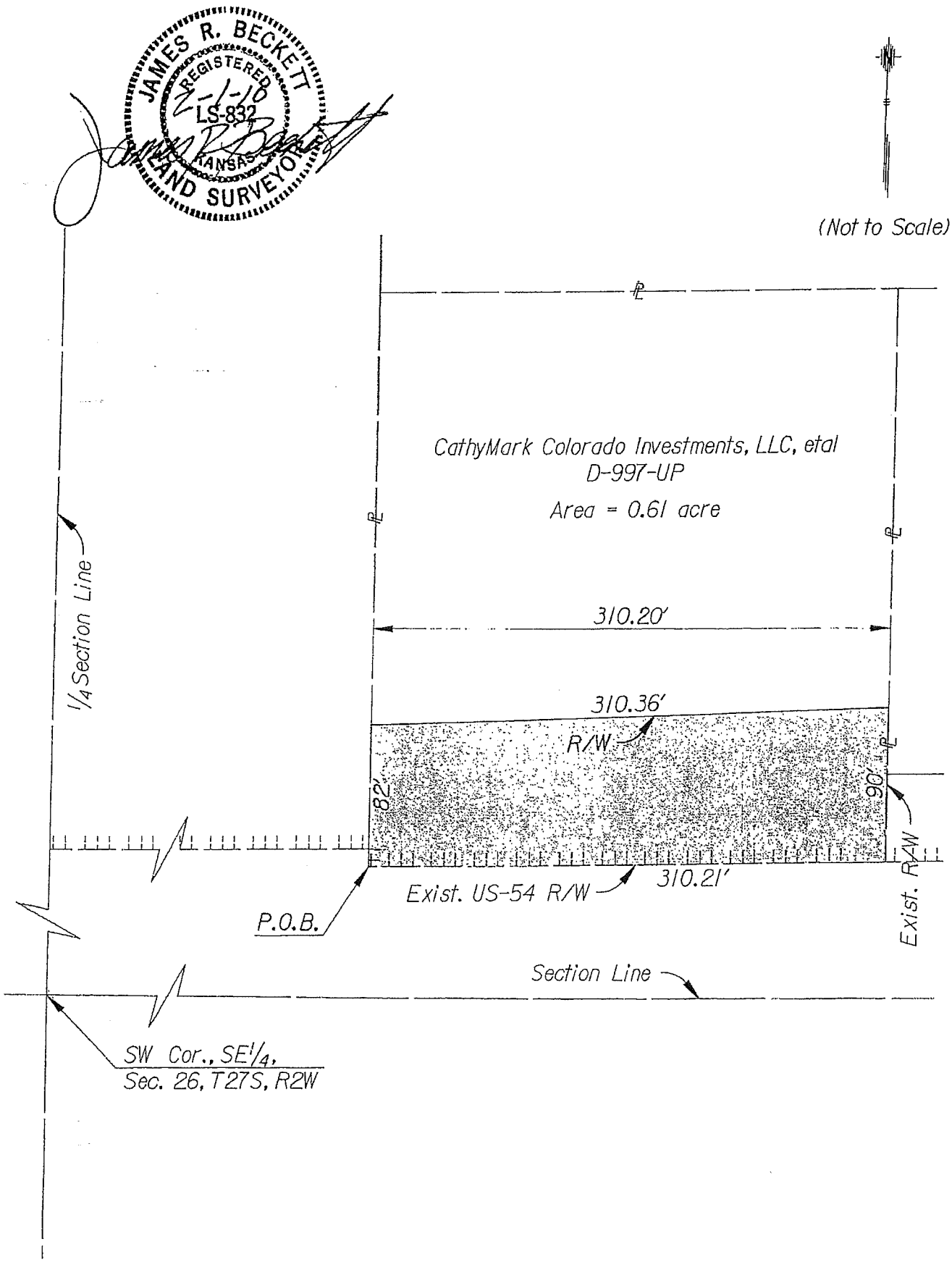
APPROVED TO FORM:

Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

Joe Vorstenbosch, Project Manager

Tract #21A - D-997-UP
Easement of Right of Way

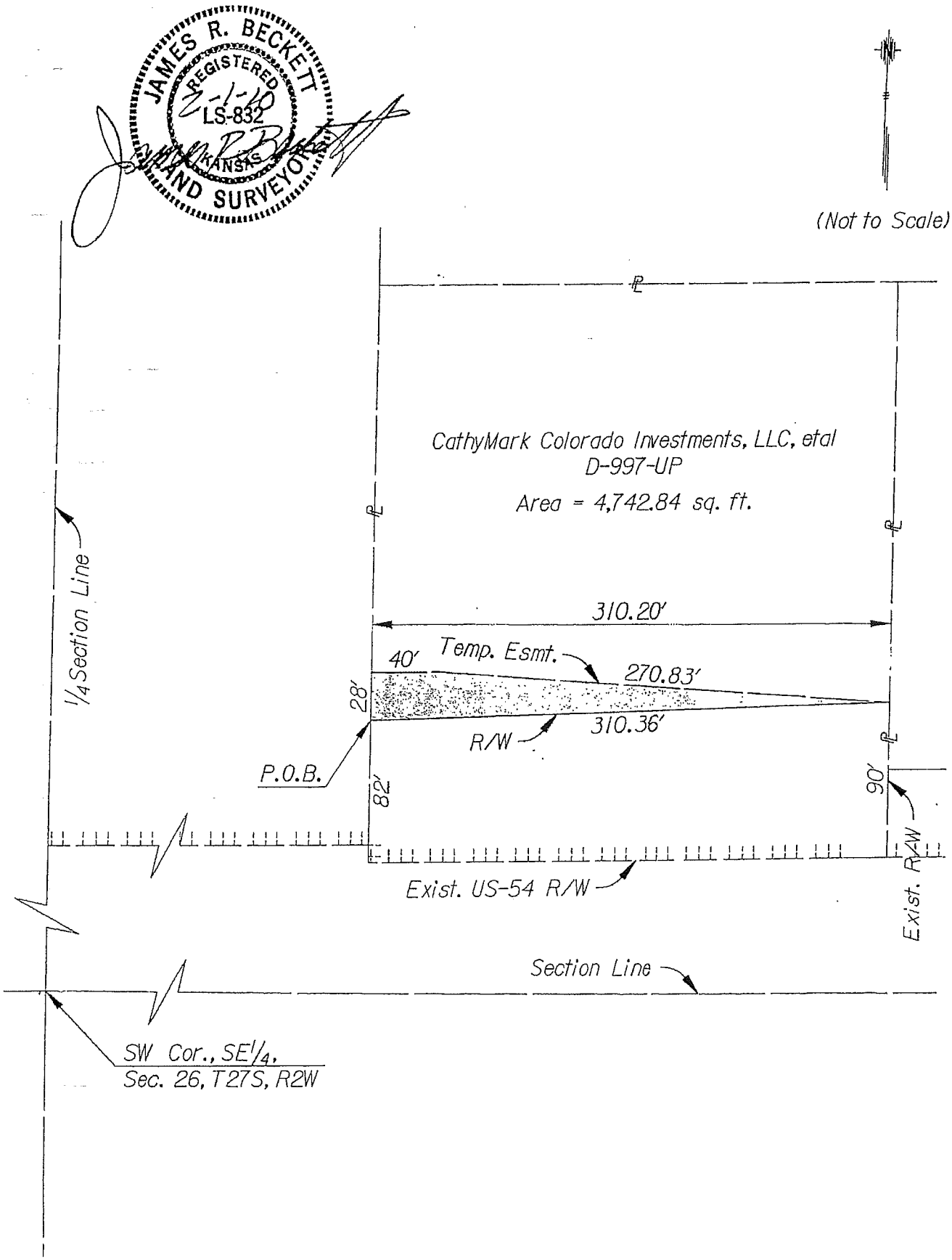


Tract #21A – D-997-UP
CathyMark Colorado Investments, LLC, etal
Easement for Right-of-Way

Beginning at the intersection of the North right-of-way line of U.S. Highway 54 per Condemnation Case A-38302 and the East line of the West 30 acres of the Southwest Quarter of the Southeast Quarter of Section 26, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas; thence North along said East line of said West 30 acres a distance of 82 feet; thence Easterly for a distance of 310.36 feet to a point 310.20 feet normally distant from the East line of said West 30 acres and 90 North of said North highway right-of-way line; thence South, parallel with the East line of said West 30 acres, a distance of 90 feet to a point on said North highway right-of-way line; thence West along said North highway right-of-way line a distance of 310.21 feet to the point of beginning, containing 0.61 acres more or less.

JAMES R. BECKETT
REGISTERED
LS-832
KANSAS
LAND SURVEYOR

Tract #21B - D-997-UP
Temporaray Construction Easement



Tract #21B – D-997-UP
CathyMark Colorado Investments, LLC, etal
Temporary Construction Easement

Commencing from the intersection of the North right-of-way line of U.S. Highway 54 per Condemnation Case A-38302 and the East line of the West 30 acres of the Southwest Quarter of the Southeast Quarter of Section 26, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas; thence North along said East line of said West 30 acres a distance of 82 feet to the point of beginning; thence continuing North a distance of 28 feet; thence East, parallel with said North highway right-of-way line, a distance of 40 feet; thence Easterly for a distance of 270.83 feet to a point 310.20 feet normally distant from the East line of said West 30 acres and 90 feet North of said North highway right-of-way line; thence Westerly for a distance of 310.36 feet to the point of beginning, containing 4,742.84 square feet, more or less.

JAMES R. BECKETT
REGISTERED
2-1-18
LS-832
KANSAS
LAND SURVEYOR

13728 W Kellogg

Every reasonable effort has been made to assure the accuracy of the maps and associated data provided herein. This information is provided with the understanding that the data are susceptible to a degree of error, and conclusions drawn from such information are the responsibility of the reader. The City of Wichita makes no warranty, representation or guaranty as to the content, accuracy, timeliness or completeness of any of the data provided herein. Some data provided here and used for the preparation of these maps has been obtained from public records not created or maintained by the City of Wichita. The City of Wichita shall assume no liability for any decisions made or actions taken or not taken by the reader in reliance upon any information or data furnished hereunder. The user should consult with the appropriate departmental staff member, e.g. Planning, Parks & Recreation, etc. to confirm the accuracy of information appearing in the visual presentations accessible through these web pages.

CITY OF WICHITA
City Council Meeting
September 27, 2011

TO: Mayor and City Council

SUBJECT: Acquisition of 1601 South Broadway for the Harry and Broadway Intersection Improvement Project (Districts I and III)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: The City Council has approved the design concept and proposed project to improve the intersection of Harry and Broadway. The project will require the acquisition of all or portions of eleven tracts. The improvements include adding left turn lanes, improving the sidewalks, improving the storm sewer system and landscaping. The property at 1601 South Broadway has 8,400 square feet and is developed with a 1,420 square foot sales and maintenance facility. The site is utilized for automobile sales. The project requires the acquisition of 392 square feet at the corner of the site. In addition, a temporary easement will be required along all the frontage of the property. This easement totals 1,068 square feet.

Analysis: The acquisition was appraised at $21,100. This consisted of $3,130 ($8.00 per square foot) for the land acquired, $1,920 for the temporary easement and $16,050 for damages to the remainder and costs associated with reconfiguring the site after the acquisition. The owner rejected that amount and provided his own appraisal that valued the acquisition at $72,000. The property is currently leased on a long term basis. The lease allows the tenant to cancel the lease due to this acquisition. The City's appraisal utilized rents considerably less than those under the current lease without providing any compensation for the lost income if the lease was canceled. If the lease were canceled due to the project, the tenant could be eligible for relocation benefits. After negotiation, a purchase price of $50,000 was arrived at.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $51,500 is requested. This amount is comprised of $50,000 for the acquisition and $1,500 for the title work and other administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving the traffic flow through a major transportation corridor.

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

Recommendation/Action: It is recommended that the City Council 1) Approve the budget and 2) Authorize the necessary signatures.

Attachments: Aerial map, tract maps and real estate purchase agreement.

REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ____ day of _____, 2011 by and between Jeffrey Joe Cunningham party of the First Part, hereinafter referred to as "Seller," whether one or more, and the City of Wichita, Kansas, a municipal corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer, by a good and sufficient warranty deed, the following described real property, situated in Sedgwick County, Kansas, to-wit:

   That part of Lot 2, English's 6th Addition to Wichita, Sedgwick County, Kansas, described as beginning at the northeast corner of said Lot 2; thence South along the east line of said Lot 2, 28.00 feet; thence northwesterly, 39.40 feet to a point on the north line of said Lot 2, said point being 28.00 feet west of the northeast corner of said Lot 2; thence East along said north line, 28.00 feet to the place of beginning.

2. The Seller does hereby agree to sell and convey to the Buyer, by a good and sufficient temporary easement, the following described real property, situated in Sedgwick County, Kansas, to-wit:

   That part of Lots 2 and 4, English's 6th Addition to Wichita, Sedgwick County, Kansas, described as commencing at the northeast corner of said Lot 2; thence South along the east line of said Lot 2, 28.00 feet for a place of beginning; thence continuing south along the east line of said Lots 2 and 4, 32.00 feet to the southeast corner of said Lot 4; thence West along the south line of said Lot 4, 7.00 feet; thence North, parallel with said east line, 31.97 feet; thence northwesterly, 31.00 feet to a point 29.03 feet west and 6.00 feet south of the northwest corner of said Lot 2; thence West, parallel with the north line of said Lot 2, 110.97 feet to the west line of said Lot 2; thence North along said west line, 6.00 feet to the northwest corner of said Lot 2; thence East along said north line, 112.00 feet; thence southeasterly, 39.40 feet to the place of beginning.

3. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above-described real property, the sum of Fifty Thousand Dollars and Zero Cents ($50,000.00) in the manner following to-wit: cash at closing

4. A title insurance company's commitment to insure or a complete abstract of title certified to date, to the above described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to the Office of Property Management for the City of Wichita for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time, but not to exceed thirty (30) days after said Title Evidence has been examined in which to correct any defects in title. If defects in title are not corrected to Buyer's satisfaction, Buyer, at Buyer's option, may cancel this contract. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller

and 100% by Buyer.

5. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

6. Taxes and specials shall be pro-rated for calendar year on the basis of 100% of taxes levied for the prior year. All prior years specials and taxes shall be current at time of closing.

7. The Seller further agrees to convey the above-described premises with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear accepted. Seller agrees to provide lease cancelations for any leases with terms longer than month to month.

8. Seller shall place no encumbrances on the property during the period from execution of this contract to closing. In addition, Seller shall be responsible for carrying such insurance as is reasonable on the improvements up until the closing date.

9. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before November 30, 2011.

10. Possession to be given to Buyer at closing

11. Closing costs shall be paid 100% by Buyer and 0% by Seller.

12. Site Assessment

A. At any time prior to the closing of this agreement, Buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, Buyer shall have the right to void this agreement upon notice to Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. If a site assessment is completed after the closing date set herein, then Buyer and Seller shall close or Buyer shall advise Seller that this agreement is being voided pursuant to said paragraph within ten (10) days of the completion of the site assessment. Buyer shall, if Buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

_____

Jeffrey Joe Cunningham

BUYER:
By Direction of the City Council

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

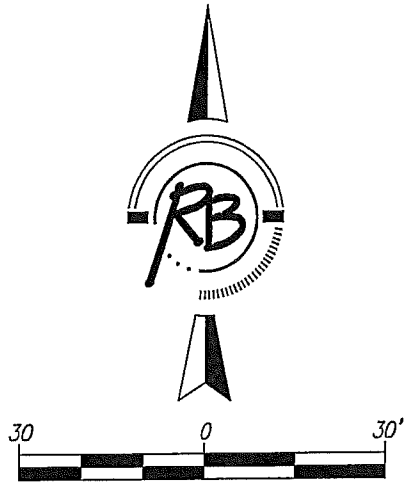
_____
Gary E. Rebenstorf, Director of Law

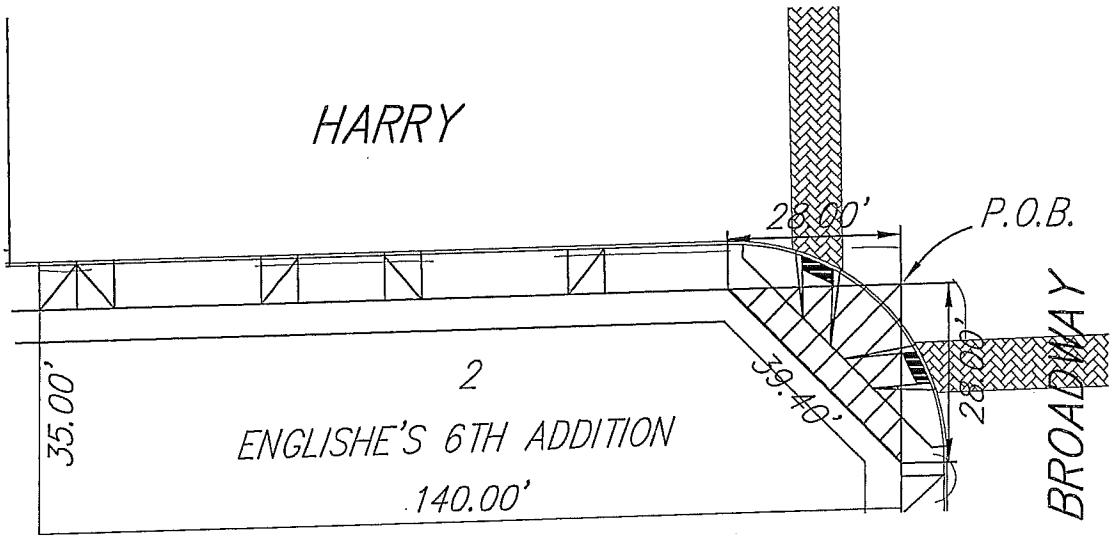
RIGHT OF WAY EXHIBIT #6

TOMMIE JOE CUNNINGHAM
C/O JEFFREY JONE CUNNINGHAM
2955 AVENUE W
MARQUETTE, KS 67464

A 06847

Right Of Way Area: 392 Sq. Ft.±
0.01 Acres





RECEIVED
DEC 22 '11
CITY CLERK OFFICE

Ruggles & Bohm, P.A.
Engineering, Surveying, Land Planning
924 North Main
Wichita, Kansas 67203
www.rbkansas.com
(316) 264-8008
(316) 264-4631 fax
E-mail: info@rbkansas.com

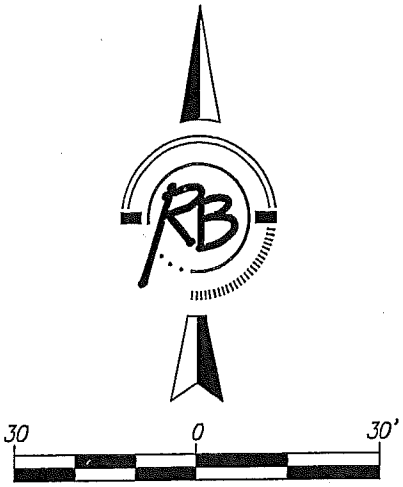
576T

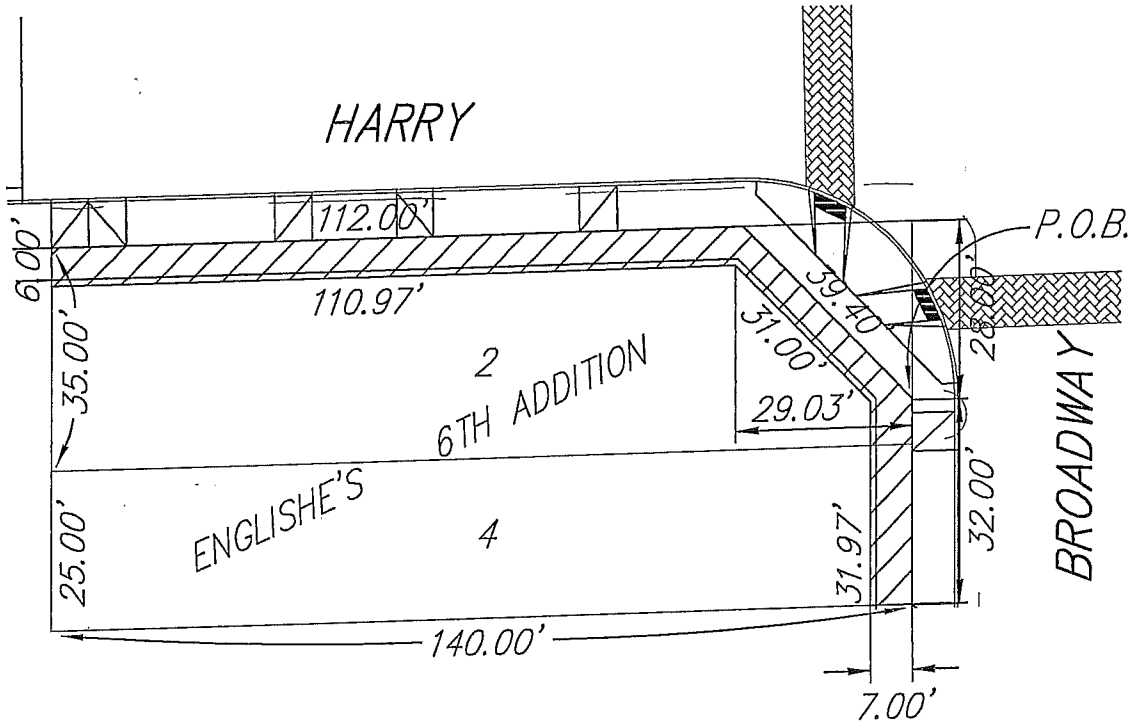
TEMPORARY CONSTRUCTION EASEMENT EXHIBIT #16

TOMMIE JOE CUNNINGHAM
C/O JEFFREY JONE CUNNINGHAM
2955 AVENUE W
MARQUETTE, KS 67464

A 06847

Right Of Way Area: 1,068 Sq. Ft.±
0.02 Acres





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Engineering, Surveying, Land Planning
924 North Main
Wichita, Kansas 67203
www.rbkansas.com
(316) 264-8008
(316) 264-4621 fax
E-mail: info@rbkansas.com

576T

1601 South Broadway

- Property Parcels
- Roads
  - State Highway
  - US Federal Highway
  - Interstate
  - KTA
  - Arterial
  - Collector
  - Minor
  - Ramp
- Railroads
- Quarter Section
- Waterways
- Streams
- Parks
- Airports
- City Limits
  - Andale
  - Bel Aire
  - Bentley
  - Cheney
  - Clearwater
  - Colwich
  - Derby
  - Eastborough
  - Garden Plain
  - Goddard
  - Haysville
  - Kechi
  - Maize
  - Mount Hope
  - Mulvane
  - Park City
  - Sedgwick
  - Sedgwick County
  - Unincorporated
  - Valley Center
  - Viola

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
September 27, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 320 East Harry for the Harry and Broadway Intersection Improvement Project (Districts I and III)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: The City Council has approved the design concept and proposed project to improve the intersection of Harry and Broadway. The project will require the acquisition of all or part of eleven tracts. The improvements include adding left turn lanes, improving the sidewalks, improving the storm sewer system and landscaping. The property located at 320 East Harry is improved with a multi-tenant retail building. The project requires a 980 square foot strip of land as road right-of-way, ranging in width from 12.50 feet to 1.50 feet. A 672 square foot temporary easement during construction is also required. No improvements are impacted, however; there is a loss of five parking stalls and the advertising signs will have to be relocated. The loss of the parking stalls will cause the property to no longer be in compliance with parking requirements.

Analysis: The acquisition was appraised at $44,800. This amount includes $5,880 ($6.00 per square foot) for the right of way being acquired, $34,120 for proximity damages and $4,800 for the temporary easement. Estimates to relocate the business sign are $9,800 for a total cost of $54,600. The owner rejected the offer. After negotiation the owner agreed to accept $60,000. The increased money was compensation for costs associated with redesign of the parking area to compensate for the lost area. The seller will also receive the east 20 feet of the property adjacent to the west, which the City has acquired for the intersection project. The option parcel is surplus to the needs of the project.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $61,500 is requested. This amount is comprised of $60,000 for the acquisition and $1,500 for the closings costs 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 budget; 2) Approve the agreement; 3) Authorize all necessary signatures.

Attachments: Aerial map, tract maps and real estate agreement.

REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ____ day of _____, 2011 by and between Lua Van Phan, Hot T. Phan, and Don M. Phan parties of the First Part, hereinafter referred to as "Seller," whether one or more, and the City of Wichita, Kansas, a municipal corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer, by a good and sufficient warranty deed, the following described real property, situated in Sedgwick County, Kansas, to-wit:

   That part of Lot 11, Zimmerly's Addition to the City of Wichita, Sedgwick County, Kansas, described as beginning at the southeast corner of said Lot 11; thence West along the south line of said Lot 11, 140.00 feet to the east line of a 20 foot alley; thence North along the east line of said alley, 12.50 feet; thence southeasterly 140.33 feet to a point on the east line of said Lot 11, said point being 1.50 feet north of the southeast corner of said Lot 11; thence South along said east line, 1.50 feet to the place of beginning.

2. The Seller does hereby agree to sell and convey to the Buyer, by a good and sufficient temporary easement, the following described real property, situated in Sedgwick County, Kansas, to-wit:

   That part of Lot 11, Zimmerly's Addition to the City of Wichita, Sedgwick County, Kansas, described as commencing at the southeast corner of said Lot 11; thence North along the east line of said Lot 11, 1.50 feet for a place of beginning; thence northwesterly, 140.33 feet to a point on the east line of a 20.00 foot alley, said point being 12.50 feet north of the south line of said Lot 11; thence North along the east line of said alley, 4.77 feet; thence southeasterly, 140.33 feet to a point on the east line of said Lot 11, said point being 6.32 feet north of the southeast corner of said Lot 11; thence South along said east line, 4.82 feet to the place of beginning.

3. The Buyer shall transfer a portion of the south 83 feet of the west 157.5 feet of Lot 11, Zimmerly's Addition to Wichita, Sedgwick County, Kansas. Said transfer parcel shall consist of the east 20 feet of said south 83 feet of the west 157.5 feet of Lot 11 located north of the new right of way line of the pending intersection project said new right of way line to be located approximately sixteen (16) feet from the north of the south line of said Lot 11.

4. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above-described real property, the sum of Sixty Thousand Dollars and Zero Cents ($60,000.00) in the manner following to-wit: cash at closing. Said payment shall be inclusive of the cost to move the business sign located in the above described acquisition parcel.

5. A title insurance company's commitment to insure or a complete abstract of title certified to date, to the above described real property, showing a merchantable title vested in the

seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to the Office of Property Management for the City of Wichita for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time, but not to exceed thirty (30) days after said Title Evidence has been examined in which to correct any defects in title. If defects in title are not corrected to Buyer's satisfaction, Buyer, at Buyer's option, may cancel this contract. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer.

6. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

7. Taxes and specials shall be pro-rated for calendar year on the basis of 100% of taxes levied for the prior year. All prior years specials and taxes shall be current at time of closing.

8. The Seller further agrees to convey the above-described premises with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear accepted. Seller agrees to provide lease cancelations for any leases with terms longer than month to month.

9. Seller shall place no encumbrances on the property during the period from execution of this contract to closing. In addition, Seller shall be responsible for carrying such insurance as is reasonable on the improvements up until the closing date.

10. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before November 30, 2011.

11. Possession to be given to Buyer at closing

12. Closing costs shall be paid 100% by Buyer and 0% by Seller.

13. Site Assessment

A. At any time prior to the closing of this agreement, Buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the property, Buyer shall have the right to void this agreement upon notice to Seller, in which event neither party shall be under any further obligation to the other, with the exception that Seller shall return to Buyer any deposit made hereunder.

B. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. If a site assessment is completed after the closing date set herein, then Buyer and Seller shall close or Buyer shall advise Seller that this agreement is being voided pursuant to said paragraph within ten (10) days of the completion of the site assessment. Buyer shall, if Buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:

_____
Lue Van Pahn

_____
Hot T. Phan

_____
Don M. Phan

BUYER:
By Direction of the City Council

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

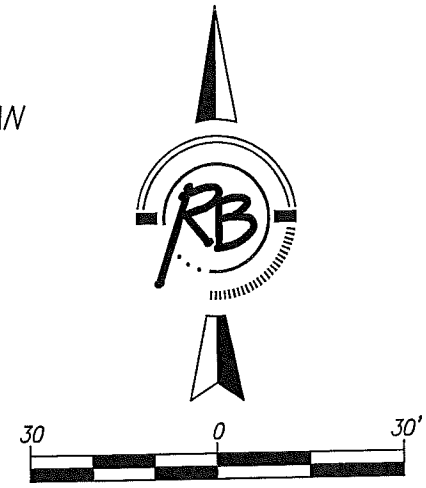
_____
Gary E. Rebenstorf, Director of Law

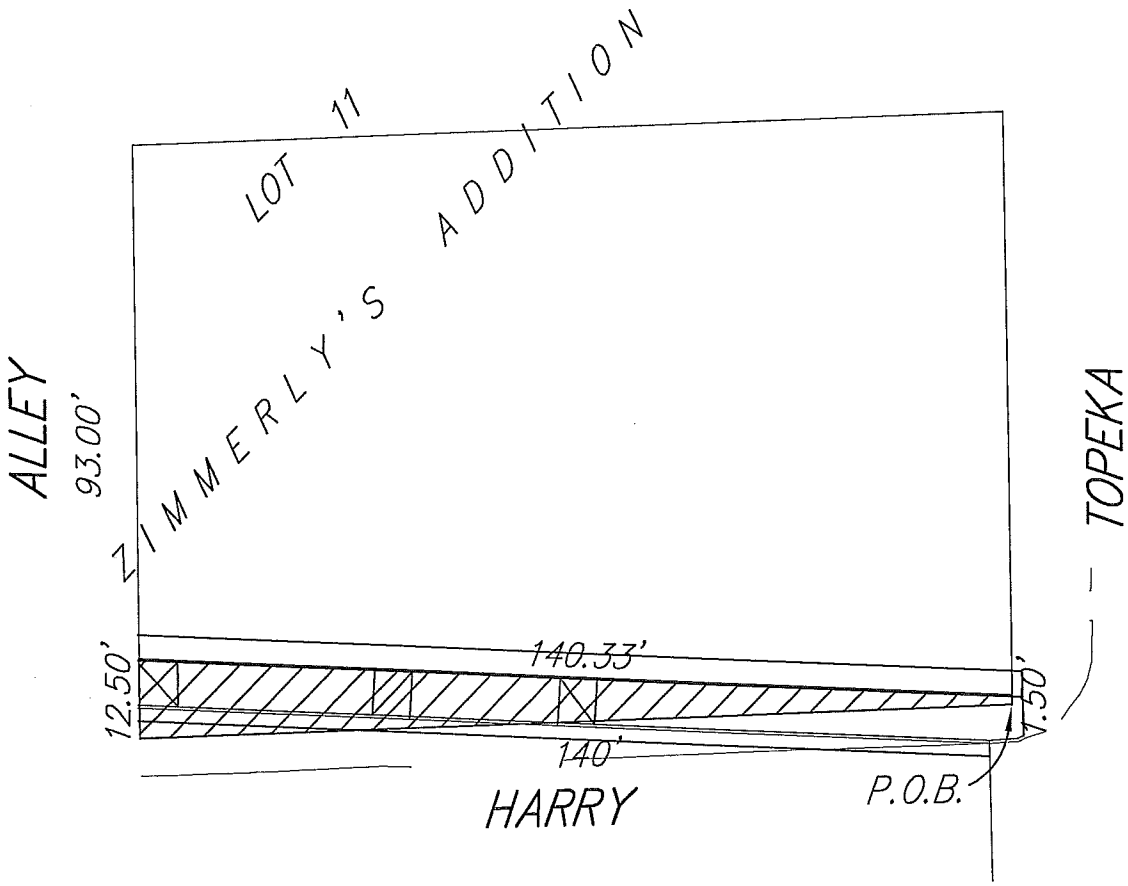
RIGHT OF WAY EXHIBIT #3

LUA VAN PHAN, HOT T PHAN & DON M PHAN
2572 N FOX RUN CR.
WICHITA, KS 67226

B 05199

Right Of Way Area: 980 Sq. Ft.±
0.02 Acres





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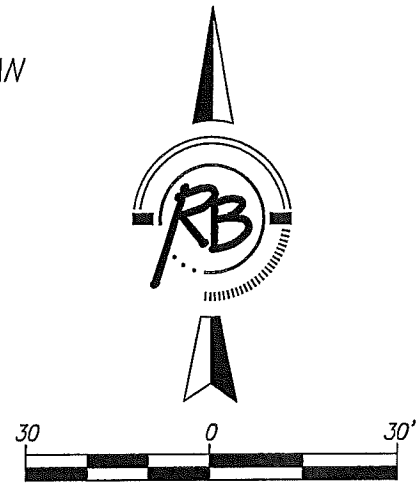
E-mail: info@rbkansas.com

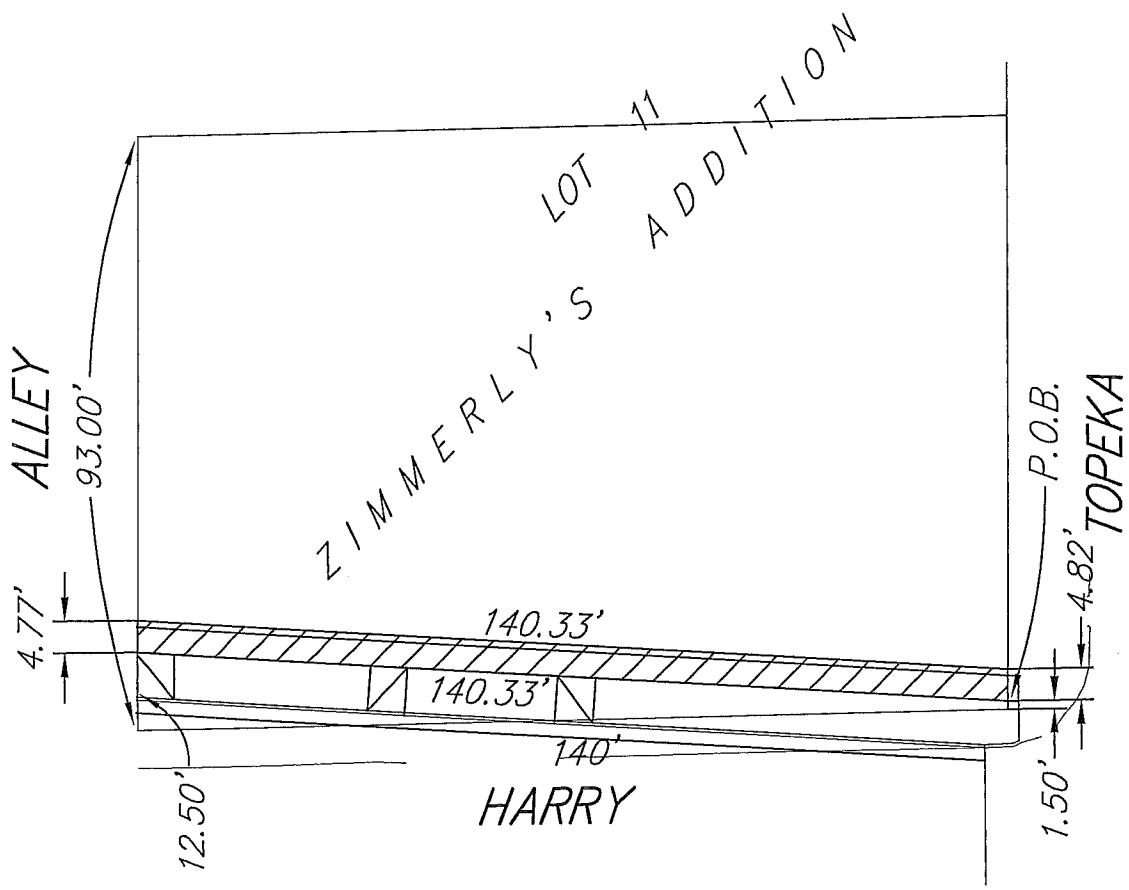
TEMPORARY CONSTRUCTION EASEMENT EXHIBIT #9

LUA VAN PHAN, HOT T PHAN & DON M PHAN
2572 N FOX RUN CR.
WICHITA, KS 67226

B 05199

Right Of Way Area: 672 Sq. Ft.±
0.02 Acres





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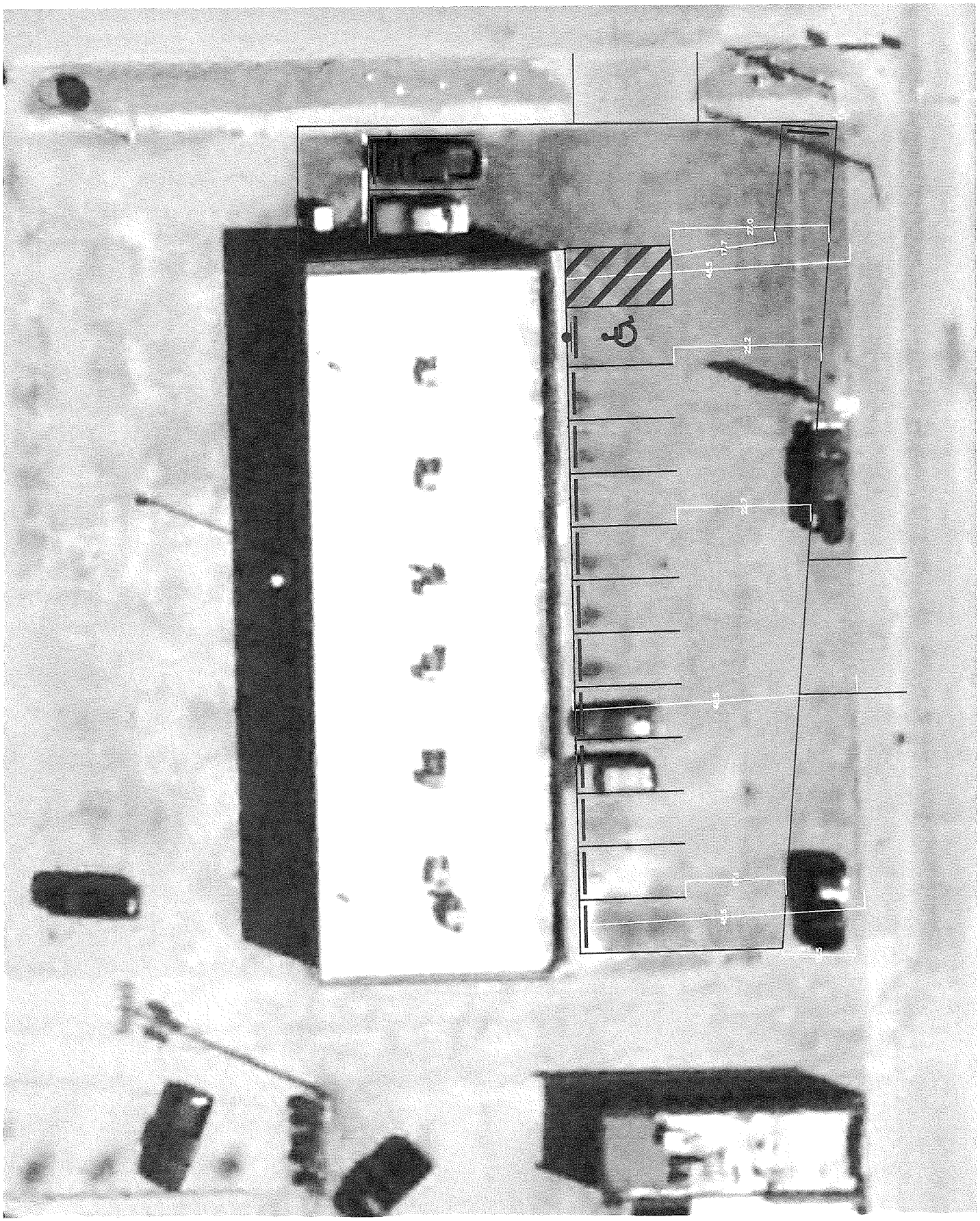
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CITY OF WICHITA
City Council Meeting
September 27, 2011

TO: Mayor and City Council

SUBJECT: Acquisition of a Temporary Easement at 1443 North Ridge Road for the West 13th Street and Ridge Road Improvement Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: The City Council has approved the design concept and proposed project to construct an interchange at I-235 and 13th Street North and associated street improvements. Associated with the project is the improvement of the intersection at 13th Street North and Ridge Road. As part of the project, the City requires a temporary construction easement at 1443 North Ridge Road. The site is zoned commercial and is improved with a retail store. The improvements will not be impacted by the easement.

Analysis: The proposed easement area impacts 830 square feet. The owner agreed to accept the appraised value of $290. The easement will allow the entrance to the property to be reconstructed to conform to the project.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $300 is requested. This includes $290 for the acquisition and $10 for recording.

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 easement and; 2) Authorize the necessary signatures.

Attachments: Temporary construction easement, tract map and aerial map.

TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT made this 13th day of September, 2011 by and between D&M Enterprises of Wichita, LLC (Owner), herein referred to as "Grantor(s)", and the City of Wichita, Kansas, a municipal corporation, successors and assigns, herein referred to as "Grantee(s)".

WITNESSETH: That the said Grantor, in consideration of the sum of (~~Purchase price~~) Two Hundred Ninety JCP Dollar ($1,290.00 ~~($1.00)~~ JCP and other good and valuable considerations, the receipt whereof is hereby acknowledged, do hereby grant and convey unto the said Grantee a temporary construction easement for the purpose of constructing road improvements and related actions over, along and under the following described real estate situated in Sedgwick County, Kansas, to wit:

> Beginning at the Northeast corner of Lot 1, Block A, Brock Addition to Wichita, Sedgwick County, Kansas; thence South along the East line of said Lot 1, a distance of 55.28 feet; thence West perpendicular to said East line, a distance of 15.00 feet; thence North parallel with said East line, a distance of 55.36 feet to a point on the North line of said Lot 1; thence East, along said North line, a distance of 15.00 feet to the point of beginning.

The Grantee hereby covenants and agrees to indemnify, protect, and save harmless the Grantor, its successors and assigns, of, from, against and in respect of all liabilities, losses, claims, damages, punitive damages, causes of action, lawsuits, demands, judgments, settlement payments and costs and expenses caused by or arising out of the use of the premises by the Grantee, its employees, successors and assigns.

The Grantee is hereby granted the right to enter upon said premises at any time for the purpose of performing road construction work and associated site work for a period not to exceed two years from the date above written or three months of the completion of the project, whichever is sooner.

IN WITNESS WHEREOF: Grantor(s) have signed these presents the day and year first written.

D&M Enterprises of Wichita, LLC

Don Klausmeyer
, Managing Member

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

On 13 day of September, 2011, this easement was acknowledged before me by Don Klausmeyer, Managing Member

NOTARY PUBLIC - State of Kansas
SHARON ZENNER
My Appt. Exp. 9-9-14

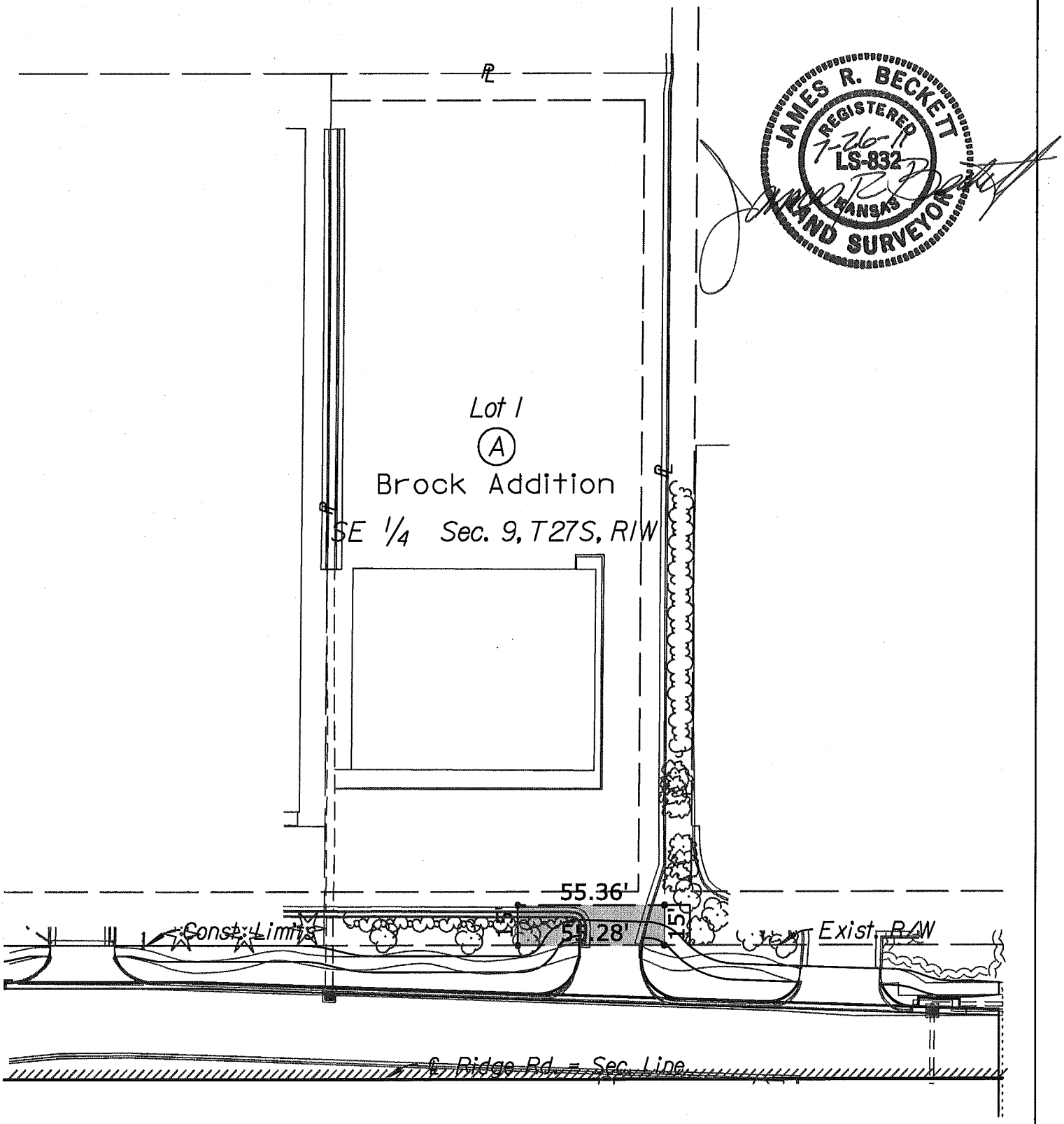
Sharon Zenner
Notary Public

My Commission expires: _____

TRACT #30 - D-47193

D & M Enterprises of Wichita, LLC
Temporary Construction Easement

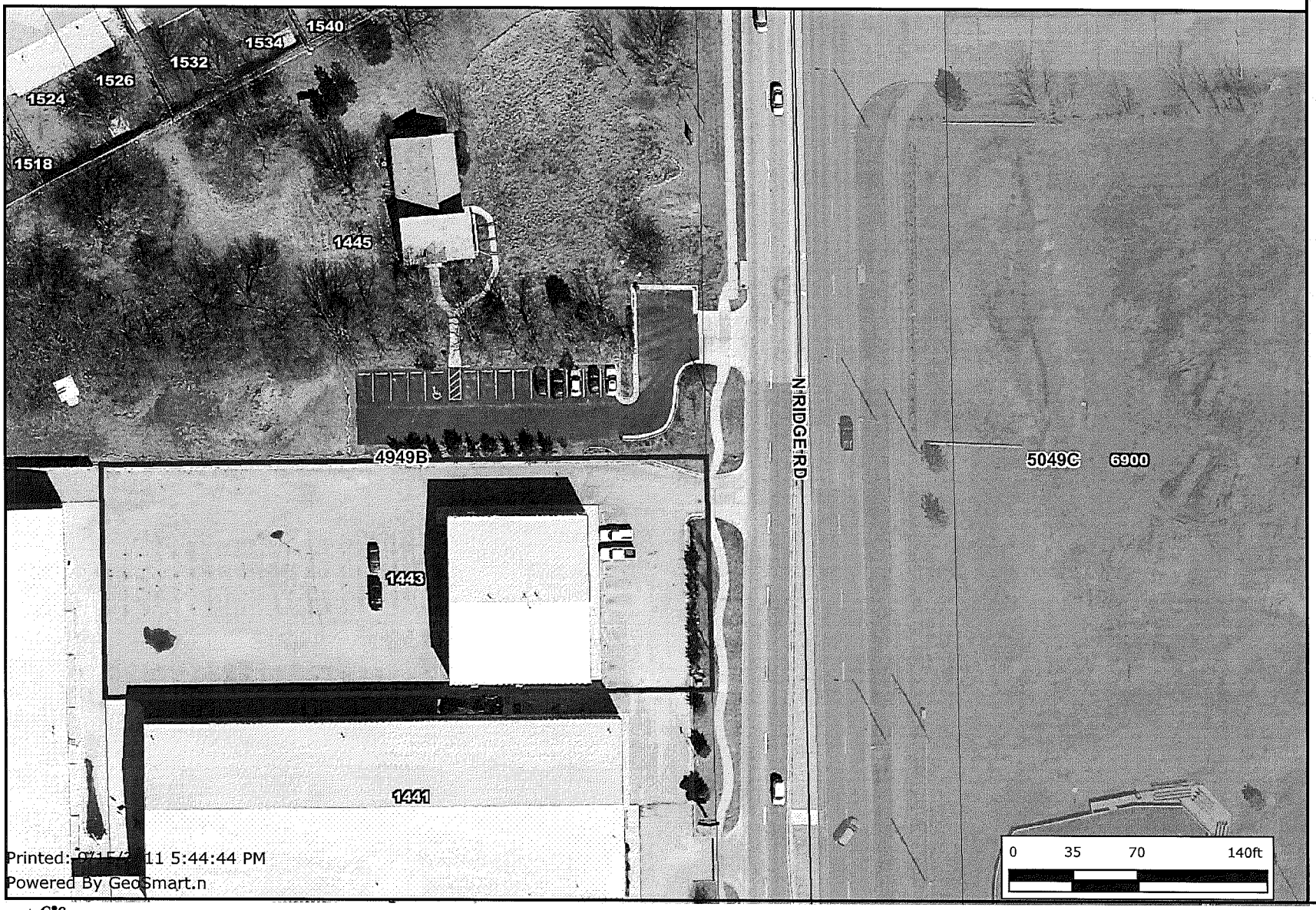
Not to Scale



LEGEND
City Limits

July 21, 2011

1443 North Ridge Road



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- Identified Features
- Property Parcels
- Roads
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  - US Federal Highway
  - Interstate
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  - Arterial
  - Collector
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City of Wichita
City Council Meeting
September 27, 2011

TO: Mayor and City Council

SUBJECT: Use of City Self-Insurance Health and General Funds for 2011 Flu Shots

INITIATED BY: Human Resources Department

AGENDA: Consent

Recommendation: Approve Agreement between City of Wichita and Sedgwick County Health Department (SCHD).

Background: For the past ten years, Sedgwick County has administered flu shots to City employees, charging only for the cost of the vaccine. This year, the shots will be given between the dates of September 30, through November 10th. This includes the clinic here at City Hall.

Analysis: Administering the vaccine is a preventive measure to prevent the possible spread of the flu among employees.

Financial Considerations: The self-insurance health fund budget contains $29,000 for flu shots. In 2011 the cost of the vaccine is $25 per shot. In 2010 a total of $25,440 was spent for the 848 employees that received the vaccine. This is consistent with the number of shots that have been given in the past.

Goal Impact: Internal Perspectives. Keeping employees healthy has a positive impact on productivity.

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

Recommendations/Actions: It is recommended that the City Council approve the agreement between the City of Wichita and Sedgwick County Health Department (SCHD).

Attachment: Billing Agreement signed by Purchasing Department.

Sedgwick County Health Department
2716 W. Central
Wichita, KS 67203
TEL: (316) 660-7300 FAX: (316) 660-4917

September 14, 2011

To Whom It May Concern:

This letter is to confirm that the Sedgwick County Health Department (SCHD) is entering into a billing agreement with the City of Wichita (COW). The Health Department will provide the following to COW Employees beginning September 30, 2011 and ending November 10, 2011

- Flu Shots - $25

The City of Wichita all Employee Flu Clinic is scheduled for Friday, September 30 from 1:00 pm – 4:30 pm on first floor of City in the boardroom. All City of Wichita Employees can receive flu shots beginning September 30, 2011 at the Clinical Services Office located at 2716 W. Central and any public mobile clinic locations.

The SCHD will bill the City of Wichita. The COW agrees to pay the SCHD within thirty days following receipt of invoice.

Employees are required to present an identification letter and/or id prior to receiving these services.

Please return a signed copy of this letter to show receipt and acknowledgment of these terms. We will need a signed copy of this letter in our office before services can be provided to our employees. The terms of this billing agreement are to be reviewed annually. If there are any questions, please let me know.

Sincerely,

J'Vonnah Maryman, MPH
Program Manager, Immunization and Health Screenings
Sedgwick County Health Department
(316) 660-7183
fax (316) 660-4917

-- --

I have received and agree to the terms listed in this letter regarding the billing agreement for Flu shots.

_____ _____
Signature, and title, of person responsible for payment Date

Agenda Item No. II-10

City of Wichita
City Council Meeting
September 27, 2011

TO:	Mayor and City Council
SUBJECT:	S-Well and M-Well Repairs Design Build Contract (All Districts)
INITIATED BY:	Department of Public Works & Utilities
AGENDA:	Consent

Recommendation: Approve the agreement.

Background: The City of Wichita has 61 water supply wells located in the Equus Beds Aquifer, approximately 25 miles northwest of Wichita. These water supply wells are critical to the City's water supply. Equus Beds water supply well, M-31 has failed and is incapable of producing water. In addition, Local S-Wells 4, 5, 7, 8, 10 and 11, located near the Water Treatment Plant have failed. In order to restore production from these wells they must be re-drilled. The S-Wells electrical and SCADA and monitoring systems will also be improved to enhance the operation of the wells and usage of the aquifer to extend the life of these wells.

Analysis: To finance M-31 well repairs, $300,000 was initiated on November 2, 2010 to finance the M-31 project. The S-well repairs were funded with $940,000 initiated on October 26, 2010. On March 8, 2011, the City Council approved the design-build of these projects. The Request for Proposal for the reconstruction of these wells was issued March 30, 2011. Proposals were received from Wildcat/PEC, Burns & McDonnell/Layne and Cahoy/MKEC. Interviews were held on May 16, 2011. The Staff Screening and Selection Committee recommended Wildcat/PEC based on caisson drilling methods and potential rehabilitation options.

The contract with Wildcat Construction submitted is in the amount of $1,993,753. Because these wells provide needed water supply during peak production, an additional $900,000 is requested to bring the project total to $2,140,000 to finance anticipated project costs.

Financial Consideration: The 2009-2018 Adopted CIP includes an additional $700,000 for well repairs in 2010 – 2013. To fully fund all anticipated project expenses of rehabilitating the wells, an additional $900,000 is requested, bringing the project total to $2,140,000. These funds have been included in the staff proposals for the 2011-2020 Water Utilities CIP, and have been incorporated into the financial modeling associated with the Cost of Service Analysis study that is on-going.

Goal Impact: The project will help Ensure Efficient Infrastructure goal by assuring that the City is able to provide an adequate supply of water to its customers.

Legal Considerations: The Agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the design/build agreement, approve the amended resolution and authorize the necessary signatures.

Attachments: Agreement, resolutions and Notices of Intent.

RESOLUTION NO. 11-239

A RESOLUTION AMENDING RESOLUTION NO. 10-278 PERTAINING TO THE LOCAL S&E WELL FIELD REPAIRS (W-1395) 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:

SECTION 1. That Section 1 of Resolution No. 10-278 is hereby amended to read as follows:

> "SECTION 1. Pursuant to the laws of the State of Kansas, including K.S.A. 10-1201, *et. seq*, as amended and supplemented by Charter Ordinance No. 211 of the City of Wichita, Kansas, it is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Local S&E Well Field Repairs (W-1395) (called the "Project"). The total costs of the Project are estimated to be $1,390,000 exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the Project."

SECTION 2. That Section 3 of Resolution No. 10-278 is hereby amended to read as follows:

> "SECTION 3. It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed one million three hundred ninety thousand dollars ($1,390,000) in 2011 exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose."

SECTION 3. That the original of Sections 1 and 3 of Resolution 10-278 is hereby rescinded.

Adopted at Wichita, Kansas, September 27, 2011.

(Seal)

_____
CARL BREWER, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By_____
GARY E. REBENSTORF, Director of Law

RESOLUTION NO. 11-238

A RESOLUTION AMENDING RESOLUTION NO. 10-281 PERTAINING TO THE M-WELL REPAIRS (W-022) 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:

SECTION 1. That Section 1 of Resolution No. 10-281 is hereby amended to read as follows:

> "SECTION 1. Pursuant to the laws of the State of Kansas, including K.S.A. 10-1201, *et. seq*, as amended and supplemented by Charter Ordinance No. 211 of the City of Wichita, Kansas, it is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, M-Well Repairs (W-022) (called the "Project"). The total costs of the Project are estimated to be $750,000 exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the Project."

SECTION 2. That Section 3 of Resolution No. 10-281 is hereby amended to read as follows:

> "SECTION 3. It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed seven hundred fifty thousand dollars ($750,000) in 2011 exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose."

SECTION 3. That the original of Sections 1 and 3 of Resolution 10-281 is hereby rescinded.

Adopted at Wichita, Kansas, September 27, 2011.

(Seal)

_____
CARL BREWER, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By_____
GARY E. REBENSTORF, Director of Law

OCA: 633822

(Published in the Wichita Eagle, on September 30, 2011.)

NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $ 750,000, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing Body of the City of Wichita, Kansas, by Resolution No. 11-238, duly adopted September 27th, 2011, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, M-Well Repairs (W-22) (called the "Project"). The total costs of the Project are estimated to be seven hundred fifty thousand dollars ($750,000). The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed $750,000 under the authority of K.S.A. 10-1201 et seq., as amended and supplemented, including by Charter Ordinance No. 211 of the City of Wichita, Kansas. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

This Notice of Intent shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the revenue bonds is filed within said fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the issuance of the revenue bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on September 27th, 2011.

/s/ CARL BREWER, Mayor

ATTEST:
/s/ Karen Sublett, City Clerk

OCA: 633821

(Published in the Wichita Eagle, on September 30, 2011.)

NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $1,390,000, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing Body of the City of Wichita, Kansas, by Resolution No. 11-239, duly adopted September 27, 2011, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Local S&E Well Field Repairs (W-1395) (called the "Project"). The total costs of the Project are estimated to be one million three hundred ninety thousand dollars ($1,390,000). The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed $1,390,000 under the authority of K.S.A. 10-1201 et seq., as amended and supplemented including by Charter Ordinance No. 211 of the City of Wichita, Kansas. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

This Notice of Intent shall be published one time in the official newspaper of the City; and if, within fifteen (15) days from and after the publication date hereof, there shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than twenty percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If no sufficient protest to the Project and the issuance of the revenue bonds is filed within said fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the issuance of the revenue bonds.

BY ORDER of the Governing Body of the City of Wichita, Kansas, on September 27th, 2011.

/s/ CARL BREWER, Mayor

ATTEST:
/s/ Karen Sublett, City Clerk

EJCDC
STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN/BUILDER ON THE BASIS OF A STIPULATED PRICE

THIS AGREEMENT is by and between **The City of Wichita, Kansas** (Owner)

and **Wildcat Construction** (Design/Builder).

Owner and Design/Builder, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.01. Design/Builder shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Reconstruction of Six Sims Wells and One Equus Beds Well
Wichita, Kansas

ARTICLE 2 - THE PROJECT

2.01. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Provide engineering design, labor, materials and equipment for the
Reconstruction of Six Sims Wells and One Equus Beds Well
Project, generally in conformance with the Design Builders Proposal Dated April 14, 2011, and the Contract Documents attached hereto.

A. Owner has elected to accept the Base Proposal.
B. Owner has elected to accept Base Proposal Add-on No. 1.
C. Owner has elected to accept Base Proposal Add-on No. 2.
D. Owner has elected to accept the MODIFIED Proposal.
E. The Owner has required the expansion of SCADA functionality as proposed in the Base Proposal. Design Builder has developed this expansion thus modifying the Scope and Price of all submitted Proposals.

ARTICLE 3 - CONTRACT TIMES

3.02. Days to Achieve Substantial Completion and Final Payment

A. The Work will be substantially completed within 210 days after the date when the Contract Times commence to run as provided in paragraph 2.02 of the General Conditions, and completed and ready for final payment in accordance with paragraph 13.08 of the General Conditions within 240 days after the date when the Contract Times commence to run.

3.03. Liquidated Damages

A. Design/Builder and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.02.A above, plus any extensions thereof allowed in accordance with paragraph 11.02 of the General Conditions. The parties also recognize the delays, expenses and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Design/Builder agree that as liquidated damages for delay (but not as a penalty), Design/Builder shall pay

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Owner $100 for each day that expires after the time specified in paragraph 3.02.A for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Design/Builder shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.02.A for completion and readiness for final payment or any proper extension thereof granted by Owner, Design/Builder shall pay Owner $100 for each day that expires after the time specified in paragraph 3.02.A for completion and readiness for final payment.

ARTICLE 4 - CONTRACT PRICE

4.01. Owner shall pay Design/Builder for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to paragraphs 4.01.A, 4.01.Band 4.01.C below:

A. For all Work: One million nine hundred ninety-three thousand, seven hundred fifty-three Dollars and twenty cents. ($1,993,753.20)

4.02. The factor used to calculate the cost of fee for employees in the direct employ of Design/Builder performing Design Professional Services in accordance with paragraph 10.01.A.1.b of the General Conditions shall be 3.0.

ARTICLE 5 - PAYMENT PROCEDURES

5.01. Design/Builder shall submit and Owner will process Applications for Payment in accordance with Article 13 of the General Conditions.

A. *Progress Payments; Retainage.* Owner shall make progress payments on account of the Contract Price on the basis of Design/Builder's Applications for Payment which are to be submitted on or about the 21st day of each month during performance of the Work as provided in paragraphs 5.01.A.1 and A.2 below. All such payments will be based on the Schedule of Values established in paragraph 2.06.A.3 of the General Conditions

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold in accordance with paragraph 13.03.B of the General Conditions.

   a. 95 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner, and if the character and progress of the Work have been satisfactory to Owner, Owner may determine that as long as the character and progress of the Work remain satisfactory to Owner, there will be no additional retainage on account of Work completed, in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100 percent of the remaining Work completed.

   b. 100 percent of the cost of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 13.02.A of the General Conditions).

2. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Design/Builder to 100% percent of the Contract Price less such amounts as Owner may withhold in accordance with paragraph 13.03.B of the General Conditions.

B. *Final Payment.* Upon final completion and acceptance of the Work in accordance with paragraph 13.08 of the General Conditions, Owner shall pay the remainder of the Contract Price.

ARTICLE 6 - INTEREST

6.01. Not used.

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ARTICLE 7 - DESIGN/BUILDER'S REPRESENTATIONS

7.01. To induce Owner to enter into this Agreement, Design/Builder makes the following representations:

A. Design/Builder has examined and carefully studied the Contract Documents (including the Addenda) listed in paragraphs 8.01.A through J and the other related data identified in the Request for Proposals but excluding the documents described in paragraph 8.01.K.

B. Design/Builder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Design/Builder is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Design/Builder has carefully studied: (1) reports of explorations and tests of subsurface conditions (if any) at the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified or made available by Owner.

E. Design/Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

F. Design/Builder has correlated the information known to Design/Builder, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

G. Design/Builder has given Owner written notice of all conflicts, errors, ambiguities or discrepancies that Design/Builder has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Design/Builder.

H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 - CONTRACT DOCUMENTS

8.01. The Contract Documents consist of the following:

A. This Agreement (pages 1 to 5, inclusive);

B. Performance Bond (pages 6 to 7, inclusive);

C. Payment Bond (pages 6 to 7, inclusive).

D. Kansas Statutory (Public Works) Bond Page 8 and consisting of 2 pages;

E. Standard General Conditions of the Contract Between Owner and Design/Builder (pages 1 to 28, inclusive);

F. Supplementary Conditions (pages 1 to 10 inclusive);

G. Revised Non-Discrimination and Equal Employment Opportunity / Affirmative Action Program Requirements Statement for Contracts or Agreements.

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L. The following, which may be delivered, prepared, or issued after the Effective Date of this Agreement and are not attached hereto:

1. Notice to Proceed; To be determined

2. All Work Change Directives, and Change Orders amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04.A of the General Conditions;

3. Specifications as defined in Paragraph 1.01.A.40 of the General Conditions; and

4. Drawings as defined in Paragraph 1.01.A.18 of the General Conditions.

8.02. The documents listed in paragraph 8.01 above are attached to this Agreement (except as expressly noted otherwise above).

8.03. There are no Contract Documents other than those listed above in this Article 8.

8.04. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.04 of the General Conditions.

ARTICLE 9 - MISCELLANEOUS

9.01. The Standard General Conditions of the Contract Between Owner and Design/Builder are referred to herein as the General Conditions.

9.02. Terms used in this Agreement will have the meanings indicated in the General Conditions.

9.03. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.04. Owner and Design/Builder each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.05. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design/Builder.

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IN WITNESS WHEREOF, Owner and Design/Builder have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Design/Builder. All portions of the Contract Documents have been signed, initialed or identified by Owner and Design/Builder.

This Agreement will be effective on September 20, 2011 (which is the Effective Date of the Agreement).

OWNER:

The City of Wichita, Kansas

By: _____

[CORPORATE SEAL]

Attest: _____

Address for giving notices:

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Designated Representative:

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

DESIGN/BUILDER:

Wildcat Construction Co., Inc.

By: James L. Tadtman, President

[CORPORATE SEAL]

Attest: Shari L. Berry

Shari L. Berry

Address for giving notices:

P.O. Box 9163

Wichita, KS 67277

Engineer License No. or Certificate No.: PE 6568 (Where applicable)

State: Kansas

Contractor License No.:: 652 (Where applicable)

State: Kanss

(If Design/Builder is a corporation, attach evidence of authority to sign.)

Designated Representative:

Name: James L. Tadtman

Title: President

Address: 4421 W. Harry

Wichita, KS 67209

Phone: (316) 945-9408

Facsimile: (316) 942-4012

The above instrument approved as to form

this 12th day of September, 2011

Gary E. Rebenstorf, Asst. City Attorney

EJCDC D-520 Suggested Form of Agreement Between Owner and Design/Builder on the Basis of a Stipulated Price
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This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN/BUILDER

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly by

ACEC
American Council of Engineering Companies

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ASCE American Society of Civil Engineers

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STANDARD GENERAL CONDITIONS OF THE CONTRACT BETWEEN OWNER AND DESIGN/BUILDER

ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. *Addenda* – Written or graphic instruments issued prior to the opening of Proposals which clarify, correct or change the Request for Proposals or the Contract Documents.

2. *Agreement* – The written instrument which is evidence of the agreement between Owner and Design/Builder covering the Work.

3. *Application for Payment* – The form which is to be used by Design/Builder in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bonds* – Performance and payment bonds and other instruments of security.

6. *Change Order* – A written order which is signed by Design/Builder and Owner which authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

7. *Claim* – A demand or assertion by Owner or Design/Builder seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a claim.

8. *Conceptual Documents* – The drawings and specifications and/or other graphic or written materials, criteria and information concerning Owner's requirements for the Project, such as design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, including those items enumerated in the Request for Proposals which show or describe the character and scope of, or relate to, the Work to be performed or furnished and which have been prepared by or for Owner.

9. *Construction* – The result of performing or furnishing of labor, the furnishing and incorporating of materials and equipment into the Work and the furnishing of services (other than Design Professional Services) and documents, all as required by the Contract Documents.

10. *Construction Subagreement* – A written agreement between Design/Builder and a construction Subcontractor for provision of Construction.

11. *Contract* – The entire and integrated written agreement between Owner and Design/Builder concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents* – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.

13. *Contract Price* – The moneys payable by Owner to Design/Builder for completion of the Work in accordance with the Contract Documents.

14. *Contract Times* – The numbers of days or the dates stated in the Agreement to (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment in accordance with paragraph 13.08.

15. *Design/Builder* – The individual or entity with whom Owner has entered into the Agreement.

16. *Design Subagreement* – A written agreement between Design/Builder and a design professional for provision of Design Professional Services.

17. *Design Professional Services* – Services related to the preparation of Drawings, Specifications, and other design submittals specified by the Contract Documents and required to be performed by licensed design professionals, as well as other services provided by or for licensed design professionals during Bidding/Negotiating, Construction, or Operational phases.

18. *Drawings* – Those portions of the Contract Documents prepared by or for Design/Builder and approved by Owner consisting of drawings, diagrams,

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illustrations, schedules and other data which show the scope, extent, and character of the Work.

19. *Effective Date of the Agreement* – The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

20. *Field Order* – A written order issued by Owner which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

21. *Hazardous Environmental Condition* – The presence at the Site of Asbestos, Hazardous Waste, PCB's, Petroleum Products or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto on connection with the Work.

22. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

23. *Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.

24. *Liens* – Charges, security interests or encumbrances upon real property or personal property.

25. *Milestone* – A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

26. *Notice of Award* – The written notice by Owner to the successful proposer stating that upon compliance by the successful proposer with the conditions precedent included therein, within the time specified, Owner will sign and deliver the Agreement.

27. *Notice to Proceed* – A written notice given by Owner to Design/Builder fixing the date on which the Contract Times will commence to run and on which Design/Builder shall start to perform the Work.

28. *Owner* – The individual or entity with whom Design/Builder has entered into the Agreement and for whom the Work is to be performed.

29. *Owner's Consultant* – An individual or entity with whom the Owner may contract to furnish services to Owner with respect to the Project and who is identified as such in the Supplementary Conditions.

30. *Partial Utilization* – Use by Owner of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

31. *PCBs* – Polychlorinated biphenyls.

32. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.

33. *Project* – The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

34. *Proposal* – The documents submitted by Design/Builder in response to the Request for Proposals setting forth the design concepts, proposed prices, and other conditions for the Work to be performed.

35. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

36. *Request for Proposals* – The document prepared by or for Owner specifying and describing Owner's objectives and the procedure to be followed in preparing and submitting a Proposal and awarding a contract.

37. *Resident Project Representative* – The authorized representative of Owner who may be assigned to the Site or any part thereof.

38. *Schedule of Values* – A schedule prepared by Design/Builder and acceptable to Owner indicating that portion of the Contract Price to be paid for each major component of the Work.

39. *Site* – Lands or other areas designated in the Contract Documents as being furnished by Owner upon which Construction is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for use of Design/Builder.

40. *Specifications* – The part of the Contract Documents prepared by or for Design/Builder and approved by Owner consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

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41. *Subcontractor* – An individual or entity other than a Supplier having a direct contract with Design/Builder or with any other Subcontractor for the performance of a part of the Work.

42. *Submittal* – A written or graphic document prepared by or for Design/Builder which is required by the Contract Documents to be submitted to Owner by Design/Builder. Submittals may include Drawings, Specifications, progress schedules, shop drawings, samples, cash flow projections, and Schedules of Values. Submittals other than Drawings and Specifications are not Contract Documents.

43. *Substantial Completion* – The time at which the Work (or a specified part) has progressed to the point where it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions* – The part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with Design/Builder or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Design/Builder or any Subcontractor.

46. *Unit Price Work* – Work to be paid for on the basis of unit prices.

47. *Work* – The entire construction or the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents.

48. *Work Change Directive* – A written directive to Design/Builder, issued on or after the Effective Date of the Agreement and signed by Owner ordering an addition, deletion or revision in the Work, or responding to differing site conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

A. Intent of Certain Terms or Adjectives:

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

2. The word "defective," when modifying the word "Construction" refers to Construction that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Owner's final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion) provided that the defect was not caused by Owner.

3. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

4 The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials or equipment or equipment complete and ready for intended use.

5. The words "perform" or "provide" when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

6. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Design/Builder, "provide" is implied.

7. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with that meaning.

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ARTICLE 2 – PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. When Design/Builder delivers the executed Agreements to Owner, Design/Builder shall also deliver to Owner such Bonds as Design/Builder may be required to furnish in accordance with paragraph 5.01.A.

2.02 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement, or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within thirty days after the Effective Date of the Agreement. Unless agreed to in writing by Owner and Design/Builder, the Contract Times will commence to run no later than the ninetieth day after the last day for receipt of the Proposal or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.03 Starting the Work

A. Design/Builder shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.04 Before Starting the Work

A. *Design/Builder's Review of Contract Documents:* Before undertaking each part of the Work, Design/Builder shall carefully study and compare those Contract Documents prepared by Owner and check and verify pertinent figures therein and all applicable field measurements. Design/Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which Design/Builder may discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby; however, Design/Builder shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Design/Builder knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within 10 days after commencement of the Contract Times (unless otherwise specified in the Contract Documents), Design/Builder shall submit the following to Owner for its timely review:

1. A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. A preliminary schedule of Submittals which will list each required Submittal and the times for submitting, reviewing and processing each Submittal;

3. A preliminary Schedule of Values for all of the Work which will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work; and

4. A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.

C. *Evidence of Insurance:* Before any Work at the Site is started, Design/Builder and Owner shall each deliver to the other, certificates of insurance as required by paragraph 5.03 which Design/Builder and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.05 Initial Conference

A. Within twenty days after the Contract Times start to run, Design/Builder will arrange a conference attended by Owner and Design/Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to in paragraph 2.04.B, procedures for handling Submittals, processing Applications for Payment, maintaining required records, items required pursuant to paragraph 8.01.A.6 and other matters.

2.06 Initial Acceptance of Schedules

A. At least ten days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design/Builder will arrange a conference attended by Design/Builder, Owner and others as appropriate to review for acceptability the schedules submitted in accordance with paragraph 2.04.B. Design/Builder shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design/Builder until the acceptable schedules are submitted to Owner.

1. The progress schedule will be acceptable to Owner if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on Owner responsibility for the progress schedule, for sequencing, scheduling or progress of the Work nor interfere with nor relieve Design/Builder from Design/Builder's full responsibility therefor.

2. Design/Builder's schedule of Submittals will be acceptable to Owner if it provides a workable

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arrangement for reviewing and processing the required Submittals.

3. Design/Builder's Schedule of Values will be acceptable to Owner as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be designed and constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for at no additional cost to Owner.

3.02 Reference Standards

A. Standards, Specifications, Codes, Laws or Regulations.

1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect on the last day for receipt of Proposals except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual, code, or instruction of a Supplier shall be effective to change the duties and responsibilities of Owner, Design/Builder, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Resolving Discrepancies

A. In the event of a discrepancy between the Conceptual Documents on the one hand and the Proposal or Drawings or Specifications on the other hand, the Conceptual Documents will control except when Owner has approved a Submittal pursuant to paragraph 6.17.B.

B. Except as otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

1. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

2. The provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

1. Owner's approval of required Submittals (pursuant to paragraph 6.17.B);

2. A Work Change Directive;

3. A Change Order;

4. A Field Order.

3.05 *Reuse of Documents*

A. All documents including Drawings and Specifications prepared or furnished by Design/Builder pursuant to this Agreement are for Design/Builder's own use, and Design/Builder shall retain an ownership and property interest therein whether or not the Project is completed. Owner may make and retain copies for information and reference in connection with the use and occupancy of the Project by Owner and others. However, such documents are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse or any continued use after any termination without written verification or adaptation by Design/Builder for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Design/Builder and Owner shall indemnify and hold harmless Design/Builder and Subcontractors from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Design/Builder to further compensation at rates to be agreed upon by Owner and Design/Builder.

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3.06 Electronic Data

A. Copies of data furnished by Owner to Design/Builder or Design/Builder to Owner that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; DIFFERING SITE CONDITIONS; REFERENCE POINTS; HAZARDOUS ENVIRONMENTAL CONDITIONS

4.01 Availability of Lands

A. Owner shall furnish the Site. Owner shall notify Design/Builder of any encumbrances or restrictions not of general application but specifically related to use of the Site which Design/Builder will have to comply in performing the Work. Unless otherwise provided in the Contract Documents, Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Design/Builder and Owner are unable to agree on entitlement to or the amount or extent of any adjustments in the Contract Price or the Contract Times as a result of any delay in Owner's furnishing the Site, Design/Builder may make a Claim therefor as provided in Article 9.

B. Upon reasonable written request, Owner shall furnish Design/Builder with a current statement of record legal title and legal description of the lands upon which the Construction is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's lien against such lands in accordance with applicable Laws or Regulations.

C. Design/Builder shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Differing Site Conditions

A. Design/Builder shall promptly, and before the conditions are disturbed, give a written notice to Owner of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Contract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character called for by the Contract Documents.

B. Owner will investigate the Site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Design/Builder's cost of, or the time required for, performing any part of the Work, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the Contract Price or Times modified in writing by Change Order in accordance with Article 9.

C. No request by Design/Builder for an equitable adjustment under paragraph 4.02 shall be allowed unless Design/Builder has given the written notice required; provided that the time prescribed in 9.03.A for giving written notice may be extended by Owner.

D. The provisions of this paragraph 4.02 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

4.03 Reference Points

A. Design/Builder shall be responsible for laying out the Work and shall protect and preserve the reference points and property monuments established by Owner pursuant to paragraph 8.01.A.6.e, and shall make no changes or relocations without the prior written approval of Owner. Design/Builder shall report to Owner whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 Hazardous Environmental Condition at Site

A. Design/Builder will not be responsible for any Hazardous Environmental Condition encountered at the Site which was not identified in the Contract Documents to be within the scope of the Work. Design/Builder shall be responsible for materials creating a Hazardous Environmental Condition created by any materials brought to the Site by Design/Builder, Subcontractors, Suppliers or anyone else for whom Design/Builder is responsible.

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B. If Design/Builder encounters a Hazardous Environmental Condition, Design/Builder shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Construction in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify Owner (and thereafter confirm such notice in writing). Owner shall promptly determine the necessity of retaining a qualified expert to evaluate such condition or take corrective action, if any.

C. Design/Builder shall not be required to resume Construction in connection with such Hazardous Environmental Condition or in any such affected area until after Owner has obtained any required permits related thereto and delivered to Design/Builder written notice (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Construction, or (ii) specifying any special conditions under which such Construction may be resumed safely. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of such Construction stoppage or such special conditions under which Construction is agreed to be resumed by Design/Builder, either party may make a Claim therefor as provided in Article 9.

D. If after receipt of such special written notice Design/Builder does not agree to resume Construction based on a reasonable belief it is unsafe, or does not agree to resume such Construction under such special conditions, then Owner may order such portion of the Work that is related to such Hazardous Environmental Condition to be deleted from the Work. If Owner and Design/Builder cannot agree as to entitlement to or the amount or extent of an adjustment, if any, in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Article 9. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.

E. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design/Builder, Subcontractors, Suppliers and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Contract Documents to be included in the scope of the Work, and (iii) was not created by Design/Builder or by anyone for whom Design/Builder is responsible. Nothing in this paragraph 4.04.E shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

F. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultant and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such Hazardous Environmental Condition created by Design/Builder or anyone for whom Design/Builder is responsible. Nothing in this paragraph 4.04.F shall obligate Design/Builder to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

ARTICLE 5 – BONDS AND INSURANCE

5.01 Performance, Payment and Other Bonds

A. Design/Builder shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all Design/Builder's obligations to furnish, provide and pay for Work and related materials under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Design/Builder shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 by the Audit Staff, Bureau of Government Financial Operations, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by Design/Builder is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B and 5.02, Design/Builder shall within twenty days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Design/Builder shall be obtained from surety or insurance companies that are duly licensed or authorized in the

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jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 Certificates of Insurance

A. Design/Builder shall deliver to Owner, with copies to each additional insured indicated in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Design/Builder is required to purchase and maintain. Owner shall deliver to Design/Builder, with copies to each additional insured indicated in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Design/Builder or any other additional insured) which Owner is required to purchase and maintain.

5.04 Design/Builder's Liability Insurance

A. Design/Builder shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Design/Builder's performance of the Work and Design/Builder's other obligations under the Contract Documents, whether it is to be performed by Design/Builder, any Subcontractor or Supplier or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefits and other similar employee benefit acts;

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Design/Builder's employees;

3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Design/Builder's employees;

4. Claims for damages insured by reasonably available personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by Design/Builder, or (ii) by any other person for any other reason;

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by paragraph 5.04.A shall:

1. With respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, (subject to any customary exclusion in respect of professional liability) include as additional insureds Owner and Owner's Consultants and any other persons or entities indicated in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, and employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. Include at least the specific overages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. Include completed operations insurance;

4. Include contractual liability insurance covering Design/Builder's indemnity obligations under paragraphs 6.11.A.3 and 6.21;

5. Contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days' prior written notice has been given to Owner and each other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Design/Builder pursuant to paragraph 5.03 will so provide);

6. Remain in effect at least until final payment and at all times thereafter when Design/Builder may be correcting, removing or replacing defective Construction in accordance with paragraphs 12.06 and 12.07; and

7. With respect to completed operations insurance, and any other insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and Design/Builder shall furnish Owner and each other additional insured indicated in the Supplementary Conditions to whom a certificate of insurance has been issued evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 Owner's Liability Insurance

A. In addition to the insurance required to be provided by Design/Builder under paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense

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Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Construction at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws or Regulations). This insurance will:

1. Include the interests of Owner, Owner's Consultant, Design/Builder, Subcontractors, and any other individuals or entities indicated in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;

2. Be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss and damage to the Construction, temporary buildings, falsework and all materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws or Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. Include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. Cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Construction, provided that such materials and equipment have been included in an Application for Payment approved by Owner;

5. Allow partial utilization in accordance with paragraph 13.06;

6. Include testing and startup; and

7. Be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner and Design/Builder with thirty days' written notice to each other additional insured to whom a certificate of insurance has been issued.

B. Owner shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws or Regulations which will include the interests of Owner, Owner's Consultants, Design/Builder, Subcontractors, and any other individuals or entities indicated in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained by Owner in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days' prior written notice has been given to Design/Builder and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. Owner shall not be responsible for purchasing and maintaining any property insurance to protect the interests of Design/Builder, Subcontractors, Suppliers, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount, will be borne by Design/Builder, Subcontractor or others suffering any such loss and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If Design/Builder requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Design/Builder by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Design/Builder whether or not such other insurance has been procured by Owner.

5.07 Waiver of Rights

A. Owner and Design/Builder intend that all policies purchased in accordance with paragraph 5.06 will protect Owner, Owner's Consultant, Design/Builder, Subcontractors, Suppliers, and all other individuals or entities indicated in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. Owner and Design/Builder waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition,

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waive all such rights against Owner's Consultant, Subcontractors, Suppliers, and all other individuals or entities indicated in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.

B. Owner waives all rights against Design/Builder, Subcontractors, and Suppliers and the officers, directors, employees and agents of any of them for:

1. Loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property caused by, arising out of or resulting from fire or other peril whether or not insured by Owner; and

2. Loss or damage to the completed Project or any part thereof caused by, arising out of. or resulting from fire or other insured peril or cause or loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to paragraph 13.06, after Substantial Completion pursuant to paragraph 13.05, or after final payment pursuant to paragraph 13.08.

C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Design/Builder, Subcontractors, Owner's Consultant, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. Owner shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Construction shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order.

B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either Owner or Design/Builder has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of their not complying with the Contract Documents, the objecting party shall so notify the other party in writing within ten days after receipt of the certificates (or other evidence requested) required by paragraph 2.04.C. Owner and Design/Builder shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was supposed to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurance

A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 13.06, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – DESIGN/BUILDER'S RESPONSIBILITIES

6.01 Design Professional Services

A. *Standard of Care.* The standard of care for Design Professional Services performed or furnished under this Agreement will be the care and skill ordinarily used by members of the engineering profession practicing under similar conditions at the same time and locality.

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B. *Preliminary Design Phase.* After the Contract Times commence to run, Design/Builder shall:

1. Consult with Owner to understand Owner's requirements for the Project and review available data;

2. Advise Owner as to the necessity of Owner's providing or obtaining from others additional reports, data, or services of the types provided in paragraph 8.01.A.6.a-g and assist Owner in obtaining such reports, data, or services;

3. Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Design/Builder with whom consultation is to be undertaken in connection with the Project;

4. Obtain such additional geotechnical and related information which it deems necessary for performance of the Work;

5. On the basis of the Conceptual Documents and Design/Builder's Proposal, prepare preliminary design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project;

6. Furnish the preliminary design documents to and review them with Owner within the times indicated in the schedules described in paragraphs 2.06.A.1 and 2.06.A.2; and

7. Identify any variations in the preliminary design documents from the Contract Documents in accordance with 6.17.B.

C. *Final Design Phase.* After written acceptance by Owner of the preliminary design phase documents Design/Builder shall:

1. On the basis of the accepted Preliminary Design Phase documents, prepare final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by Design/Builder and Specifications (which will be prepared, where appropriate, in general conformance with the sixteen division format of the Construction Specifications Institute);

2. Provide technical criteria, written descriptions and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist Owner in consultations with appropriate authorities;

3. Furnish the above documents, Drawings, and Specifications to and review them with Owner within the times indicated in the schedules described in paragraphs 2.06.A.1 and 2.06.A.2; and

4. Identify any deviations from other Contract Documents in accordance with paragraph 6.17.B.

6.02 Supervision and Superintendence of Construction

A. Design/Builder shall supervise, inspect and direct the Construction competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to provide the Construction in accordance with the Contract Documents. Design/Builder shall be solely responsible for the means, methods, techniques, sequences and procedures of Construction. Design/Builder shall be responsible to see that the completed Construction complies accurately with the Contract Documents and shall keep Owner advised as to the quality and progress of the Construction.

B. At all times during the progress of Construction, the Design/Builder shall assign a competent resident superintendent thereto, who shall not be replaced without written notice to Owner except under extraordinary circumstances. The superintendent will be Design/Builder's representative at the Site and shall have authority to act on behalf of Design/Builder. All communications given to or received from the superintendent shall be binding on Design/Builder.

6.03 Labor, Working Hours

A. Design/Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design/Builder shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Construction at the Site shall be performed during regular working hours, and Design/Builder will not permit overtime work or the performance of Construction on Saturday, Sunday or any legal holiday without Owner's written consent, which will not be unreasonably withheld.

6.04 Services, Materials, and Equipment

A. Unless otherwise specified in the Contract Documents, Design/Builder shall furnish or cause to be furnished and assume full responsibility for materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the Work.

B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and

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guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If reasonably required by Owner, Design/Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

6.05 Progress Schedule

A. Design/Builder shall adhere to the progress schedule established in accordance with paragraph 2.06.A as it may be adjusted from time to time as provided below:

1. Design/Builder shall submit to Owner for acceptance proposed adjustments in the progress schedule that will not change the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 11.02. Such adjustments may only be made by a Change Order or .

6.06 Concerning Subcontractors, Suppliers, and Others

A. Design/Builder shall not employ any Subcontractor, Supplier, or other individual or entity against whom Owner may have reasonable objection. Design/Builder shall not be required to employ any Subcontractor, Supplier or other individual or entity to furnish or perform any of the Work against whom Design/Builder has reasonable objection.

B. Design/Builde0r shall be fully responsible to Owner for all acts and omissions of the Subcontractors, Suppliers and other individuals or entities performing or furnishing any of the Work just as Design/Builder is responsible for Design/Builder's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner and any such Subcontractor, Supplier, or other individual or entity, nor shall it create any obligation on the part of Owner to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws or Regulations.

C. Design/Builder shall be solely responsible for scheduling and coordinating Subcontractors, Suppliers and other individuals and entities performing or furnishing any of the Work under a direct or indirect contract with Design/Builder.

D. Design/Builder shall require all Subcontractors, Suppliers and such other individuals and entities performing or furnishing any of the Work to communicate with the Owner through Design/Builder.

E. All Work performed for Design/Builder by a Subcontractor or Supplier will be pursuant to an appropriate Design Subagreement or Construction Subagreement between Design/Builder and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the Design/Builder and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Design/Builder, Owner's Consultant, and all other additional insureds (and their officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Design/Builder will obtain the same.

6.07 Patent Fees and Royalties

A. Design/Builder shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Conceptual Documents for use in the performance of the Construction and if to the actual knowledge of Owner its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Conceptual Documents.

B. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner and Owner's Consultant, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not identified in the Conceptual Documents.

C. To the fullest extent permitted by Laws or Regulations, Owner shall indemnify and hold harmless Design/Builder and its officers, directors, partners, employees or agents, Subcontractors and Suppliers from and against all claims, costs, losses and damages (including but not limited to

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all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device required by the Conceptual Documents.

6.08 Permits

A. Unless otherwise provided in the Contract Documents, Design/Builder shall obtain and pay for all necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Work. Owner shall assist Design/Builder, when necessary, in obtaining such permits, licenses and approvals. Design/Builder shall pay all governmental charges and inspection fees necessary for the performance of the Work, which are applicable on the last day for receipt of Proposals. Design/Builder shall pay all charges of utility owners for connections to the Work, and Owner shall pay all charges of such utility owners for capital costs related thereto.

6.09 Laws or Regulations

A. Design/Builder shall give all notices required by and comply with all Laws or Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design/Builder's compliance with any Laws or Regulations.

B. If Design/Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design/Builder shall bear all costs arising therefrom.

C. Changes in Laws or Regulations not known on the date of receipt of Proposals having an effect on the cost or time of performance may be the subject of a change in Contract Price or Contract Times.

6.10 Taxes

A. Design/Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design/Builder in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas.

1. Design/Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design/Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of Work, Design/Builder shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design/Builder's performance of the Construction.

B. *Removal of Debris.* During the performance of the Construction, Design/Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

C. *Cleaning.* Prior to Substantial Completion, Design/Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design/Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures.* Design/Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design/Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. Design/Builder shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders and Work Change Directives in good order and annotated to show all changes made during performance of the Work. These record documents together with all approved Submittals will be available to Owner for reference. Upon completion of the Work, these record documents and Submittals, including a

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reproducible set of record drawings, will be delivered to Owner.

6.13 Safety and Protection

A. Design/Builder shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Design/Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:

1. All persons on the Site or who may be affected by the Work;

2. All Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation, or replacement in the course of construction.

B. Design/Builder shall comply with applicable Laws or Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Design/Builder shall notify owners of adjacent property and of underground facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.

C. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Design/Builder, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Design/Builder.

D. Design/Builder's duties and responsibilities for safety and for protection of the construction shall continue until such time as all the Work is completed and Owner has issued a notice to Design/Builder in accordance with paragraph 13.08.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

A. Design/Builder shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

A. Design/Builder shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design/Builder is obligated to act to prevent threatened damage, injury or loss. Design/Builder shall give Owner prompt written notice if Design/Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design/Builder in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Submittals

A. Owner will review and approve Submittals in accordance with the schedule of required Submittals accepted by Owner as required by paragraph 2.06.A. Owner's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the construction, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Owner's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

B. Owner's review and approval of Submittals shall not relieve Design/Builder from responsibility for any variation from the requirements of the Contract Documents unless Design/Builder has in a separate written communication at the time of submission called Owner's attention to each such variation and Owner has given written approval.

C. Construction prior to Owner's review and approval of any required Submittal will be at the sole risk of Design/Builder.

6.18 Continuing the Work

A. Design/Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending

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resolution of any disputes or disagreements, except as Design/Builder and Owner may otherwise agree in writing.

6.19 Post-Construction Phase

A. Design/Builder shall:

1. Provide assistance in connection with the start-up, testing, refining and adjusting of any equipment or system.

2. Assist Owner in training staff to operate and maintain the Work.

3. Assist Owner in developing systems and procedures for control of the operation and maintenance of and record keeping for the Work.

6.20 Design/Builder's General Warranty and Guarantee

A. Design/Builder warrants and guarantees to Owner that all Construction will be in accordance with the Contract Documents and will not be defective. Design/Builder's warranty and guarantee hereunder excludes defects or damage caused by:

1. Abuse, modification or improper maintenance or operation by persons other than Design/Builder, Subcontractors, or Suppliers or any other individual for whom Design/Builder is responsible; or

2. Normal wear and tear under normal usage.

B. Design/Builder's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Design/Builder's obligation to perform the Work in accordance with the Contract Documents:

1. Observations by Owner;

2. The making of any progress or final payment;

3. The issuance of a certificate of Substantial Completion;

4. Use or occupancy of the Work or any part thereof by Owner;

5. Any acceptance by Owner or any failure to do so;

6. Any review and approval of a Submittal;

7. Any inspection, test or approval by others; or

8. Any correction of defective Construction by Owner.

6.21 Indemnification

A. To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultants, and the officers, directors, partners, employees, agents, other consultants and subcontractors of each from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from the performance of Construction, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom) but only to the extent caused by any negligent act or omission of Design/Builder, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform or furnish any of the Work.

B. In any and all claims against Owner, Owner's Consultant or any of their respective consultants, agents, officers, directors, partners or employees by any employee (or the survivor or personal representative of such employee) of Design/Builder, any Subcontractor, any Supplier, any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.21.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Design/Builder or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts or other employee benefit acts.

C. The indemnification obligations of Design/Builder under paragraph 6.21.A shall not extend to the liability of Owner's Consultant, and their officers, directors, partners, employees, agents, other consultants, and subcontractors arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, designs, or specifications.

ARTICLE 7 – OTHER CONSTRUCTION

7.01 Related Work at Site

A. Owner may perform other Work related to the Project at the Site by Owner's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

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1. Written notice thereof will be given to Design/Builder prior to starting any such other work; and

2. Design/Builder may make a Claim therefor as provided in Article 9 if Design/Builder believes that such performance will involve additional expense to Design/Builder or requires additional time and the parties are unable to agree as to the amount or extent thereof.

B. Design/Builder shall afford each other contractor who is a party to such a direct contract and each utility owner (and Owner, if Owner is performing the additional work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, Design/Builder shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Design/Builder shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Owner and the others whose work will be affected. The duties and responsibilities of Design/Builder under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Design/Builder in said direct contracts between Owner and such utility owners and other contractors.

C. If the proper execution or results of any part of Design/Builder's Work depends upon work performed or services provided by others under this Article 7, Design/Builder shall inspect such other work and appropriate instruments of service and promptly report to Owner in writing any delays, defects or deficiencies in such other work or services that render it unavailable or unsuitable for the proper execution and results of Design/Builder's Work. Design/Builder's failure so to report will constitute an acceptance of such other work as fit and proper for integration with Design/Builder's Work except for latent or nonapparent defects and deficiencies in such other work.

7.02 Coordination

A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. The individual or entity who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

2. The specific matters to be covered by such authority and responsibility will be itemized; and

3. The extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 General

A. Owner shall do the following in a timely manner so as not to delay the services of Design/Builder:

1. Designate in writing a person to act as Owner's Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, make decisions with respect to performance of the Work, and shall provide such other services as may be agreed upon;

2. Provide such legal services as Owner may require with regard to legal issues pertaining to the Project including any that may be raised by Design/Builder;

3. If requested in writing by Design/Builder, furnish reasonable evidence satisfactory to Design/Builder that sufficient funds are available and committed for the entire cost of the Project. Unless such reasonable evidence is furnished, Design/Builder is not required to commence or continue any Work, or may, if such evidence is not presented within a reasonable time, stop Work upon 15 days notice to the Owner;

4. Make payments to Design/Builder promptly when they are due as provided in paragraph 13.03 and 13.08;

5. Furnish the Site as set forth in paragraph 4.01.A;

6. Furnish to Design/Builder, as required for performance of Design/Builder's Services the following, all of which Design/Builder may use and rely upon in performing services under this Agreement:

a. Environmental assessment and impact statements;

b. Property, boundary, easement, right-of-way, topographic, and utility surveys;

c. Property descriptions;

d. Zoning, deed, and other land use restrictions;

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e. Engineering surveys to establish reference points for design and construction which in Owner's judgment are necessary to enable Design/Builder to proceed with the Work;

f. Assistance to Design/Builder in filing documents required to obtain necessary permits, licenses, and approvals of governmental authorities having jurisdiction over the Project;

g. Permits, licenses, and approvals of government authorities Owner is specifically required to obtain by the Contract Documents; and

h. All subsurface data at or contiguous to the Site which Owner may have obtained.

7. Review Submittals subject to Owner review pursuant to paragraph 6.17.A; and

8. Provide information known to or in the possession of Owner relating to the presence of materials and substances at the Site which could create a Hazardous Environmental Condition.

8.02 Insurance

A. Owner's responsibilities in respect of purchasing and maintaining liability and property insurance are set forth in Article 5.

8.03 Limitations on Owner's Responsibilities

A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Design/Builder's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident thereto, or for any failure of Design/Builder to comply with Laws or Regulations applicable to the furnishing or performance of the Work. Owner will not be responsible for Design/Builder's failure to perform the Work in accordance with the Contract Documents.

8.04 Undisclosed Hazardous Environmental Condition

A. Owner's responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Materials uncovered or revealed at the Site is set forth in paragraph 4.04.

8.05 Resident Project Representation

A. Owner may furnish a Resident Project Representative to observe the performance of Construction. The duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions.

8.06 Owner's Consultant

A. Owner's Consultant, if any, has no duties, responsibilities, or authorities with respect to Design/Builder, unless so provided in the Supplementary Conditions.

ARTICLE 9 – CHANGES IN THE WORK; CLAIMS

9.01 Authorized Changes in the Work

A. Without invalidating the Agreement and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work within the general scope of the Contract by a Change Order or a Work Change Directive. Upon receipt of any such document, Design/Builder shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

9.02 Unauthorized Changes in the Work

A. Design/Builder shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Construction as provided in paragraph 12.04.

9.03 Claims

A. *Notice.* If Owner and Design/Builder are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of any order of Owner pursuant to paragraph 9.01.A or other occurrence for which the Contract Documents provide that such adjustment(s) may be made, a Claim may be made therefor. Written notice of intent to make such a Claim shall be submitted to the other party promptly and in no event more than 15 days after the start of the occurrence or event giving rise to the Claim.

B. *Documentation.* Substantiating documentation shall be submitted by the claiming party within 30 days after delivery of the notice required by paragraph 9.03.A.

C. *Decision.* The other party shall render a decision on the Claim no more than 30 days after the receipt of the substantiating documentation required by paragraph 9.03.B. This decision will be final and binding unless the claiming party gives notice of intention to exercise its rights under Article 15 within 30 days of receipt of the decision and exercises such rights within 30 days of giving the notice of intent.

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D. *Time Limit Extension.* The time limits of paragraphs 9.03.B and 9.03.C may be extended by mutual agreement.

9.04 Execution of Change Orders

A. Owner and Design/Builder shall execute appropriate Change Orders covering:

1. Changes in the Work which are (i) ordered by Owner pursuant to paragraph 9.01, (ii) required because of acceptance of defective Construction under paragraph 12.08 or Owner's correction of defective Work under paragraph 12.09 or (iii) agreed to by the parties; and

2. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive.

9.05 Notice to Sureties

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be Design/Builder's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

ARTICLE 10 – COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

10.01 Cost of the Work

A. *Costs Included.* The term Cost of the Work means the sum of all costs necessarily incurred and paid by Design/Builder in the proper performance of the Work. When the value of Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Design/Builder will be only those additional or incremental costs required because of the change of the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 10.01.B:

1. Payroll costs for employees in the direct employ of Design/Builder in the performance of the Work under schedules of job classifications agreed upon by Owner and Design/Builder.

a. Such employees shall include without limitation superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by Owner.

b. Such employees shall also include engineers, engineering technicians, architects, and others providing Design Professional Services. For purposes of this paragraph 10.01.A.1, Design/Builder shall be entitled to payment for such employees an amount equal to salary costs times a factor, both as designated in the Agreement, for all services performed or furnished by such employees engaged on the Project.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Design/Builder unless Owner deposits funds with Design/Builder with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Design/Builder shall make provisions so that they may be obtained.

3. Payments made by Design/Builder to Subcontractors (excluding payments for Design Professional Services pursuant to paragraph 10.01.A.4) for Work performed or furnished by Subcontractors. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Design/Builder's Cost of the Work and fee.

4. Payments made by Design/Builder for Design Professional Services provided or furnished under a Design Subagreement.

5. Costs of special consultants (including but not limited to testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

6. Supplemental costs including the following items:

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a. The proportion of necessary transportation, travel and subsistence expenses of Design/Builder's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Design/Builder.

c. Rentals of all construction or engineering equipment and machinery and the parts thereof whether rented from Design/Builder or others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Design/Builder is liable, imposed by Laws or Regulations.

e. Deposits lost for causes other than negligence of Design/Builder, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses, damages, and related expenses caused by damage to the Work not compensated by insurance or otherwise, sustained by Design/Builder in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of Design/Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Design/Builder's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. Cost of premiums for all Bonds and insurance Design/Builder is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded.* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Design/Builder's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks and other personnel employed by Design/Builder whether at the Site or in Design/Builder's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.01.A.1, all of which are to be considered administrative costs covered by the Design/Builder's fee.

2. Expenses of Design/Builder's principal and branch offices other than Design/Builder's office at the Site.

3. Any part of Design/Builder's capital expenses, including interest on Design/Builder's capital employed for the Work and charges against Design/Builder for delinquent payments.

4. Costs due to the negligence of Design/Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.01.A.

C. *Design/Builder's Fee.* When all the Work is performed on the basis of cost-plus, Design/Builder's fee shall be as set forth in the Agreement. When the value of the Work covered by a Change Order is determined on the basis of Cost of the Work, Design/Builder's fee shall be determined as set forth in paragraph 11.01.C.

D. *Documentation.* Whenever the cost of any Work is to be determined pursuant to paragraph 10.01.A and 10.01.B, Design/Builder will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

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10.02 Cash Allowances

A. The Contract Price includes all allowances so named in the Contract Documents. Design/Builder shall cause the Work so covered to be performed for such sums as may be acceptable to Owner. Design/Builder agrees that:

1. The allowances include the cost to Design/Builder (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. Except as set forth in the Contract Documents, Design/Builder's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued to reflect actual amounts due Design/Builder on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.03 Unit Prices

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all of Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Design/Builder will be made by Owner.

B. Each unit price will be deemed to include an amount considered by Design/Builder to be adequate to cover Design/Builder's overhead and profit for each separately identified item.

C. Design/Builder or Owner may make a Claim for an adjustment in the Contract Price in accordance with Article 9 if:

1. the quantity of any item of Unit Price Work performed by Design/Builder differs materially and significantly from the estimated quantity of such item indicated in the Contract Documents;

2. there is no corresponding adjustment with respect to any other item of Work; and

3. Design/Builder believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes it is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 11 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

11.01 Change of Contract Price

A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the Claim to the other party promptly in accordance with paragraph 9.03.A.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 10.03); or

2. Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.01.C.2); or

3. Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 10.01) plus a Design/Builder's Fee for overhead and profit (determined as provided in paragraph 11.01.C).

C. Design/Builder's Fee: The Design/Builder's fee for overhead and profit on Change Orders shall be determined as follows:

1. A mutually acceptable fixed fee; or

2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. For costs incurred under paragraphs 10.01.A.1.a and 10.01.A.2, the Design/Builder's fee shall be 15 percent;

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b. For costs incurred under paragraph 10.01.A.3 10.01.A.4, 10.01.A.5 and 10.01.A.6, the Design/Builder's fee shall be five percent;

c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraphs 11.01.C.1 and 11.01.C.2.a is that the Subcontractor who actually performs or furnishes Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 10.01.A.1 and 10.01.A.2 and that any higher tier Subcontractor and Design/Builder will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. The amount of credit to be allowed by Design/Builder to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Design/Builder's fee by an amount equal to five percent of such net decrease; and

e. When both additions and credits are involved in any one change, the adjustment in Design/Builder's fee shall be computed on the basis of the net change in accordance with paragraphs 11.01.C.2.a through 11.01.C.2.d, inclusive.

11.02 Change of Contract Times

A. The Contract Times (or Milestones) may only be changed by a Change Order. Any Claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice pursuant to paragraph 9.03.A.

B. *Delays Beyond Design/Builder's Control.* Where Design/Builder is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of Design/Builder, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 11.02.A. Delays beyond the control of Design/Builder shall include, but not be limited to, acts or neglect by Owner, governmental agencies, acts or neglect of utility owners or other contractors performing other construction work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

C. If Owner or other contractor or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Design/Builder shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Design/Builder's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Design/Builder's ability to complete the Work within the Contract Times.

D. If Design/Builder is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Design/Builder, then Design/Builder shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Design/Builder's ability to complete the Work within the Contract Times. Such an adjustment shall be Design/Builder's sole and exclusive remedy for the delays described in this Paragraph 11.02.C.

E. Owner and Owner's Consultant shall not be liable to Design/Builder for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Design/Builder on or in connection with any other project or anticipated project.

F. Design/Builder shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Design/Builder. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Design/Builder.

ARTICLE 12 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE CONSTRUCTION

12.01 Notice of Defects

A. Owner shall give Design/Builder prompt written notice of all defective Construction of which Owner has actual knowledge. All defective Construction may be rejected, corrected or accepted as provided in this Article 12.

12.02 Access to Construction

A. Owner, Owner's Consultants, other representatives and personnel of Owner, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Site and the Construction at reasonable times for their observation, inspecting, and testing. Design/Builder shall provide them proper and safe conditions for such access and advise them of Design/Builder's Site safety procedures and programs so that they may comply therewith as applicable.

12.03 Tests and Inspections

A. If the Contract Documents or Laws or Regulations of any public body having jurisdiction require any part of the Construction specifically to be inspected, tested or approved, Design/Builder shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all

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costs in connection therewith, and furnish Owner the required certificates of inspection or approval. Design/ Builder shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's acceptance of materials or equipment to be incorporated in the Work or of materials, mix designs, or equipment submitted for approval prior to Design/Builder's purchase thereof for incorporation in the Work.

B. Design/Builder shall give Owner reasonable notice of the planned schedule for all required inspections, tests, or approvals.

C. If any Construction (or the construction work of others) that is required to be inspected, tested, or approved is covered by Design/Builder without written concurrence of Owner, it must, if requested by Owner, be uncovered for observation at Design/Builder's expense unless Design/ Builder has given Owner timely notice of Design/Builder's intention to cover the same and Owner has not acted with reasonable promptness in response to such notice.

12.04 Uncovering Construction

A. If any Construction is covered contrary to the written request of Owner, it must, if requested by Owner, be uncovered for Owner's observation and recovered at Design/Builder's expense.

B. If Owner considers it necessary or advisable that covered Construction be observed by Owner or inspected or tested by others, Design/Builder, at Owner's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Owner may require, that portion of the Construction in question, furnishing all necessary labor, material and equipment. If it is found that such Construction is defective, Design/Builder shall pay all costs and damages caused by or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction, (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If, however, such Construction is not found to be defective, Design/Builder shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Design/Builder may make a Claim therefor as provided in Article 9.

12.05 Owner May Stop Construction

A. If Construction is defective, or Design/Builder fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform Construction in such a way that the completed Construction will conform to the Contract Documents, Owner may order Design/Builder to stop Construction or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop Construction will not give rise to any duty on the part of Owner to exercise this right for the benefit of Design/Builder or any other party.

12.06 Correction or Removal of Defective Construction

A. Owner will have authority to disapprove or reject defective Construction and will have authority to require special inspection or testing of the Construction whether or not the Construction is fabricated, installed or completed. If required by Owner, Design/Builder shall promptly, as directed, either correct all defective Construction, whether or not fabricated, installed or completed, or, if the Construction has been rejected by Owner, remove it from the Site and replace it with non-defective Construction. Design/Builder shall bear all direct, indirect, and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and all court, arbitration, or other dispute resolution costs) arising out of or relating to such correction or removal.

12.07 Correction Period

A. If within one year after the date of Substantial Completion of the entire Work or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Construction is found to be defective, Design/Builder shall promptly, without cost to Owner and in accordance with Owner's written instructions, (i) correct such defective Construction, or, if it has been rejected by Owner, remove it from the Site and replace it with Construction that is not defective, and (ii) satisfactorily correct or remove and replace any damage to other Construction or the work of others resulting therefrom. If Design/Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Construction corrected or the rejected Construction removed and replaced, and all costs, losses, and damages caused by or resulting from such removal and replacement (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs, and all costs of repair or replacement of work of others) will be paid by Design/Builder.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial

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Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Conceptual Documents.

C. Where defective Construction (and damage to other Construction resulting therefrom) has been corrected, removed or replaced under this paragraph 12.07, the correction period hereunder with respect to such Construction will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

12.08 Acceptance of Defective Construction

A. If, instead of requiring correction or removal and replacement of defective Construction, Owner prefers to accept it, Owner may do so. Design/Builder shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Construction. If any such acceptance occurs prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price reflecting the diminished value of the Construction so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9. If the acceptance occurs after final payment, an appropriate amount will be paid by Design/Builder to Owner.

12.09 *Owner May Correct Defective Construction*

A. If Design/Builder fails within a reasonable time after written notice from Owner to correct defective Construction or to remove and replace rejected Construction as required by Owner in accordance with paragraphs 12.06.A or 12.07.A, or if Design/Builder fails to perform the Construction in accordance with the Contract Documents, or if Design/Builder fails to comply with any other provision of the Contract Documents, Owner may, after seven days' written notice to Design/Builder, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph 12.09 Owner shall proceed expeditiously. In connection with such corrective and remedial action, Owner may exclude Design/Builder from all or part of the Site, take possession of all or part of the Construction, and suspend Design/Builder's services related thereto, take possession of Design/Builder's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Construction all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere. Design/Builder shall allow Owner, Owner's Consultant, Owner's representatives, agents, employees, and other contractors access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

C. All costs, losses, and damages (included but not limited to fees and charges of engineers, architects, attorneys and other professionals, all court or arbitration or other dispute resolution costs and all costs of repair or replacement of work of others) incurred or sustained by Owner in exercising such rights and remedies under this paragraph 12.09 will be charged against Design/Builder and a Change Order will be issued incorporating the necessary revisions in the Contract Documents, and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Article 9.

D. Design/Builder shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this paragraph 12.09.

ARTICLE 13 – PAYMENTS TO DESIGN/BUILDER AND COMPLETION

13.01 *Schedule of Values*

A. The Schedule of Values established as provided in paragraph 2.06.A will serve as the basis for progress payments. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.02 *Application for Progress Payment*

A. On or about the date established in the Agreement for submission of each application for progress payment (but not more often than once a month), Design/Builder shall submit to Owner for review an Application for Payment filled out and signed by Design/Builder covering the Work completed as of the date indicated on the Application and accompanied by supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect Owner's interest therein, all of which will be satisfactory to Owner.

B. Beginning with the second Application for Payment, each Application shall include an affidavit of Design/Builder stating that all previous progress payments received on account of the Work have been applied on account to discharge Design/Builder's legitimate obligations associated with prior Applications for Payment.

C. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

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13.03 *Progress Payments*

A. *Procedure.* Progress payments shall be made by the Owner to the Design/Builder according to the following procedure:

1. Owner will, within ten days of receipt of each Application for Payment, either indicate in writing its acceptance of the Application and state that the Application is being processed for payment, or return the Application to Design/Builder indicating in writing its reasons for refusing to accept the Application. Not more than ten days after accepting such Application the amount will become due and when due will be paid by Owner to Design/Builder.

2. If Owner should fail to pay Design/Builder at the time the payment of any amount becomes due, then Design/Builder may, at any time thereafter, upon serving written notice that he will stop the Work within seven days after receipt of the notice by Owner, and after such seven day period, stop the Work until payment of the amount owing has been received. Written notice shall be deemed to have been duly served if sent by certified mail to the last known business address of Owner.

3. Payments due but unpaid shall bear interest at the rate specified in the Agreement.

4. No Progress Payment nor any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

B. *Reduction in or Refusal to Make Payment.* Owner may refuse to make the whole or any part of any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any previous payment, to the extent that is reasonably necessary to protect Owner from loss because:

1. the Construction is defective, or completed Construction has been damaged requiring correction or replacement; or

2. the Contract Price has been reduced by Change Order; or

3. Owner has been required to correct defective Construction or complete Work in accordance with paragraph 12.09.A; or

4. Owner has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.A.; or

5. Claims have been made against Owner on account of Design/Builder's performance or furnishing of the Work; or

6. Liens have been filed in connection with the Work, except where Design/Builder has delivered a specific Bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

7. There are other items entitling Owner to a set off against the amount for which application is made.

C. If Owner refuses to make payment of the full amount requested by Design/Builder, Owner must give Design/Builder immediate written notice stating the reasons for such action and promptly pay Design/Builder any amount remaining after deduction of the amount withheld. Owner shall promptly pay Design/Builder the amount withheld or any adjustment thereto agreed to when Design/Builder corrects to Owner's satisfaction the reason for such action.

13.04 *Design/Builder's Warranty of Title*

A. Design/Builder warrants and guarantees that title to all Construction, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

13.05 *Substantial Completion*

A. When Design/Builder considers the Work ready for its intended use Design/Builder shall notify Owner in writing that the Work is substantially complete (except for items specifically listed by Design/Builder as incomplete) and request that Owner issue a certificate of Substantial Completion. Promptly thereafter, Owner and Design/Builder shall make an inspection of the Work to determine the status of completion. If Owner does not consider the Work substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers the Work substantially complete, Owner will prepare and deliver to Design/Builder a certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a list of items to be completed or corrected before final payment. At the time of delivery of the certificate of Substantial Completion Owner will deliver to Design/Builder a written determination as to division of responsibilities pending final payment between Owner and Design/Builder with respect to security, operation, safety, protection of Construction, maintenance, heat, utilities, insurance and warranties and guarantees.

B. Owner will have the right to exclude Design/Builder from the Site after the date of Substantial Completion, but Owner will allow Design/Builder reasonable access to complete or correct items on the list of items to be completed.

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13.06 *Partial Utilization*

A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Construction which (i) has specifically been identified in the Contract Documents, or (ii) Owner and Design/Builder agree constitute a separately functioning and usable part of the Construction that can be used by Owner for its intended purpose without significant interference with Design/ Builder's performance of the remainder of the Construction, subject to the following:

1. Owner at any time may request Design/Builder in writing to permit Owner to use or occupy any such part of the Construction which Owner believes to be ready for its intended use and substantially complete. If Design/Builder agrees that such part of the Work is substantially complete, Design/Builder will certify to Owner that such part of the Construction is substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Construction. Design/Builder at any time may notify Owner in writing that Design/Builder considers any such part of the Work ready for its intended use and substantially complete and request Owner to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, Owner and Design/Builder shall make an inspection of that part of the Work to determine its status of completion. If Owner does not consider that part of the Work to be substantially complete, Owner will notify Design/Builder in writing giving the reasons therefor. If Owner considers that part of the Work to be substantially complete, the provisions of paragraph 13.05 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No use or occupancy of part of the Construction will be accomplished prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

13.07 *Final Inspection*

A. Upon written notice from Design/Builder that the entire Work or an agreed portion thereof is complete, Owner will make a final inspection with Design/Builder and will notify Design/Builder in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Design/Builder shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

13.08 *Final Payment*

A. Application for Payment.

1. After Design/Builder has completed all such corrections to the satisfaction of Owner and delivered in accordance with the Contract Documents all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, record documents (as provided in paragraph 6.12) and other documents, Design/Builder may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (unless previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by paragraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to Owner) of all Liens arising out of or filed in connection with the Work.

3. In lieu of such releases or waivers of Liens specified in paragraph 13.08.A.2 and as approved by Owner, Design/Builder may furnish receipts or releases in full and an affidavit of Design/Builder that: (i) the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and (ii) all payrolls, material and equipment bills and other indebtedness connected with the Work for which Owner or Owner's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Design/Builder may furnish a Bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Final Payment and Acceptance. If Owner is satisfied that the Work has been completed and Design/Builder's other obligations under the Contract Documents have been fulfilled, Owner will, within ten days after receipt of the final Application for Payment, give written notice to Design/Builder that the Work is acceptable. Otherwise, Owner will return the Application to Design/Builder, indicating in writing the reasons for refusing to process final payment, in which case Design/Builder shall make the necessary corrections and resubmit the Application.

C. *Payment Becomes Due.* Thirty days after the presentation to Owner of the acceptable Application and accompanying documentation, in appropriate form and substance and with Owner's notice of acceptability, the amount will become due and will be paid by Owner to Design/Builder.

13.09 *Final Completion Delayed*

A. If, through no fault of Design/Builder, final completion of the Work is significantly delayed, Owner shall, upon receipt of Design/Builder's final Application for Payment, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held

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by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01.A, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Design/Builder to Owner with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

13.10 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. A waiver of all Claims by Owner against Design/Builder, except Claims arising from unsettled Liens, from defective Construction appearing after final inspection pursuant to paragraph 13.07, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Design/Builder's continuing obligations under the Contract Documents; and

2. A waiver of all Claims by Design/Builder against Owner other than those previously made in writing and still unsettled.

ARTICLE 14 – SUSPENSION OF WORK AND TERMINATION

14.01 *Owner May Suspend Work*

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 days by notice in writing to Design/Builder which will fix the date on which Work will be resumed. Design/Builder shall resume the Work on the date so fixed. Design/Builder shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Design/Builder makes a Claim therefor as provided in Article 9.

14.02 *Owner May Terminate for Cause*

A. The occurrence of any one or more of the following events justifies termination for cause:

1. Design/Builder's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.06.A as adjusted from time to time pursuant to paragraph 6.05).

2. Design/Builder's disregard of Laws or Regulations of any public body having jurisdiction.

3. Design/Builder's violation in any substantial way of provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 14.02.A occur, Owner may, after giving Design/Builder (and the surety, if any) seven days' written notice, terminate the services of Design/Builder, take possession of any completed Drawings and Specifications prepared by or for Design/Builder (subject to the indemnification provisions of paragraph 3.05.A), exclude Design/Builder from the Site, and take possession of the Work and of all Design/Builder's tools, appliances, construction equipment and machinery at the Site and use the same to the full extent they could be used by Design/Builder (without liability to Design/Builder for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Design/Builder but which are stored elsewhere, and finish the Work as Owner may deem expedient. In such case Design/Builder shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all costs, losses and damages sustained by Owner arising out of or resulting from completing the Work (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) such excess will be paid to Design/Builder. If such costs, losses and damages exceed such unpaid balance, Design/Builder shall pay the difference to Owner. Such costs, losses and damages incurred by Owner will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph Owner shall not be required to obtain the lowest price for the Work performed.

C. Notwithstanding paragraph 14.02.B, Design/Builder's services will not be terminated if Design/Builder begins, within seven days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.

D. Where Design/Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design/Builder then existing or which may thereafter accrue. Any retention or payment of moneys due Design/Builder by Owner will not release Design/Builder from liability.

14.03 *Owner May Terminate for Convenience*

A. Upon seven days' written notice to Design/Builder, Owner may, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design/Builder shall be paid (without duplication of any items) for:

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1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. Amounts paid in settlement of terminated contracts with Subcontractors, Suppliers and others (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs incurred in connection with termination of contracts with Subcontractors, Suppliers and others); and

4. Reasonable expenses directly attributable to termination.

B. Except as provided in paragraph 14.03.C, Design/Builder shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

14.04 *Design/Builder May Stop Work or Terminate*

. . A. If, through no act or fault of Design/Builder, the Work is suspended for a period of more than 90 days by Owner or under an order of court or other public authority, or Owner fails to act on any Application for Payment within thirty days after it is submitted or Owner fails for thirty days to pay Design/Builder any sum finally determined to be due, then Design/Builder may, upon seven days' written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, terminate the Agreement and recover from Owner payment on the same terms as provided in paragraph 14.03.A. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if Owner has failed for 30 days to pay Design/Builder any sum finally determined to be due, Design/Builder may upon seven days' written notice to Owner stop the Work until payment is made of all such amounts due Design/Builder, including interest thereon. The provisions of this paragraph 14.04.A are not intended to preclude Design/Builder from making Claim under Article 9 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Design/Builder's stopping Work as permitted by this paragraph.

ARTICLE 15 – DISPUTE RESOLUTION

15.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no such method and procedure has been set forth, Owner and Design/Builder may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 16 – MISCELLANEOUS

16.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by certified mail, postage prepaid, to the last business address known to the giver of the notice.

16.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

16.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by:

1. Laws or Regulations; or

2. any special warranty or guarantee; or

3. other provisions of the Contract Documents.

B. The provisions of paragraph 16.03.A will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

16.04 *Survival of Obligations*

A. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive

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final payment, completion and acceptance of the Work and termination or completion of the Contract.

16.05 *Controlling Law*

A. The Contract Documents will be construed in accordance with the law of the place of the Project.

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SUPPLEMENTARY CONDITIONS

SC-1	Definitions
SC-3.05-A	Reuse of documents
SC-4.02.A	Differing Site Conditions
SC-4.04.A	Hazardous Environmental Condition at Site
SC-4.04.B	Hazardous Environmental Condition at Site
SC-4.04.D	Hazardous Environmental Condition at Site
SC-4.04.E	Hazardous Environmental Condition at Site
SC-5.03.A	Certificates of Insurance
SC-5.04.A.7	DESIGN/BUILDER's Liability Insurance
SC-5.04.B.5	DESIGN/BUILDER's Liability Insurance
SC-5.04.B.8	DESIGN/BUILDER's Liability Insurance
SC-5.04.C	DESIGN/BUILDER's Liability Insurance
SC-5.06.A	Property Insurance
SC-6.08.A	Permits
SC-6.10	Taxes
SC-6.17.A	Submittals
SC-6.20	DESIGN/BUILDERS General Warranty & Guarantee
SC-6.21	Indemnification
SC-7.01.C	Related Work at Site
SC-9.03.A	Claims
SC-10.01.B	Cost of Work
SC-10.01.C	Cost of Work
SC-11.01.B.3	Change of Contract Price
SC-11.02.D	Change of Contract Price
SC-12.06.A	Correction or Removal of Defective Construction
SC-16.05.A	Controlling Law
SC-16.06	Other
SC-17	Waiver

These Supplementary Conditions amend or supplement the Standard General Conditions of the Contract between the OWNER and DESIGN/BUILDER (EJCDC D-520, 2002 ed.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect.

SC-1 Definitions

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Contract between the OWNER and the DESIGN/BUILDER (EJCDC D-520, 2002 ed.) have the meanings assigned to them in the General Conditions except that the "OWNER" may be referred herein as the "Owner" and or as the "City".

SC-3.05.A Reuse of Documents

Delete Paragraph 3.05.A in its entirety and insert the following in its place:

A. All documents including Drawings and Specifications prepared or furnished by Design/Builder pursuant to this Agreement when delivered to and accepted by the City, shall become the property of the City when Design/Builder has been compensated by the City under the terms of this Agreement. Design/Builder agrees to allow the City to review any of the procedures used in performing the work and services hereunder, and to make available for inspection the field notes

and other documents used in the preparation for and performance of any of the services performed hereunder.

B. Design/Builder shall have common law, statutory and other reserved rights in the drawings, specifications and other documents, including those in electronic form, prepared by Design/Builder for use with respect to this Project. However, Design/Builder gives the City an irrevocable license to use the drawings, specifications, and other documents prepared by Design/Builder for completion of this Project. This license is for the benefit of the City and its assigns and permits the City to retain other architects, engineers and design professionals who may use the drawings, specifications and other documents for such purposes.

   All drawings, specifications and other documents shall become the property of the City, at the conclusion of the Project, whether the Project for which they are made is executed or not, or the termination of the services of Design/Builder, whichever is earlier, and shall be delivered to the City clearly marked and identified in good order. Such documents may be used by the City to complete the project. Design/Builder shall not be liable for injury or damage resulting from reuse of drawings, specifications and other documents for a project in which Design/Builder is not also involved, the City will remove and obliterate from such documents all identification of the original Design/Builder, including name, address, professional seal and stamp.

C. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of Design/Builder's or the City's rights.

SC-4.02.A Differing Site Conditions

Add the following additional paragraph: Inclement weather beyond statistical norms as reported by NOAA for the project geographical area shall not constitute a differing Site condition, but will entitle the DESIGN/BUILDER to additional time commensurate to the weather delays impact on the project's critical path schedule."

SC-4.04.A Hazardous Environmental Condition at Site

Delete Paragraph 4.04.A in its entirety, replace with the following paragraph 4.04.A "DESIGN/BUILDER will not be responsible for any Hazardous Environmental Condition encountered at the Site except as specifically provided for herein. DESIGN/BUILDER shall be responsible for materials creating a Hazardous Environmental Condition only where such condition is created by DESIGN/BUILDER, Subcontractors, Suppliers or anyone else for whom DESIGN/BUILDER is responsible."

SC-4.04.B Hazardous Environmental Condition at Site

Add the following to the beginning of the first sentence. "Except to the extent a Hazardous Condition is identified as the Work,"

SC-4.04.D Hazardous Environmental Condition at Site

Insert the following paragraphs between paragraph 4.04.D and 4.04.E.

"E. OWNER shall disclose to DESIGN/BUILDER the location and types of any known or suspected toxic, hazardous or chemical materials or wastes existing on or near the premises upon which work is to be performed by DESIGN / BUILDER, or DESIGN / BUILDER's Consultants employees or subcontractors. If any Hazardous Wastes not identified by OWNER in the Contract

SUPPLEMENTARY CONDITIONS: continued

Documents are discovered after this Agreement is executed, the Work, schedule and compensation shall be adjusted upon mutual agreement of OWNER and DESIGN/BUILDER.

F. OWNER acknowledges that DESIGN/BUILDER is performing professional services for OWNER, and that DESIGN/BUILDER is not and shall not become a Potentially Responsible Party (such as an "arranger", "operator", "generator", "transporter", "treator", "storer", "handler", or "disposer" as defined the CERCLA or RCRA,) related to any Hazardous Environmental Condition or any Hazardous Waste which are or may be encountered at or near the Site or in connection with DESIGN/BUILDER'S activities under this Agreement."

SC-4.04.E Hazardous Environmental Condition at Site

Replace paragraph 4.04.E with the following: "G. To the fullest extent permitted by the Kansas Tort Claims Act and other Laws or Regulations, Owner shall indemnify and hold harmless Design/Builder, Subcontractors, Suppliers and the officers, directors, partners, employees, agents, other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs) arising out of or resulting from such a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Contract Documents to be included in the scope of the Work, and (ii) was not created by Design/Builder or by anyone for whom Design/Builder is responsible. Nothing in this paragraph 4.04.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence. Further, to the extent any claim for indemnity hereunder would have been subject to an exception to liability or a liability cap under the Kansas Tort Claims Act, if brought against the City directly, the same exception to liability and/or cap will apply to the City's obligation to indemnify under this section.

SC-5.03.A Certificates of Insurance

Delete the phrase "(and other evidence of insurance requested by OWNER or any other additional insured)" in lines 3-4 and lines 8-9.

SC-5.04.A.7 DESIGN/BUILDER's Liability Insurance

Add the following new paragraph following Paragraph 5.04.A.6:

7. Claims for damages because of the performance of all professional activities, including Design Professional Services

SC-5.04.B.5 DESIGN/BUILDER's Liability Insurance

Delete the words "materially changed" from the first sentence.

SC- 5.04.B.8 DESIGN/BUILDER's Liability Insurance

Add the following new Paragraphs following SC-5.04.B.7:

8. The Comprehensive (also commonly referred to as "Commercial") General Liability Insurance shall be written in a comprehensive form and shall protect Design/Builder against all claims arising from injuries to persons (other than Design/Builder's employees) or damage to property of the City or others

arising out of any negligent act or omission of Design/Builder, its agents, officers, employees, consultants or subcontractors in the performance of Design/Builder's services under this Agreement.

9. Every such policy shall be procured and maintained with appropriate forms and insurers acceptable to the City. All coverage shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Design/Builder, pursuant to its indemnity obligations under this Agreement. The City shall be added as an additional insured on every such policy with the exception of Workers Compensation, Employers' Liability and Professional Liability. All coverage shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by Design/Builder pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Design/Builder shall be solely responsible for any deductible losses under any required policy.

10. Every policy, except professional liability insurance, required above shall be primary insurance, and any insurance carried by the City, its officers, its employees or its consultants shall be excess and not contributory insurance to that provided by Design/Builder. No additional insured endorsement to the policy required by this paragraph shall contain any exclusion for bodily injury or property damage arising from completed operations.

11. Satisfactory Certificates of Insurance shall be filed with the City prior to the time Design/Builder starts any work under this agreement. Design/Builder shall furnish the City certificates of insurance in a form acceptable to the City evidencing that the insurance coverage required to be maintained by Design/Builder hereunder are in full force and effect. In addition, insurance policies applicable hereto shall contain a provision that provides that the City shall be given thirty (30) days written notice by the insurance company before such policy is canceled.

12. Failure on the part of Design/Builder to procure or maintain policies providing the required coverages, conditions and limits shall constitute a material breach of the Agreement. In such event, as its sole discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Design/Builder to the City upon demand, or the City may offset the cost of the premiums against any monies due to Design/Builder from the City.

13. Design/Builder shall procure and maintain or shall cause any consultant of Design/Builder, concerning the services delegated under this Agreement to such consultant, to procure and maintain Professional Liability Insurance to insure its professional activities in an amount not less than $1,000,000 and the insurance coverages required in Paragraph 5.04.A of this Agreement.

14. Failure of the City to demand such certificates or other evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency from evidence provided shall not be construed as a waiver of Design/Builder's obligation to maintain such insurance.

SC-5.04.C DESIGN/BUILDER's Liability Insurance

Add the following new Paragraphs following SC-5.04.B.

C. The limits of liability for insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by Laws and Regulations:

1. Workers' Compensation, and related coverages under paragraphs 5.04.A.1 and A.2 of the General Conditions:

a. State:	$500,000 per occurrence
b. Employer's Liability	$1,000,000 per occurrence

2. Comprehensive General Liability under paragraphs 5.04.A.3 through A.6 of the General Conditions which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody, and control of the Contractor:

a. General Aggregate	$2,000,000
b. Products - Completed Operations Aggregate	$1,000,000 per occurrence
c. Personal and Advertising Injury	$1,000,000 per occurrence
d. Each Occurrence (Bodily Injury and Property Damage)	$1,000,000 per occurrence
e. Excess or Umbrella Liability	
1) General Aggregate	$2,000,000
2) Each Occurrence	$2,000,000

2. Automobile Liability under paragraph 5.04.6 of the General Conditions:

a. Combined Single Limit	$1,000,000 per occurrence or accident

3. Property Damage liability insurance will provide Explosion, Collapse and Underground (X,C,U) coverages where applicable.

4. Contractual Liability coverage required by paragraph 5.04.B.4 of the General Conditions shall be provided as part of the General Liability coverage.

5. The City is to be included as an additional insured except for Workers' Compensation/Employer's Liability and Professional Liability.

6. Professional Liability under paragraph 5.04.A.7 shall be in an amount of $1,000,000.

SC-5.06.A Property Insurance

Delete the text of Paragraph 5.06.A in its entirety and substitute:

The Design/Builder shall purchase and maintain Builder's Risk "all risk" coverage upon the Work at the Site in the amount of the full replacement cost thereof. Design/Builder, Owner, Owner's Consultant and subcontractors of all tiers are to be included as additional insureds on the policy.

SC-6.08.A Permits

Delete Paragraph 6.08.A in its entirety replace with the following: DESIGN/BUILDER shall obtain and pay for the following permits: Sedgwick County Building Permit, City of Wichita Building Permit (if required and permit fee shall be waived). Application for and costs associated with acquisition of

additional permits shall remain the responsibility of the OWNER. DESIGN / BUILDER shall provide a site assessment for potential environmental and cultural resource permitting. It is anticipated that no additional services will be required. The site assessment may reveal the need to obtain and comply with environmental or cultural preservation permits. Revisions to the scope of work and revisions to the project schedule that are a result of permit requirements determined during the course of the project shall require an adjustment in contract price or contract schedule or both. Owner shall pay for all charges of utility owners for connection to the work, including all charges of such utility owners for the connection of such utilities to the work.

SC-6.10 Taxes

Add the following language at the end of paragraph 6.10 of the General Conditions:
"Materials and equipment incorporated into this Project are exempt from the payment of sales tax under the Laws of the State in which the Project is located and such sales tax shall not be included in Project cost. OWNER will provide DESIGN / BUILDER with a proper exemption certificate number within ten days of the date of the Agreement. Should OWNER fail to provide an exemption certificate number within the required time period, DESIGN / BUILDER will be reimbursed monthly for sales tax amounts for which he becomes liable until such certificate number is provided. OWNER will provide an exemption certificate number within 60 days or it shall be presumed that the Project will proceed on a non-exempt basis, and the Contract amount will be equitably adjusted in writing in a lump sum amount sufficient to cover DESIGN / BUILDER'S sales tax expense. Upon issuance of a proper exemption certificate number to DESIGN / BUILDER, DESIGN / BUILDER shall assume full responsibility for his own proper use of the certificate number, and shall pay all costs of any legally assessed penalties relating to DESIGN / BUILDER'S improper use of the exemption certificate number."

SC-6-17.A Submittals

Add the following to the end of the first sentence. "Which shall include 15 days for the OWNER's review and approval"

SC-6.20 DESIGN/BUILDERS General Warranty and Guarantee

Add the following sub-sections:

"C. If, prior to Substantial Completion or within one year after the date of Substantial Completion of the Work, any Defective Work is found, the OWNER shall promptly notify the DESIGN/BUILDER in writing.

1. Unless the OWNER provides written acceptance of the condition, the DESIGN/BUILDER shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the OWNER discovers and does not promptly notify the DESIGN/BUILDER or give the DESIGN/BUILDER an opportunity to test and/or correct Defective Work as reasonably requested by the DESIGN/BUILDER, the OWNER waives the DESIGN/BUILDER's obligation to correct that Defective Work as well as the OWNER's right to claim a breach of the warranty with respect to that Defective Work.

2. With respect to any portion of Work first performed after Substantial Completion, the one year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the DESIGN/BUILDER.

SUPPLEMENTARY CONDITIONS: continued

3. If the DESIGN/BUILDER fails to correct Defective Work within a reasonable time after receipt of written notice from the OWNER prior to final payment, the OWNER may correct such Defective Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due the DESIGN/BUILDER. If payments then or thereafter due DESIGN/BUILDER are not sufficient to cover such amounts, the DESIGN/BUILDER shall pay the difference to the OWNER.

4. If after the one-year correction period but before the applicable limitation period the OWNER discovers any Defective Work, the OWNER shall, unless the Defective Work requires emergency correction, promptly notify the DESIGN/BUILDER. The DESIGN/BUILDER and OWNER shall mutually agree upon whether the DESIGN/BUILDER shall complete the correction of Work. If DESIGN/BUILDER and OWNER agree that the DESIGN/BUILDER will correct the Defective Work, the DESIGN/BUILDER and OWNER shall mutually agree upon the nature of the corrective action to be taken and the allowable time frame for effecting such action. If the DESIGN/BUILDER does not correct the Work, the OWNER may have the Work corrected by itself or by others and charge the DESIGN/BUILDER for the reasonable cost of the correction. OWNER shall provide DESIGN/BUILDER with an accounting of correction costs it incurs.

5. If the DESIGN/BUILDER's correction or removal of Defective Work causes damage to or destroys other completed or partially completed construction, the DESIGN/BUILDER shall be responsible for the cost of correcting the destroyed or damaged construction.

6. The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the DESIGN/BUILDER's other obligations under the Contract Documents or the OWNER's rights under any applicable statute of limitations.

7. Prior to final payment, at the OWNER's option and with the DESIGN/BUILDER's agreement, the OWNER may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted."

SC-6.21 Indemnification

Delete SC-6.21 and replace with the following: A. Design/Builder hereby agrees to indemnify, and hold harmless the City, its officials, officers, and employees from any claims, damages, suits, costs and expenses, liability, actions or proceedings of any kind or nature to the extent caused directly or indirectly by the comparative fault of Design/Builder for negligent acts or errors or omissions, its agents, servants, employees or subconsultants occurring in the performance of its design services or construction activities under the Agreement The insurance coverage specified in this Agreement constitutes the minimum requirements and these requirements do not lessen or limit the liability of Design/Builder hereunder.

B. Design/Builder agrees that it will contractually obligate its subcontractors and subconsultants to indemnify and hold harmless the indemnitees identified in this Paragraph to the same extent that Design/Builder is required to indemnify and hold harmless said indemnitees.

C. In the event of the filing of record of a lien or verified claim against any property on which the Project is located by, by a subcontractor or subconsultant, or by any other person or entity for which Design/Builder may be responsible, Design/Builder shall promptly remove the lien or claim in accordance with the laws of the State of Kansas.

SUPPLEMENTARY CONDITIONS: continued

D. Design/Builder shall protect, defend, indemnify, and hold harmless the City from and against any claims, actions, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) in the event that litigation is filed by one of Design/Builder 's subcontractors or subconsultants for non-payment by Design/Builder to that subcontractor or subconsultant.

E. Except with respect to the Copper Ion System (CIS) Design/Builder shall take reasonable actions to inform the City of known potential patents on processes, designs, or devices that may be incorporated into the Project. Design/Builder agrees to protect, defend and save harmless the City against any claim or demand for payment for the use of any patented or copyrighted material, process, design, article or device that may enter into the work being performed by Design/Builder under this Agreement to the extent that the City shall have provided Design/Builder reasonable notice of such claim or demand for payment.

F. Except for the indemnity set forth in SC-4.04.E., The City does not agree to indemnify, hold harmless, exonerate or assume the defense of Design/Builder or any other person, or entity whatsoever, for any purpose whatsoever by or in connection with this Agreement.

7.01.C Related Work at the Site
Delete the last sentence in its entirety.

SC-9.03.A Claims
Change 15 days to 30 days.

SC-10.01.B Cost of Work
The exclusions provided for in B.1 and B.2 shall not be applicable to personnel whose efforts are directly related to the Work.

SC-10.01.C Cost of Work
Add a new paragraph: 3. Where Engineering services are provided; the fee would be a multiplier of 3.3 times the direct cost of such services.

SC-11.01.B.3 Change of Contract Price.
Add the following words after 11.01.B.2.....change in contract price shall be determined....

SC-11.02.D Change of Contract Times
Change to read as follows. "If DESIGN/BUILDER is delayed in the performance or progress of the work by fire, flood, epidemic, abnormal weather conditions, acts of God, war, shortage, civil unrest, failures to act of utility OWNER's not under the control of OWNER, or other causes not the fault of or under control of the OWNER and DESIGN/BUILDER, then DESIGN/BUILDER shall be entitled to an equitable adjustment of Contract Time."

SC-12.06.A Correction or Removal of Defective Construction
Add the following to the end of Paragraph 12.06.A, "provided, however that this obligation shall not extend beyond indirect or consequential costs of correction or removal, to consequential damages arising under the law of contract, such as damages for loss of revenue or profit, lost production, claims by customers of OWNER, or governmental fines or penalties, and provided, further, that it shall not extend to any issues with the CIS equipment other than faulty installation."

SC-16.05.A Controlling Law

Change SC-16.05.A to read as follows: "The laws of the state of Kansas will govern the construction of and the remedies available under this Agreement. Venue for any lawsuit arising under or related to this Agreement shall be before the Eighteenth Judicial District Court of Kansas (Sedgwick County, Kansas) or the United States District Court for the District of Kansas sitting in Wichita, Kansas."

SC-16.06 Other

Insert the following SC-16.06.A thru H.

A. In the event any dispute arises under this Agreement and during the time such dispute is being resolved, Design/Builder hereby agrees that it shall continue performance under this Agreement in accordance with the terms and conditions hereof since time is of the essence and City shall continue to compensate Design/Builder for all undisputed payment amounts. Design/Builder's failure to continue expeditious performance due to a dispute arising under this Agreement, at the option of the City, shall be construed as a material breach of this Agreement.

B. Design/Builder and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

C. The term of this Agreement shall commence upon execution and end upon final completion of the services to be provided hereunder by Design/Builder. The insurance and indemnification provisions of this Agreement shall survive such termination.

D. The captions and headings set forth in this Agreement are for convenience and for reference only and shall not be construed so as to define or limit the terms and provisions hereof.

E. This Agreement is intended as the complete integration of all prior oral or written understandings between the Parties. No prior or contemporaneous additions, deletions or other amendments shall have any force or effect, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties and signed by the signatories to the original Agreement.

F. Supplemental Agreements and other amendments to the Agreement shall require approval by the City in the manner required by City policy.

G. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

H. 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 Owner's obligations under this Agreement are to be construed in a manner that assures that the Owner is at all times not in violation of the Cash Basis Law or the Budget Law. Accordingly, the Owner's obligations hereunder will be subject to sufficiency of annual appropriations.

SC-17 Waiver

Add the following provision:

"Consequential Damages: In no event will DESIGN/BUILDER be liable for any special, indirect, or consequential damages including, without limitation, damages or losses in the nature of increased Project costs, (except those costs of correction or removal which Design/Builder is required to bear under SC-12.06.A), loss of revenue or profit, lost production, claims by customers of OWNER, or governmental fines or penalties.

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

D. Exempted from these requirements are:

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

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

Agenda Item No. II-11

City of Wichita
City Council Meeting
September 27, 2011

TO: Mayor and City Council

SUBJECT: Litigation Settlement/Claim for Damages Approval

INITIATED BY: Department of Law

AGENDA: Consent

Recommendation: Authorize payment of $12,635.91 as a settlement of this claim.

Background: This claim results from an automobile accident on August 11, 2011, involving a City employee and the claimant, Patricia Burton. Claimant seeks payment for personal injuries caused by the City employee rear-ending her vehicle.

Analysis: After investigating the claim and evaluating the extent of the claimed damages, the City determined that a resolution of this matter was appropriate. Based on the investigation, it is recommended that the claim be resolved with a payment of $12,635.91 as settlement of the claims against the City arising out of this event.

Financial Considerations: Funding for this settlement payment is from the Tort Claims Fund.

Goal Impact: Payment of the sum contributes to the City goal of providing a Safe and Secure Community. It provides certain resolution to a contingent liability.

Legal Considerations: The Law Department recommends payment of this claim.

Recommendations/Actions: Authorize payment of $12,635.91 as a settlement of this claim against the City of Wichita arising out of the event which is the subject of the claim.

Attachment: None.

City of Wichita
City Council Meeting

September 27, 2011

TO: Mayor and City Council Members

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

INITIATED BY: Office of Central Inspection

AGENDA: Consent

Recommendations: Adopt the attached resolution to schedule the required City Council public hearing to consider condemnation of the structure at 1821 East 23rd Street North, which has been deemed dangerous and unsafe per Kansas State Statutes.

Background: On September 12, 2011, the Board of Code Standards and Appeals conducted a hearing on the property listed below. The building on the property is considered a dangerous and unsafe structure per State Statutes and local ordinances, and is being presented in order to schedule a condemnation hearing before the City Council. The Board of Code Standards and Appeals has recommended that the City Council proceed with condemnation, demolition and removal of the dangerous building on this property.

Analysis: Minimum Housing Code violation notices have been issued on the structure; however, compliance has not been achieved. Pre-condemnation and formal condemnation letters have also been issued and the time granted for repair or removal has expired. No actions have been taken by the property owners and/or other interested parties to complete required building repairs or to remove the dangerous building.

Property Address	Council District
a. 1821 East 23rd Street North	I

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

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

Legal Considerations: The structure has defects that under Ordinance No. 28-251 of the Code of the City of Wichita cause it to be deemed as a dangerous and unsafe building for condemnation consideration, as required by State Statutes.

Recommendations/Actions: Adopt the attached resolution to schedule a public hearing before the City Council on November 15, 2011 at 9:30 a.m. or soon thereafter, to consider condemnation of the structure deemed dangerous and unsafe per Kansas State Statutes and local ordinances.

Attachments: Letters to Council, summaries, and resolutions.

GROUP # 1

NOTICE OF DEMOLITION ACTION

This is to certify that the property located at **1821 E. 23RD N** and legally described as: **LOT 4, BLOCK D, MILLAIR ADDITION, SEDGWICK COUNTY, KANSAS**, is the subject of a demolition action by the City of Wichita, Kansas, under the provisions of Section 18.16 of the Code of the City of Wichita. Unless certain improvements to the structure(s) located thereon are commenced and completed by **November 15, 2011** such structures are subject to being demolished and the costs associated therewith charged, as a lien, against the above-described real property.

_____
Kurt A. Schroeder, Superintendent, Office of Central Inspection
City of Wichita

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

BE IT REMEMBERED, That on this _____day of _____, 2011, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Kurt A. Schroeder, Superintendent of the Office of Central Inspection, City of Wichita, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal; the day and year last above written.

_____
Notary Public

My Appointment Expires:
_____

TO: The Mayor and City Council
Wichita, Kansas

RE: Statement of Dangerous or Unsafe Structure

The following described structure is in a dangerous or unsafe condition:

(a) Description of Structure: A one story frame dwelling about 23 x 41 feet in size. Vacant for at least 4 years, this structure has a shifting and cracking concrete foundation; missing vinyl siding; badly deteriorated compostion roof with holes and missing shingles; and rotted soffit, fascia, wood trim and framing members.

(b) Street Address: 1821 E. 23rd N

(c) Owners:
Alfred Yates & Gwenevere Yates
833 S Market #1025
Wichita KS 67211

Frank A. Yates (deceased), Alfreda Inz Yates, Alfred E. Yates, Guinn Yates and any other heirs or interested parties
POST ON PROPERTY

(d) Resident Agent: None

(e) Occupant: None

(f) Lienholders of Record:
Kelly Arnold, County Clerk
Sedgwick County Courthouse
525 N Main
Wichita KS 67203

Chris McElgunn, Attorney
301 N Main #1600
Wichita KS 67202

City of Wichita Department of Housing
332 Riverview
Wichita KS 67203

(g) Mortgage Holder(s): None

(h) Interested Parties:

Robert McComb
1133 N Hazelwood
Wichita KS 67212

Paul M Bower
dba: McComb Bonding
POST ON PROPERTY

Wendelken, Cline & Crockett
POST ON PROPERTY

DATE: September 12, 2011

CDM SUMMARY

COUNCIL DISTRICT # I

ADDRESS: 1821 E. 23rd N

LEGAL DESCRIPTION: LOT 4, BLOCK D, MILLAIR ADDITION, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A one story frame dwelling about 23 x 41 feet in size. Vacant for at least 4 years, this structure has a shifting and cracking concrete foundation; missing vinyl siding; badly deteriorated compostion roof with holes and missing shingles; and rotted soffit, fascia, wood trim and framing members.

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.

B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.

C. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

OCA: 230200

_____PUBLISHED IN THE WICHITA EAGLE ON_____
RESOLUTION NO. _____

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: **LOT 4, BLOCK D, MILLAIR ADDITION, SEDGWICK COUNTY, KANSAS** KNOWN AS **1821 E. 23RD N** MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE.

WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the **27th day of September 2011**, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is unsafe or dangerous.

NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita.
That a hearing will be held on the 15**th day of November 2011**, before the governing body of the city at **9:30 A.M.,** or thereafter in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described at LOT 4, BLOCK D, MILLAIR ADDITION, SEDGWICK COUNTY, KANSAS, known as: 1821 E. 23rd N, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure ordered repaired or demolished. The structure is a one story frame dwelling about 23 x 41 feet in size. Vacant for at least 4 years, this structure has a shifting and cracking concrete foundation; missing vinyl siding; badly deteriorated compostion roof with holes and missing shingles; and rotted soffit, fascia, wood trim and framing members.

Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 12-1752.

Adopted this **27th day of September 2011.**

_____
Carl Brewer, Mayor

(SEAL)

ATTEST:_____
Karen Sublett, City Clerk

City of Wichita
City Council Meeting
September 27, 2011

TO: Mayor and City Council

SUBJECT: Resolutions Authorizing Congestion Mitigation and Air Quality (CMAQ) Grants from the Federal Transit Administration (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve resolutions.

Background: The Federal Transit Administration (FTA) grant application process requires a resolution by the governing body authorizing staff to file grant applications to receive funds and administer the grant's program. The purpose of the resolution is to authorize staff to file for eligible federal funds for the support of Q-Line services for Fiscal Year 2012. Two separate grants will be applied for: CMAQ for Q-Line1, continuing the current Q-Line, and Q-Line 2, offering a second Q-Line. Each grant is for $100,000 ($80,000 federal portion and $20,000 local portion). Transit staff held a public hearing on September 23, 2011, with no adverse comments. Congestion Mitigation and Air Quality (CMAQ) funds are Federal Highway Administration (FHWA) funds that are transferred to the FTA for use for transit services. The funds are 80% federal funds and 20% local matching funds. A second resolution for each grant is required by KDOT to pledge sufficient matching funds.

Analysis: The proposed resolutions authorize the filing of applications for the following funding:

- Federal portion - $160,000
- Local portion - $ 40,000 (Sedgwick County $20,000 and City of Wichita $20,000)
- Total - $200,000

The Transportation Policy Body, which develops and approves transportation plans for the Wichita Area Metropolitan Planning Organization, awarded $80,000 federal portion to Wichita Transit for one CMAQ grant and $80,000 federal portion for the second CMAQ grant on July 12, 2011.

Financial Consideration: The request is $100,000 for each grant for a total of $200,000. The federal share is $80,000 for each grant. The local match for Q-Line 1 is $20,000 and will be funded by Sedgwick County per the Coordination Agreement for Arena Event Transit Services approved by Wichita City Council on March 1, 2011. The local match for Q-Line 2 is $20,000 and will be funded by the Transit Fund.

Goal Impact: Funding from this grant will support Wichita Transit's role in providing for Efficient and Effective Infrastructure by maintaining and optimizing public facilities and assets.

Legal Consideration: The Law Department has reviewed and approved the resolutions authorizing filing of grant as to form.

Recommendation/Actions: Staff recommends that the City Council approve the resolutions and authorize the necessary signatures.

Attachments:
1. Wichita Transit resolution authorizing 2012 CMAQ Q-Line1
2. Kansas Department of Transportation Form 1312 resolution for 2012 CMAQ Q-Line1
3. Wichita Transit resolution authorizing 2012 CMAQ Q-Line2
4. Kansas Department of Transportation Form 1312 resolution for 2012 CMAQ Q-Line2

RESOLUTION NO. 11-240

A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE FEDERAL TRANSIT ADMINISTRATION, AN OPERATING ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FOR FEDERAL TRANSPORTATION ASSISTANCE AUTHORIZED BY 49 U.S.C., AND OTHER FEDERAL STATUTES ADMINISTERED BY THE FEDERAL TRANSIT ADMINISTRATION TO SUPPORT FY 2012 CONGESTION MITIGATION AND AIR QUALITY (CMAQ) PROJECTS

WHEREAS, the Federal Transportation Administrator has been delegated authority to award federal financial assistance for transportation projects; and

WHEREAS, the grant or cooperative agreement for federal financial assistance will impose certain obligations upon the City of Wichita and may require the City to provide the local share of the project cost; and

WHEREAS, the City of Wichita has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project; and

WHEREAS, the City of Wichita desires financial assistance for support of the following projects: Pursuant to CMAQ – Congestion Mitigation and Air Quality: Current Q-Line 1 services.

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

1. The City Manager or designee is authorized to execute and file an application on behalf of the City of Wichita, Kansas, with the Federal Transit Administration for federal assistance under 49 U.S.C., United States Code, or other federal statutes authorizing a project administered by the Federal Transit Administration to aid in financing 49 U.S.C.

2. That the City Manager or designee is authorized to execute and file with its application the annual certifications and assurances and other documents the Federal Transit Administration requires before awarding a federal assistance grant or cooperative agreement.

3. That the City Manager or designee is authorized to execute the grant and cooperative agreements with the Federal Transit Administration on behalf of the City of Wichita.

CERTIFICATION

The undersigned duly-qualified Mayor, acting on behalf of the City of Wichita, which is the Recipient of CMAQ assistance under the provisions of 49 U.S.C., certifies that the foregoing is a true and correct copy of a resolution adopted at a legally-convened meeting of the City of Wichita.

ADOPTED at Wichita, Kansas on September 27, 2011.

_____
Carl Brewer, Mayor

Attest:

_____
Karen Sublett, MMC, City Clerk

(seal)

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law

KANSAS DEPARTMENT OF TRANSPORTATION

BUREAU OF LOCAL PROJECTS

REQUEST FOR CONGESTION MITIGATION AND AIR QUALITY (CMAQ)

IMPROVEMENT PROGRAM PROJECT

County/City: _____

WHEREAS, The Secretary of Transportation of the State of Kansas, hereinafter referred to as the "Secretary," has been designated as an agent for _____ under an agreement dated _____ , or, will be designated as an agent for _____under an agreement to be executed at a later date and,

WHEREAS, the Federal-Aid Highway Act of 1956, as amended, and subsequent acts and amendments, provides Federal-Aid funds to assist the counties, cities, and other political sub-divisions in improving their roads and streets and congestion mitigation activities that provide air quality benefits, and,

WHEREAS, The above-noted county/city desires to improve a certain portion of their road or street system or other related project that will contribute to air quality improvements and reduce congestion, now, therefore,

WHEREAS, The county/city request the Secretary program the following Congestion Mitigation Air Quality Improvement project _____

_____

_____

ESTIMATED costs of such improvements are as follows:

Federal Funds	$ _____
Local Funds	$ _____
ESTIMATED Total for Project	$ _____
Proposed Let Date	_____

Submit One (1) Copy of the document along with Approved TIP documentation

BE IT RESOLVED: That sufficient funds of _____ County/City are now, or will be available and are hereby pledged to the Secretary in the amount and at the time required for the supplementing of federal funds available for the completion of this project. Prior to Federal Authorization, any project expenditures made by the County/City are ineligible for federal funding and remain the responsibility of the County/City. Upon cancellation of the project by the County/City, the County/City shall reimburse the Secretary within thirty (30) days after receipt of statement of cost incurred by the Secretary prior to cancellation.

Day _____ Month _____ Year _____, at _____, Kansas.

Recommend for Approval: APPROPRIATE LOCAL OFFICIAL(S)

_____ _____

County/City Engineer or Administrator Chairperson/Mayor

ATTEST: _____

Member

_____ _____

County/City Clerk Member

DOT Form 1312 (Original 3/10)

RESOLUTION NO. 11-241

A RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION WITH THE FEDERAL TRANSIT ADMINISTRATION, AN OPERATING ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION, FOR FEDERAL TRANSPORTATION ASSISTANCE AUTHORIZED BY 49 U.S.C., AND OTHER FEDERAL STATUTES ADMINISTERED BY THE FEDERAL TRANSIT ADMINISTRATION TO SUPPORT FY 2012 CONGESTION MITIGATION AND AIR QUALITY (CMAQ) PROJECTS

WHEREAS, the Federal Transportation Administrator has been delegated authority to award federal financial assistance for transportation projects; and

WHEREAS, the grant or cooperative agreement for federal financial assistance will impose certain obligations upon the City of Wichita and may require the City to provide the local share of the project cost; and

WHEREAS, the City of Wichita has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project; and

WHEREAS, the City of Wichita desires financial assistance for support of the following projects: Pursuant to CMAQ – Congestion Mitigation and Air Quality: Expanded Q-Line 2 services.

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

1. The City Manager or designee is authorized to execute and file an application on behalf of the City of Wichita, Kansas, with the Federal Transit Administration for federal assistance under 49 U.S.C., United States Code, or other federal statutes authorizing a project administered by the Federal Transit Administration to aid in financing 49 U.S.C.

2. That the City Manager or designee is authorized to execute and file with its application the annual certifications and assurances and other documents the Federal Transit Administration requires before awarding a federal assistance grant or cooperative agreement.

3. That the City Manager or designee is authorized to execute the grant and cooperative agreements with the Federal Transit Administration on behalf of the City of Wichita.

CERTIFICATION

The undersigned duly-qualified Mayor, acting on behalf of the City of Wichita, which is the Recipient of CMAQ assistance under the provisions of 49 U.S.C., certifies that the foregoing is a true and correct copy of a resolution adopted at a legally-convened meeting of the City of Wichita.

ADOPTED at Wichita, Kansas on September 27, 2011, 2011.

Carl Brewer, Mayor

Attest:

Karen Sublett, MMC, City Clerk

(seal)

Approved as to form:

Gary E. Rebenstorf, Director of Law

KANSAS DEPARTMENT OF TRANSPORTATION

BUREAU OF LOCAL PROJECTS

REQUEST FOR CONGESTION MITIGATION AND AIR QUALITY (CMAQ)

IMPROVEMENT PROGRAM PROJECT

County/City: _____

WHEREAS, The Secretary of Transportation of the State of Kansas, hereinafter referred to as the "Secretary," has been designated as an agent for _____ under an agreement dated _____ , or, will be designated as an agent for _____under an agreement to be executed at a later date and,

WHEREAS, the Federal-Aid Highway Act of 1956, as amended, and subsequent acts and amendments, provides Federal-Aid funds to assist the counties, cities, and other political sub-divisions in improving their roads and streets and congestion mitigation activities that provide air quality benefits, and,

WHEREAS, The above-noted county/city desires to improve a certain portion of their road or street system or other related project that will contribute to air quality improvements and reduce congestion, now, therefore,

WHEREAS, The county/city request the Secretary program the following Congestion Mitigation Air Quality Improvement project _____

_____

_____

ESTIMATED costs of such improvements are as follows:

Federal Funds	$ _____
Local Funds	$ _____
ESTIMATED Total for Project	$ _____
Proposed Let Date	_____

Submit One (1) Copy of the document along with Approved TIP documentation

BE IT RESOLVED: That sufficient funds of _____ County/City are now, or will be available and are hereby pledged to the Secretary in the amount and at the time required for the supplementing of federal funds available for the completion of this project. Prior to Federal Authorization, any project expenditures made by the County/City are ineligible for federal funding and remain the responsibility of the County/City. Upon cancellation of the project by the County/City, the County/City shall reimburse the Secretary within thirty (30) days after receipt of statement of cost incurred by the Secretary prior to cancellation.

Day _____ Month _____ Year _____, at _____, Kansas.

Recommend for Approval: APPROPRIATE LOCAL OFFICIAL(S)

_____ _____

County/City Engineer or Administrator Chairperson/Mayor

ATTEST: _____

Member

_____ _____

County/City Clerk Member

DOT Form 1312 (Original 3/10)

Second Reading Ordinances for September 27, 2011 (first read on September 13, 2011)

A) Public Hearings for Douglas Place TIF Project Plan, Community Improvement District and Façade Improvements. (District I)

(1) ORDINANCE NO. 49-079

An ordinance authorizing the issuance of certain bonds of the City of Wichita, Kansas to pay all or a portion of the costs of land acquisition and construction of a public parking garage and urban park in the Douglas Place Redevelopment Project Area.

(2) ORDINANCE NO. 49-080

An ordinance of the City of Wichita establishing the Douglas and Broadway Community Improvement District**.**

(3) ORDINANCE NO. 49-081

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. 11-213 of the city (104 South Broadway Facade Improvement District).

(4) ORDINANCE NO. 49-082

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. 11-215 of the city (104 South Broadway Facade Improvement District).

(5) ORDINANCE NO. 49-083

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. 11-216 of the city (104 South Broadway Facade Improvement District**).**

(6) ORDINANCE NO. 49-084

An ordinance adopting a project plan or the Douglas Place Project in the Center City South Redevelopment District.

(7) ORDINANCE NO. 49-100

An ordinance of the City of Wichita, Kansas (the "City"), approving certain planned construction and approving and authorizing the execution of a development agreement between the City and Douglas Place, LLC regarding development of property at and adjacent to Douglas and Broadway for purposes of a Boutique Hotel, a parking garage and an urban park, all pursuant to Charter Ordinance No. 203

(8) CHARTER ORDINANCE NO. 216

A charter ordinance amending and repealing Section 1 of Charter Ordinance No. 213 of the city of Wichita, Kansas, which amended and repealed Section 1 of Charter Ordinance No. 183 of the City of Wichita, which amended and repealed Section 1 of Charter Ordinance No. 174 of the City of Wichita, Kansas, pertaining to the application of revenues from the transient guest tax.

Second Reading Ordinances for September 27, 2011 (first read on September 20, 2011)

B) Approval of Forgivable Loan Agreement (JCB Laboratories) (District V)

(1) ORDINANCE NO. 49-094

An ordinance of the city of Wichita, Kansas, prescribing the form and authorizing the execution of a Forgivable Loan Agreement and promissory note by and between JCB Laboratories, LLC and the City of Wichita, Kansas.

C) Amendment to Section 1.04.070 of the Code of the City of Wichita regarding court costs and administrative court fees in the Municipal Court.

(1) ORDINANCE NO. 49-095

An Ordinance amending Section 1.04.070 of the code of the City of Wichita, Kansas, pertaining to costs and witness fees in cases before the Municipal Court and repealing the original of said section.

D) Harry and Woodlawn Intersection Improvement (Districts II and III)

(1) ORDINANCE NO. 49-096

An ordinance amending Ordinance No. 48-693 of the city of Wichita, Kansas declaring the intersection of Harry and Woodlawn (472-84882) to be a main trafficway within the City of Wichita, Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of same.

E) Amending Resolutions and Ordinance for Street Paving Projects. (Districts IV, V & VI)

(1) ORDINANCE NO. 49-097

An Ordinance amending Ordinance No. 49-059 of the City of Wichita, Kansas declaring Seneca, between I-235 freeway and 31st Street South (472-84006) to be a main trafficway within the City of Wichita, Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of same.

F) **<u>Pawnee and Broadway Intersection Improvement (District III)</u>**

(1) ORDINANCE NO. 49-098

An Ordinance amending Ordinance no. 49-063 of the City of Wichita, Kansas declaring the intersection of Pawnee and Broadway (472-84881) to be a main trafficway within the City of Wichita Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of the same.

G) **<u>ZON2011-00024 – City zone change from SF-5 Single-Family Residential to GC General Commercial; generally located on the east side of Webb Road between Von Thaden Street and Chamberlin Street.</u>** (District II)

(1) ORDINANCE NO. 49-099

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.

City of Wichita
City Council Meeting
September 27, 2011

TO: Wichita Housing Authority Board

SUBJECT: Veterans Affairs Supportive Housing Funding

INITIATED BY: Housing and Community Services Department

AGENDA: Housing **(**Consent)

Recommendation: Authorize a grant budget of $250,178 for Veterans Affairs Supportive Housing (VASH) grant renewal funds received during the 2011 calendar year.

Background: The U. S. Department of Housing and Urban Development (HUD) began funding a program to provide housing vouchers for homeless veterans in 2008. The program is known as HUD – VASH and in addition to providing housing vouchers there is a supportive services component that is provided by the Veterans Administration. The Wichita Housing Authority (WHA) has operated the HUD-VASH program since May 1, 2008.

Analysis: At the start of 2011, Congress had not approved the federal budget and HUD therefore provided funding to the WHA without the standard documentation. After the federal budget was approved, HUD provided the documentation which is needed to establish a budget account in the City's accounting system. The WHA currently manages a HUD-VASH program with 110 vouchers. The funds received will be used to support the 110 vouchers.

Financial Considerations: The program is completely funded by HUD, and will not impact the City General Fund. Approval of this item will authorize staff to set up a grant budget in the amount of $250,178 for the HUD-VASH program.

Goal Impact: The HUD-VASH program impacts the Economic Vitality and Affordable Living goal.

Legal Considerations: The Law Department has reviewed the HUD Notice to Amend the Consolidated Annual Contributions Contract with revised funding exhibits and approved it as to form.

Recommendations/Actions: It is recommended that the Wichita Housing Authority Board authorize a grant budget of $250,178 for Veterans Affairs Supportive Housing (VASH) grant renewal funds received during the 2011 calendar year.

Attachments: HUD Notice to Amend the Consolidated Annual Contributions Contract with a revised funding exhibit.

HUD NOTICE TO HOUSING AGENCY AMENDING

CONSOLIDATED ANNUAL CONTRIBUTIONS CONTRACT

Housing Agency: **KS004**
WICHITA HOUSING AUTHORITY

In accordance with Paragraph 2.c. of the Consolidated Annual Contributions Contract between HUD and the HA, you are notified that the funding exhibits of the Consolidated Annual Contributions Contract is hereby revised to add a new funding increment as provided in the attached revised funding exhibit. (This notice adds one or more funding increments listed on the attached funding exhibit.)

The revised funding exhibit is attached to this HUD notice. This revised funding exhibit replaces and revises the prior funding exhibit.

In accordance with Paragraph 2.d. of the Consolidated Annual Contributions Contract, this HUD notice and the attached funding exhibit constitutes an amendment to the Consolidated Annual Contributions Contract.

United States of America	Secretary of Housing and Urban Development Authorized Representative	Date of Document:
	Carissa Riddle, Director Financial Management Center	4/18/2011

Form HUD-52520A (12/97)

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PIH SECTION 8 - FUNDING EXHIBIT

PROGRAM-BASED

ACC NUMBER: KS004VA

FIELD OFFICE: **7APH**

KS004
WICHITA HOUSING AUTHORITY
332 N. RIVERVIEW

WICHITA, KS 67203

HA FISCAL YEAR-END: **12/31** PROGRAM TYPE: **Voucher Program**

FUNDING INCREMENT NUMBER	FIRST DAY OF TERM	LAST DAY OF TERM	CONTRACT TERM	BUDGET AUTHORITY	UNITS
KS004VA0003	11/1/2009	12/31/2010	14	170,693	35
KS004VA0004	1/1/2010	12/31/2010	12	83,978	35
KS004VA0006	1/1/2011	2/28/2011	2	83,978	35
KS004VA0007	3/1/2011	4/30/2011	2	83,099	35
KS004VA0008	1/1/2011	4/30/2011	4	1	35
KS004VA0005	6/1/2010	5/31/2011	12	69,115	15
KS004VA0009	5/1/2011	6/30/2011	2	83,098	35
KS004VA0010	6/1/2011	6/30/2011	1	1	15
KS004VA0011	5/1/2011	6/30/2011	2	1	35

Agenda Item No. II-16

City of Wichita
City Council Meeting
September 27, 2011

TO: Wichita Housing Authority Board Members

SUBJECT: Application for Conversion of Riverwalk and Victoria Park Housing Choice Vouchers

INITIATED BY: Housing and Community Services Department

AGENDA: Housing **(**Consent)

Recommendation: Approve the application, approve the grant award upon receipt, and authorize the necessary signatures.

Background: On July 21, 2011, the U. S. Department of Housing and Urban Development (HUD) sent a letter to the Wichita Housing Authority (WHA) to solicit cooperation in applying for and administering 64 Housing Choice Vouchers to assist families who have been participating in HUD's Multi-Family project-based program. The vouchers are available because the Riverwalk and Victoria Park Apartments are opting out of Multi-Family project-based program. The WHA responded with a preliminary agreement to accept this responsibility which will enable the families to continue to have rental assistance for safe, affordable housing. The new vouchers will be administered through the client-based Housing Choice Voucher program which the Wichita Housing Authority operates.

Analysis: The WHA will be responsible for administering the rental assistance vouchers for 64 families who are being impacted by the change in status for these two apartment properties. Families at the Riverwalk Apartments will not be required to relocate from the property. They may utilize their vouchers to lease units at the property or may choose to rent eligible units from other property owners. Families at Victoria Park Apartments will be required to relocate from the property. Families at both properties are eligible to receive normal voucher assistance. Vouchers that are not used by any of the families may be used by families already on the WHA Housing Choice Voucher Program waiting list.

Financial Considerations: The program is completely funded by HUD and will not impact the City General Fund.

Goal Impact: This will impact the Economic Vitality and Affordable Living goal.

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

Recommendations/Actions: It is recommended that the Wichita Housing Authority Board approve the application, approve the grant award upon receipt, and authorize the necessary signatures.

Attachment: HUD Funding Documents

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
KANSAS/MISSOURI STATE OFFICE
Gateway Tower II, Room 200
400 State Avenue
Kansas City, KS 66101-2406
HUD Home Page: *www.hud.gov*

July 21, 2011

HOUSING & COMMUNITY SERVICES DEPT.
JUL 25 2011
FILE _____

Mary K. Vaughn
Executive Director
Wichita Housing Authority
332 Riverview Street
Wichita, KS 67203

Dear Ms. Vaughn:

Our office is seeking cooperation with your agency to administer Housing Choice Vouchers being provided for the following conversion actions:

1. Riverwalk Apartments
   410 E. Marion Ave.
   Wichita, KS 67216-1057
   Section 8 No. KS160023012
   Target effective date: October 31, 2011
   Local management agent: Weigand-Omega Management
   Attn: Brandy Alcorn
   333 S. Broadway
   Wichita, KS 67202
   316-263-2215

   This complex has a total of 44 residents that are potentially eligible for conversion to vouchers through your agency.

2. Victoria Park Apartment
   612 E. Douglas Ave.
   Wichita, KS 67202-3515
   Section 8 No. KS16E000003
   Target effective date: September 30, 2011
   Local management agent: City of Wichita
   c/o John Philbrick
   455 N. Main
   Wichita, KS 67202
   316-268-4351

   This complex has a total of 20 residents that are potentially eligible for conversion to vouchers through your agency.

Families at Riverwalk Apartments **will not** be required to relocate from the property. They may utilize their vouchers to lease units at the property or may choose to rent eligible units from other property owners. Families at Victoria Park Apartments **will** be required to relocate from the property as of the target effective date. Families at both properties are eligible to receive **normal** voucher assistance. Vouchers unused by any of the families may be used by families already on your waiting list. Form HUD-50059s for the current residents have been sent to the Housing Authority under separate cover.

In a recent phone conversation, Gail Lotson of your staff, indicated an interest in administering the vouchers for these conversions. In consideration of that conversation, we request that you complete a Form HUD-52515 (Funding Application) for each property and return them to our Office at your earliest convenience. Copies of these forms are enclosed.

If you have any questions, or need any other information, please contact Craig Vandervort at (913) 551-6556.

Sincerely,

Frances Cleary
Director
Office of Public Housing

Enclosure

Funding Application

Section 8 Tenant-Based Assistance
Rental Certificate Program
Rental Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp.04/30/2014)

Send the original and two copies of this application form and attachments to the local HUD Field Office

Eligible applicants (HAs) must submit this information when applying for grant funding for tenant-based housing assistance programs under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). HUD will use the information to evaluate an application based on selection crit eria stated in the Notice of Funding Availability (NOFA). HUD will notify the HA of its approval/disapproval of the funding application. Responses are required to obtain a benefit from the Federal Govenment. The information requested does not lend itself to confidentiality.

Name and Mailing Address of the Housing Agency (HA) requesting housing assistance payments

Do you have an ACC with HUD	No	Yes	Date of Application
for Section 8 Certificates?	☐	☐	
for Section 8 Vouchers?	☐	☒	July 26, 2011

Legal Area of Operation
(area in which the HA has authority under State and local law to administer the program)

A. Area(s) From Which Families To Be Assisted Will Be Drawn.

Locality (city, town, etc.)	County	Congressional District	Units
Victoria Park	Sedgwick	4th	20
612 E. Douglas			
Wichita, KS 67202			

B. Proposed Assisted Dwelling Units. (Complete this section based on the unit sizes of the applicants at the top of the w aiting list)

	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	Total Dwelling Units
Certificates								
Vouchers	8	12						

C. Average Monthly Adjusted Income. Complete this section based on actual incomes of current participants by unit size. Enter average monthly adjusted income for each program separately and only for the unit sizes requested in Section B.

	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR
Certificates	$	$	$	$	$	$	$
Vouchers	$	$	$	$	$	$	$

D. Need for Housing Assistance. Demonstrate that the project requested in this application is responsive to the condition of the housing stock in the community and the housing assistance needs of low-income families residing in or expected to reside in the community. (If additional space is needed, add separate pages

E. Housing Quality Standards (HQS). (Check applicable box) HUD's HQS will be used with no modifications Attached for

HUD approval are HQS acceptability criteria variations

F. New HA Information. Complete this section if HA currently does not administer a tenant-based certificate or voucher program.

Financial and Administrative Capability. Describe the experience of the HA in administering housing or other programs and prov ide any other relevant information which evidences present or potential management capability for the proposed rental assistance program. Submit this narrative on a separate page.

Qualification as an HA. Demonstrate that the applicant qualifies as an HA and is legally qualified and authorized to administer the funds applied for in this application. Submit the relevant enabling legislation and a supporting legal opinion.

Note: If this application is approved, the HA must submit for HUD approval a utility allowance schedule and budget documents.

G. Certifications. The following certifications are incorporated as a part of this application form. The signature on the last page of this ap plication of the HA representative authorized to sign the application signifies compliance with the terms of these certifications.

Equal Opportunity Certification

The Housing Agency (HA) certifies that:

(1) The HA will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations issued pursuant thereto (24 CFR Part 1) which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded fr om participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will take any measures necessary to effectuate this agreement.

(2) The HA will comply with the Fair Housing Act (42 U.S.C. 3601-19) and regulations issued pursuant thereto (24 CFR Part 100) which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

(3) The HA will comply with Executive Order 11063 on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, or national origin in housing and related facilities provided with Federal financial assistance and HUD regulations (24 CFR Part 107).

(4) The HA will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant ther eto (24 CFR Part 8) which state that no otherwise qualified individual with handicaps in the United States shall solely by reason of th e handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity r eceiving Federal financial assistance.

(5) The HA will comply with the provisions of the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and regulations issued pursuant thereto (24 CFR Part 146) which state that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance .

(6) The Housing Agency will comply with the provisions of Title II of the Americans with Disabilities Act (42 U.S.C. 12131)and regulations issued pursuant thereto (28 CFR Part 35) which state that subject to the provisions of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activiti es of a public entity, or be subjected to discrimination by any such entity.

The following provisions apply only to housing assisted with Project-Based Certificates:

(7) The HA will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60-1) which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity.

(8) The HA will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and regul ations issued pursuant thereto (24 CFR Part 135), which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for metropolitan area (or non-metropolitan county) in which the project is located.

Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influen cing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an em ployee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modificat ion of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempt ing to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a M ember of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Certification Regarding Drug-Free Workplace Requirements

Instructions for Drug-Free Workplace Requirements Certification:

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized un der the Drug-Free Workplace Act.

3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award , if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements .

4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work un der the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).

6. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees or subrecipients or subcontractors in covered workplaces).

A. The grantee 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 grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee'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 violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement r equired by paragraph (a);

(d) 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;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to an y 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;

(g) 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 grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

Check if there are workplaces on file that are not identified here.

Housing Agency Signature

Signature of HA Representative	Print or Type Name of Signatory	
Mary K Vaughn	Mary K. Vaughn	
	Phone No.	Date
	316-462-3795	July 26, 2011

Funding Application

Section 8 Tenant-Based Assistance
Rental Certificate Program
Rental Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp.04/30/2014)

Send the original and two copies of this application form and attachments to the local HUD Field Office

Eligible applicants (HAs) must submit this information when applying for grant funding for tenant-based housing assistance programs under Section 8 of the U.S. Housing Act of l937 (42 U.S.C. 1437f). HUD will use the information to evaluate an application based on selection crit eria stated in the Notice of Funding Availability (NOFA). HUD will notify the HA of its approval/disapproval of the funding application. Responses are required to obtain a benefit from the Federal Govenment. The information requested does not lend itself to confidentiality.

Name and Mailing Address of the Housing Agency (HA) requesting housing assistance payments

Do you have an ACC with HUD	No	Yes	Date of Application
for Section 8 Certificates?	☐	☐	
for Section 8 Vouchers?	☐	☒	July 26, 2011

Legal Area of Operation
(area in which the HA has authority under State and local law to administer the program)

A. Area(s) From Which Families To Be Assisted Will Be Drawn.

Locality (city, town, etc.)	County	Congressional District	Units
Riverwalk Apartments	Sedgwick	4th	44
410 E. Marion			
Wichita, KS 67216			

B. Proposed Assisted Dwelling Units. (Complete this section based on the unit sizes of the applicants at the top of the w aiting list)

Number of Dwelling Units by Bedroom Size	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	Total Dwelling Units
Certificates								
Vouchers		26	14	4				

C. Average Monthly Adjusted Income. Complete this section based on actual incomes of current participants by unit size. Enter average monthly adjusted income for each program separately and only for the unit sizes requested in Section B.

	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR
Certificates	$	$	$	$	$	$	$
Vouchers	$	$	$	$	$	$	$

D. Need for Housing Assistance. Demonstrate that the project requested in this application is responsive to the condition of the housing stock in the community and the housing assistance needs of low-income families residing in or expected to reside in the community. (If additional space is needed, add separate pages

E. Housing Quality Standards (HQS). (Check applicable box) HUD's HQS will be used with no modifications Attached for

HUD approval are HQS acceptability criteria variations

F. New HA Information. Complete this section if HA currently does not administer a tenant-based certificate or voucher program.

Financial and Administrative Capability. Describe the experience of the HA in administering housing or other programs and prov ide any other relevant information which evidences present or potential management capability for the proposed rental assistance program. Submit this narrative on a separate page.

Qualification as an HA. Demonstrate that the applicant qualifies as an HA and is legally qualified and authorized to administer the funds applied for in this application. Submit the relevant enabling legislation and a supporting legal opinion.

Note: If this application is approved, the HA must submit for HUD approval a utility allowance schedule and budget documents.

G. Certifications. The following certifications are incorporated as a part of this application form. The signature on the last page of this ap plication of the HA representative authorized to sign the application signifies compliance with the terms of these certifications.

Equal Opportunity Certification

The Housing Agency (HA) certifies that:

(1) The HA will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations issued pursuant thereto (24 CFR Part 1) which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded fr om participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will take any measures necessary to effectuate this agreement.

(2) The HA will comply with the Fair Housing Act (42 U.S.C. 3601-19) and regulations issued pursuant thereto (24 CFR Part 100) which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

(3) The HA will comply with Executive Order 11063 on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, or national origin in housing and related facilities provided with Federal financial assistance and HUD regulations (24 CFR Part 107).

(4) The HA will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant ther eto (24 CFR Part 8) which state that no otherwise qualified individual with handicaps in the United States shall solely by reason of th e handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity r eceiving Federal financial assistance.

(5) The HA will comply with the provisions of the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and regulations issued pursuant thereto (24 CFR Part 146) which state that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance .

(6) The Housing Agency will comply with the provisions of Title II of the Americans with Disabilities Act (42 U.S.C. 12131)and regulations issued pursuant thereto (28 CFR Part 35) which state that subject to the provisions of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activiti es of a public entity, or be subjected to discrimination by any such entity.

The following provisions apply only to housing assisted with Project-Based Certificates:

(7) The HA will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60-1) which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity.

(8) The HA will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and regul ations issued pursuant thereto (24 CFR Part 135), which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for metropolitan area (or non-metropolitan county) in which the project is located.

Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influen cing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an em ployee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modificat ion of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempt ing to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a M ember of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Certification Regarding Drug-Free Workplace Requirements

Instructions for Drug-Free Workplace Requirements Certification:

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized un der the Drug-Free Workplace Act.

3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award , if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements .

4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work un der the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).

6. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees or subrecipients or subcontractors in covered workplaces).

A. The grantee 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 grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee'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 violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement r equired by paragraph (a);

(d) 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;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to an y 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;

(g) 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 grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

Check if there are workplaces on file that are not identified here.

Housing Agency Signature

Signature of HA Representative	Print or Type Name of Signatory
Mary K. Vaughn	Mary K. Vaughn, Director
	Phone No. 316-462-3795 / Date July 26, 2011

City of Wichita
City Council Meeting
September 27, 2011

TO: Wichita Airport Authority

SUBJECT: Agreement – U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Wildlife Services

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the Agreement.

Background: In December 2000, the Wichita Airport Authority (WAA) entered into a service agreement with the U. S. Department of Agriculture-Wildlife Services (USDA) to provide wildlife management services at Mid-Continent Airport and Colonel James Jabara Airport. This Agreement Work Plan/Financial Plan has been renewed on an annual basis since the original agreement date. The Work Plan consists of the following services: assessing/monitoring biological conditions necessary to track seasonal and yearly changes in wildlife populations; provide training to airport staff; provide wildlife hazing and habitat management; and apply for and maintain required permits.

Analysis: Through this Agreement, the WAA complies with its obligations to the Federal Aviation Administration under 14 CFR Part 139.337-*Wildlife Hazard Management*, the Airport Certification Manual, and the Airport Wildlife Hazard Management Plan, all of which are mandatory federal compliance programs as a condition for maintaining the Airport Operating Certificate.

Financial Considerations: The cost of the services provided is $51,249 for the period October 1, 2011, through September 30, 2012. This amount reflects an increase of $1,249 above the 2010/2011 contract amount or a two percent increase compared to last year. The funds for this program are included in the Airport Operating Budget.

Goal Impact: The Wichita Airport Authority's contribution to the Economic Vitality of Wichita is promoted through maintaining safe, efficient, and economical airport services to serve the community.

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

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the Agreement and authorize the necessary signatures.

Attachments: The Agreement Work Plan/Financial Plan.

Work Plan/Financial Plan

COOPERATOR: Wichita Airport Authority
Victor D. White, Director of Airports, (316) 946-4700

COOPERATIVE AGREEMENT NO.: 12-73-20-5303RA

ACCOUNTING CODE No.: 273-7320-377

LOCATION: Mid-Continent Airport Wichita Kansas

DATES: October 1, 2011 to September 30, 2012

OBJECTIVES/GOALS:

To continue to collect biological assessment information, provide periodic wildlife damage management training to Wichita Airport Authority (WAA) personnel and assist Airfield Operations and Maintenance by responding directly to known wildlife nuisances and hazards. Specific actions requested: a) assess/monitor biological conditions on Mid-Continent Airport to track seasonal and yearly changes in wildlife population indices, b) provide periodic training to WAA personnel to meet FAA requirements and identify, document, and address wildlife hazards, c) provide direct control of nuisance and hazardous wildlife using hazing (harassment), trapping, shooting and other management tools as appropriate, and d) assist the WAA in maintaining appropriate State and Federal depredation permits.

PLAN OF ACTION:

WS personnel will conduct all activities within the above-delineated areas. WS will coordinate all activities with the appropriate WAA personnel. WAA will be responsible for designating WS points of contact, approving WS activities, and providing the appropriate clearances needed to complete the stated objectives/goals. The project will be supervised by the State Director for Kansas or his designated representative.

One specialist will be assigned to the project for approximately 32 hours per week. Work hours will vary and will be scheduled to most appropriately address wildlife damage management problems. WS may utilize all practical and legal wildlife management techniques.

COST ESTIMATE FOR SERVICES
October 1, 2011 to September 30, 2012

Salary/Benefits	36,843
Lodging/Per Diem	1,000
Transportation (9,600 miles @ .55/mile)	5,280
Supplies	1,000
SUBTOTAL	44.123
Program Support @ 16.15% of Subtotal	7,126
TOTAL	**$51,249**

Billing will be done quarterly. Costs are estimated and may vary according to changing needs.

NOTE: In accordance with the Debt Collection Improvement Act (DCIA) of 1996, bills issued by APHIS/WS are due and payable within 30 days of receipt. The DCIA requires that all debts older than 120 days must be forwarded to debt collection centers or commercial collection agencies for more aggressive action.

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS
By direction of the Wichita Airport Authority

By: _____
Karen Sublett, City Clerk

By: _____
Carl Brewer, President

By: _____
Victor D. White, Director of Airports

APPROVED AS TO FORM: _____ Date: _____
Director of Law

UNITED STATES DEPARTMENT OF AGRICULTURE
ANIMAL & PLANT HEALTH INSPECTION SERVICE
WILDLIFE SERVICES

By: _____ Date: _____
State Director, Kansas

By: _____ Date: _____
Director, Western Region