Table of Contents

Agenda 4

Request for a Letter of Intent for Industrial Revenue Bonds, Pixius Communications LLC. (District VI)

- Agenda Report No. IV-1 11
- Application and Request for Letter of Intent 13

Public Hearing and Approval of a Façade Improvement Project - 301 North Saint Francis. (District VI)

- Agenda Report No. IV-2 19
- Ordinance No. 49-009 21
- Resolution No. 11-117 24
- Pixius Facade Easement 25
- Pixius Petition & Waiver 31

Approval of Forgivable Loan Agreement, The Golf Warehouse. (District II)

- Agenda Report No. IV-3 40
- Ordinance No. 49-003 42
- Agreement 44

Quarterly Financial Report for Quarter Ending March 31, 2011.

- Agenda Report No. IV-4 49

Wichita WaterWalk Art Project. (District I)

- Agenda Report No. IV-5 50
- Proposal Model 51
- CorTen - Stainless - Bronze 52

WaterWalk Aesthetic Design, Site Areas No.2. (District I)

- Agenda Report No. IV-6 53

Central Avenue Improvement, from Tara to West Parkway, between Rock and Webb. (District II)

- Agenda Report No. IV-7 55
- Ordinance No. 49-004 56
- Map and CIP 58

DER2011-00003 - Douglas Avenue Corridor Transit Oriented Development Study. (Districts I, IV, and VI)

- Agenda Report No. IV-8 60
- Ordinance No. 49-008 62
- Contract 64

CON2010-00008 – Request for a Conditional Use to allow a Wrecking/Salvage Yard on property located at the southwest corner of 29th Street North and Mead Street. (District VI)

- Agenda Report No. V-1 78
- Resolution No. 11-119 83
- Background Information 85

ZON2011-00002 – City zone change from SF-5 Single-Family Residential to NO Neighborhood Office, subject to Protective Overlay #250, generally located northeast of Central Avenue and 159th Street East. (District II)

Agenda Report No. V-2 132
Ordinance No. 49-005 137
Background Information 139
Preliminary Estimates. (See Attached)
Preliminary Estimates 171
Janitorial Services for Various City Facilities.
Agenda Report No. II-4a 172
Contracts 173
Change Order No. 3 - Harry Street Improvement, between Greenwich and 127th Street East. (District II)
Agenda Report No. II-5a and Change Order 194
Change Order No. 2 - Mid-Continent Water Quality Reclamation Facility. (District IV)
Agenda Report No. II-5b 197
Change Order No. 2 198
Change Order No. 2 - Cowskin Creek Sanitary Sewer Pump Station Modifications. (District IV)
Agenda Report No. II-5c 205
Change Order 206
Acquisition of 1358 North Terrace for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)
Agenda Report No. II-6a 211
Contract for Conveyance, Tract Map, and Aerial Map 212
Sale of City-owned Building at 610 East Douglas. (District I)
Agenda Report No. II-7 216
Supporting Document 217
Contracts and Agreements, April 2011.
Agenda Report No. II-8 223
Senior Management Report for Quarter Ended March 31, 2010.
Agenda Report No. II-9 224
North Iva Avenue and 27th Street Stormwater Sewer Environmental Protection Agency Grant Application. (District I)
Agenda Report No. II-10 225
EPA Grant Application 227
Abatement of Dangerous and Unsafe Structures. (Districts I, IV and VI)
Agenda Report No.II-11 and Ordinance Nos. 49-006 and 49-007 360
Transit Service Agreement for Oaklawn Improvement District. (District III)
Agenda Report No. II-12 366
Transit Service Agreement 367
Notice of Intent to Use Debt Financing Amendment - Fuel Farm Relocation Study and Improvements.
Agenda Report No. II-13 369
Resolution No. 11-109 370

Removal of Nuisance Abatement Special Property Tax Assessments, 2450 South Leonine. (Districts IV)
Agenda Report No. II-14 372
Street Closure: Arkansas at 32nd Street North. (District VI)
Agenda Report No. II-15 373
Map 374
List of Second Reading Ordinances. (See Attached)
Second Reading Ordinances 375
*SUB2011-00005 -- Plat of Stonebridge 3rd Addition located north of 13th Street North, west of 159th Street East. (District II)
Agenda Report No. II-17 376
Resolution Nos. 11-110 through 11-116 378
Supporting Documents 394
*VAC2010-00033 - Request to vacate easements retained by a Vacation Order; generally located between 1st and 2nd Streets, on the west side of Wichita Street. (District VI)
Agenda Report No. II-18 399
*2100 Block Airport Road Improvements - Supplemental Agreement No. 1.
Agenda Item No. II-19. 401
Supplemental Agreement No. 1. 402
*Aviation Bulk Fuel Farm Rehabilitation - Supplemental Agreement No. 2.
Agenda Report No. II-20 406
Supplemental Agreement No. 2. 407

FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. May 10, 2011

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

-- Call to Order

-- Invocation

-- Pledge of Allegiance

-- Approve the minutes of the regular meeting on May 3, 2011

AWARDS AND PROCLAMATIONS

None

I. PUBLIC AGENDA

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

1. Alex East - Joyland Restoration Project.

II. CONSENT AGENDAS (ITEMS 1 THROUGH 20)

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

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

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

None

IV. NEW COUNCIL BUSINESS

1. Request for a Letter of Intent for Industrial Revenue Bonds, Pixius Communications LLC. (District VI)

   RECOMMENDED ACTION: Close the public hearing and deny the request for a Letter of Intent for Industrial Revenue Bonds for Pixius in the amount not to exceed $2,400,000.

2. Public Hearing and Approval of a Façade Improvement Project - 301 North Saint Francis. (District VI)

   RECOMMENDED ACTION: Close the public hearing, approve the revised petition, adopt amending resolution, accept the waiver and consent, approve the façade easement and place the maximum assessment ordinance for the 301 North Saint Francis facade improvements on first reading.

3. Approval of Forgivable Loan Agreement, The Golf Warehouse. (District II)

   RECOMMENDED ACTION: Approve the forgivable loan agreement for TGW, place the home rule ordinance on first reading and authorize the necessary signatures.

4. Quarterly Financial Report for Quarter Ending March 31, 2011.

   RECOMMENDED ACTION: Receive and file the Quarterly Financial Report for the quarter ended March 31, 2011.

5. Wichita WaterWalk Art Project. (District I)

   RECOMMENDED ACTION: Approve the design proposed by Albert Paley for the initiation of fabrication of the design.

6. WaterWalk Aesthetic Design, Site Areas No.2. (District I)

   RECOMMENDED ACTION: Approve the Aesthetic design.

7. Central Avenue Improvement, from Tara to West Parkway, between Rock and Webb. (District II)

   RECOMMENDED ACTION: Approve the project, place the amending ordinance on first reading, and authorize the necessary signatures.

8. DER2011-00003 - Douglas Avenue Corridor Transit Oriented Development Study. (Districts I, IV, and VI)

   RECOMMENDED ACTION: Approve the Agreement for Professional Services and the Bonding Ordinance and authorize the necessary signatures.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

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

V. NON-CONSENT PLANNING AGENDA

1. CON2010-00008 – Request for a Conditional Use to allow a Wrecking/Salvage Yard on property located at the southwest corner of 29th Street North and Mead Street. (District VI)

   RECOMMENDED ACTION: 1) Concur with the findings of the MAPC, approve the Conditional Use, subject to the recommended conditions and authorize the Mayor to sign the resolution (requires a three-fourths majority); OR 2) Concur with the findings of the MAPC, approve the Conditional Use, subject to amended conditions (requires a three-fourths majority) OR 3) Deny the Conditional Use request by making alternative findings, and override the MAPC's recommendation (requires simple majority).

2. ZON2011-00002 – City zone change from SF-5 Single-Family Residential to NO Neighborhood Office, subject to Protective Overlay #250, generally located northeast of Central Avenue and 159th Street East. (District II)

   RECOMMENDED ACTION: 1) Adopt the findings of the MAPC, approve the zone change subject to the provisions of Protective Overlay #250, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority vote required); OR 2) Deny the zone change request by making alternative findings, and override the MAPCs recommendation (two-thirds majority vote required) or 3) Return the application to the MAPC for further consideration (simple majority vote required). (An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

HOUSING AGENDA

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

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

VI. NON-CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

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

VII. NON-CONSENT AIRPORT AGENDA

None

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

1. Approval of travel expenses for Mayor to attend the NLC Summer Board Meeting in Charlotte, NC, July 6-9, 2011.

   RECOMMENDED ACTION: Approve the expenditures.

IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

   RECOMMENDED ACTION: Approve the Appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 20)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated May 9, 2011.

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

2. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	2011	(Consumption off premises)
Kulwinder Jaswal	Petro America #2	2838 West Central Avenue

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

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

   RECOMMENDED ACTION: Receive and file.

4. Agreements/Contracts:
   a. Janitorial Services for Various City Facilities.

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

5. Change Orders:
   a. Change Order No. 3 - Harry Street Improvement, between Greenwich and 127th Street East. (District II)
   b. Change Order No. 2 - Mid-Continent Water Quality Reclamation Facility. (District IV)
   c. Change Order No. 2 - Cowskin Creek Sanitary Sewer Pump Station Modifications. (District IV)

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

6. Property Acquisition:
   a. Acquisition of 1358 North Terrace for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)

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

7. Sale of City-owned Building at 610 East Douglas. (District I)

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

8. Contracts and Agreements, April 2011.

   RECOMMENDED ACTION: Receive and file.

9. Senior Management Report for Quarter Ended March 31, 2010.

   RECOMMENDED ACTION: Receive and file.

10. North Iva Avenue and 27th Street Stormwater Sewer Environmental Protection Agency Grant Application. (District I)

    RECOMMENDED ACTION: Approve submitting the grant application and authorizes the necessary signatures.

11. Abatement of Dangerous and Unsafe Structures. (Districts I, IV and VI)

    RECOMMENDED ACTION: Approve the proposed assessments and place the ordinances on first reading.

12. Transit Service Agreement for Oaklawn Improvement District. (District III)

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

13. Notice of Intent to Use Debt Financing Amendment - Fuel Farm Relocation Study and Improvements.

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

14. Removal of Nuisance Abatement Special Property Tax Assessments, 2450 South Leonine. (Districts IV)

    RECOMMENDED ACTION: Approve removal of the nuisance abatement special property tax assessments for the property at 2450 South Leonine.

15. Street Closure: Arkansas at 32nd Street North. (District VI)

    RECOMMENDED ACTION: Approve the street closure.

16. Second Reading Ordinances: (First Read May 3, 2011)
    a. List of Second Reading Ordinances. (See Attached)

    RECOMMENDED ACTION: Adopt the Ordinances.

II. CONSENT PLANNING AGENDA ITEMS

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

17. *SUB2011-00005 -- Plat of Stonebridge 3rd Addition located north of 13th Street North, west of 159th Street East. (District II)

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

18. *VAC2010-00033 - Request to vacate easements retained by a Vacation Order; generally located between 1st and 2nd Streets, on the west side of Wichita Street. (District VI)

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

II. CONSENT HOUSING AGENDA ITEMS

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

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

None

II. CONSENT AIRPORT AGENDA ITEMS

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

19. *2100 Block Airport Road Improvements - Supplemental Agreement No. 1.

    RECOMMENDED ACTION: Approve the supplemental agreement and authorize the necessary signatures.

20. *Aviation Bulk Fuel Farm Rehabilitation - Supplemental Agreement No. 2.

    RECOMMENDED ACTION: Approve the budget adjustment and the supplemental agreement and authorize the necessary signatures.

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: Request for a Letter of Intent for Industrial Revenue Bonds (Pixius Communications LLC) (District VI)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendation: Deny the Letter of Intent.

Background: Pixius Communications, LLC ("Pixius") is requesting the issuance of a Letter of Intent for Industrial Revenue Bonds ("IRBs") in an amount not to exceed $2,400,000. The bond proceeds will be used to finance the cost of acquisition and remodeling of an existing downtown building to serve as Pixius' new corporate headquarters. The existing building is located at 301 N. St. Francis, in downtown Wichita. In addition to IRBs, Pixius initially requested the approval of a10-year 100% property tax abatement on the bond-financed property. Subsequently, Pixius has withdrawn the request for property tax abatement. As a separate item, Pixius is also requesting special assessment façade financing under the City's Façade Improvement Program.

Analysis: Pixius is currently located at 1634 E. Central in Wichita, Kansas. Pixius was established in 2000 to provide a wide range of data communications solutions to business and residential markets in underserved areas in Kansas. Using wireless technology, Pixius has the ability to provide high speed Internet service to areas that are beyond the reach of cable, DSL, 3G and 4G cellular. Pixius currently serves almost 7,000 residential and business customers in Kansas and Missouri.

Pixius intends to use the bond proceeds to purchase and remodel an existing building that is located at 301 N. St. Francis. The 21,420 square foot building will be used as the new headquarters for Pixius Communications. The existing building was originally constructed in 1920. Historically, it has been used as an automobile dealership, truck sales, and more recently as office space. The remodel will add a mezzanine level and upgrade the building to Class A office space.

In conjunction with the relocation of its corporate headquarters, Pixius plans to expand its business operations and add 34 new employees to its existing Wichita staff of 34, over a 10-year period at an average annual salary of $43,030. Pixius intends to initially occupy approximately 72% of the new facility and grow into the rest of it over the 10-year ramp-up period. Accordingly, the company plans to sublease the portion of the building it does not occupy to other businesses until the space is needed for Pixius operations.

USES OF FUNDS

Land and Building	$ 550,000
Project Construction	1,220,000
Fixtures	440,000
Design Fees	100,000
Administrative Fees	50,000
Cost of issuance	40,000
Total Cost of Project:	$2,400,000

The bonds will be privately placed with Intrust Bank, NA or purchased by the Applicant. The City's contract bond counsel firm of Kutak Rock, LLP will serve as bond counsel for this issue. Pixius agrees to comply with all of the standard letter of intent conditions set forth in the City's IRB Policy.

Policy Considerations: Under the City-County Economic Development Incentive Policy, Pixius would qualify for a 100% tax abatement based on job creation, capital investment and location within a redevelopment target area. However, as an internet service provider, Pixius falls under the category of service sector businesses for the purpose of determining its eligibility for incentives such as IRBs and tax abatement. To qualify, Pixius would have to generate a majority of its revenues from customers located outside the Wichita MSA. Currently, Pixius estimates that 35% of its revenues are from outside the MSA. Pixius has requested a waiver of the Policy based on their view that the business more closely relates to transportation of data and information and as such does comply with the spirit of the Policy. Staff's recommendation is to stay consistent with the current Policy and deny the letter of intent request.

Financial Considerations: Pixius agrees to pay all costs of issuing the bonds and agrees to pay the City's $2,500 annual IRB administrative fee for the term of the bonds.

Pixius has requested a ten year ad valorem property tax abatement. Since Pixius intends to sublease part of the building until such time as growth in employment necessitates a requirement for additional space, Pixius agrees to make payments in lieu of taxes ("PILOTs") for the percentage of space not occupied by Pixius. City staff will inspect the building annually to verify the percentage of the building occupied by Pixius and adjust the PILOTs accordingly. Pixius has also requested sales tax exemption on taxable purchases financed with IRBs. The sales tax exemption would save approximately $44,530.00.

The Center for Economic Development and Business Research at Wichita State University has conducted a fiscal impact analysis for this project and reports the following ratios of benefits to costs:

City of Wichita	2.27 to one
General Fund	2.23 to one
Debt Service Fund	2.34 to one
Sedgwick County	1.54 to one
U.S.D. 259	1.12 to one
State of Kansas	15.91 to one

Goal Impact: Quality of Life and Core Area Neighborhood. Project promotes revitalization of the City's core area.

Legal Considerations: Bond documents needed for the issuance of the bonds will be prepared by bond counsel. The Law Department will review and approve the form of bond documents prior to the issuance of any bonds.

Pixius has requested that it be allowed to substitute a bank letter of credit ("LC") for a construction performance bond. Charter Ordinance 177 requires that IRB tenants provide surety instruments guaranteeing completion of construction in amounts approved by the City. A bank letter of credit can satisfy this requirement, and in past instances the City has agreed to LC amounts equal to or greater than the largest construction draw amount.

Recommendations/Actions: It is recommended that the City Council close the public hearing and deny the request for a Letter of Intent for Industrial Revenue Bonds for Pixius in the amount not to exceed $2,400,000.

Attachments: Request for IRB Letter of Intent

Application and Request for Letter of Intent

To the City of Wichita, Kansas

For the Issuance of Industrial Revenue Bonds

For the benefit of

Pixius Communications, LLC

April 15, 2011

Mayor Carl Brewer & Members of the City Council
City of Wichita
455 N. Main
Wichita, Kansas 67202

RE: Proposed $3,300,000 City of Wichita, Kansas Industrial Revenue Bonds for Pixius Communications, LLC

Dear Mayor and Council Members:

This letter is to request approval by the governing body of the City of Wichita, Kansas (the "City") of a Letter of Intent to issue its industrial revenue bonds in one or more series in an amount not to exceed $3,300,000. The proceeds of the proposed bonds will be used to finance the cost of acquisition and remodeling of an existing building for Pixius Communication's new corporate headquarters. The existing building is located at 301 N. St. Francis, Wichita, Kansas.

1. Name and Address of Applicant

   Pixius Communications, LLC
   1634 E. Central
   Wichita, Kansas 67214
   Telephone: 316-219-8500
   Fax: 316-219-8600
   Attention: Jay Maxwell, Managing Member
   Email: jmaxwell2@pixius.com

2. Key Officers and Employees of Beneficiary

   Managing Member: Jay Maxwell
   Secretary: Bob Hanson
   Treasurer: James Vosburgh

3. A General Description of the Nature of the Business of the Proposed Beneficiary

   Pixius is an innovative, growing company that is uniquely positioned to provide a wide range of data communications solutions to business and residential markets. We provide high speed wireless broadband Internet service and provide our customers with enhanced Internet based business services.

   Pixius was established in 2000 by a group of experienced entrepreneurs who saw a need for high speed Internet service in underserved areas in Kansas. Using wireless technology, Pixius has the ability to provide, at a competitive price, high speed Internet service to areas that are beyond the reach of cable, DSL, 3G and 4G cellular.

Former FCC Chairman William Kennard once stated that "the Internet is the fastest growing technology the world has ever known". Those who know and directly impact the future course of technology echo his message. Cisco Systems chief executive John Chambers made the observation that broadband would be the driving engine of the 21st century economy. He said, "It will create jobs in the growth sectors of our economy - jobs that are driving the collaboration and interaction economy." Pixius is committed to providing access to technology that will allow our customers to fully participate in the 21st century economy.

Our corporate mission is: "To set the standard as the best wireless broadband service provider, focusing on secondary and tertiary markets."

4. A General Description of the Proposed Project

Proceeds from the issuance of the proposed Bonds will be used to purchase and remodel an existing building that is located at 301 N. St. Francis. The building will be used as the new headquarters for Pixius Communications. It is believe that the existing building was originally constructed in the early 1900s. Historically, it has been used as an automobile dealership, truck sales, and more recently as office space.

The remodel will upgrade the building to Class A office space comparable to many of the new office buildings that are located on the urban fringe.

5. The Dollar Amount of the Bonds Requested.

The total principal amount of the Bonds requested is $3,300,000.

6. A Detailed Breakdown of the Estimated Costs.

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

Land & Building	$ 550,000
Project Construction	$2,120,000
Fixtures	$ 440,000
Design Fees	$ 100,000
Administrative Fees	$ 50,000
Costs of Issuance	$ 40,000
TOTAL	$3,300,000

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

Applicant's Counsel

Ms. Laura Fent
Hinkle Law Firm, LLC
8621 East 21st Street North, Suite 200
Wichita, KS 67206-2991
Phone: 316.631.3118
Fax: 316-630-8375
Email: lfent@hinklaw.com

Bond Counsel

Ms. Doty Riley
Kutak Rock, LLP
Suite 500
1010 Grand Boulevard
Kansas City, MO 64106-2220
Phone: (816) 960-0090
Fax: (816) 960-0041
Email: dotty.riley@kutakrock.com

8. A Statement Relative to Ad Valorem Taxes.

The Applicant respectfully requests that the property (acquired, constructed, and installed with the proceeds of the Bonds) be 100% exempted from Kansas ad valorem property taxes for a ten (10) year period as permitted by Kansas law. The tax abatement will permit the Applicant to proceed with the anticipated Project, allow for its anticipated growth and result in the public benefits outlined herein.

Please note that Pixius's intention is to temporarily sublease some floor space of the building until such time as Pixius expands into the space that is sublet. Pixius will make a payment-in-lieu of taxes for the pro-rata share of the office space that is sublet until such time as the space is used by Pixius.

9. Brief Statement with Respect to Benefits.

The financing of the Project will allow the Applicant to serve, maintain, and expand our customer base in this region. This project will create XX new jobs and will provide for future company expansion. The design of the facility will allows greater efficiencies in our operations as our current operations have outgrown the two non-adjoining buildings in which they are

located. The Project will provide economic growth in the local construction industry through the use of local contractors, suppliers and vendors.

From its auspicious Sedgwick County beginnings in 2000, Pixius has grown to serve almost 7,000 residential and business customers in Kansas and Missouri. Pixius's future growth is planned for areas outside of the Wichita MSA. (See attached service area maps.)

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

    The Project will have no effect on the ambient air quality of the city and Sedgwick County, nor are there any other anticipated adverse environmental effects.

11. A Brief Statement with respect to Equal Employment Opportunities.

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

12. Administrative Service Fee Agreement.

    The Applicant agrees to make a payment to the city to reimburse the city for administrative costs in the amount of $2,500 per year commencing one year after the delivery of the bonds, for the life of the bond issue. In addition, the Applicant will pay all costs of the city relative to the issuance of the Bonds, regardless of whether or not the Bonds are actually approved and/or issued.

13. Arrangements for Sale of the Bonds.

    It is anticipated that the sale of the Bonds will be sold either to the Applicant or the sale will be underwritten by Intrust Bank, NA.

14. Financial Information.

    Financial information is not provided with this letter under the exception where the bonds will either be privately placed or secured by bond insurance or a letter of credit. To permit Pixius Communications, LLC, to finalize the financing for expansion, it is requested at this time that the City Council authorize the Mayor to execute a Letter of Intent for and on behalf of the city whereby the city indicates its intent to issue not to exceed $3,300,000 of its Industrial Revenue Bonds for the purposes described herein. Applicant respectfully requests that such Letter of Intent be valid for a period of six months, so as to provide time for the appropriate structuring of the financing and so that the bonds may be issued during the actual construction of the Project.

Applicant is aware that such a Letter of Intent is only an indication of the intent of the city to issue the proposed Bonds and to assist in the financing the Project, and that such Letter of Intent is subject in all respects to the governing body's final approval of the terms and provisions of the Bond Ordinance, Trust Indenture, Lease Agreement, Guaranty Agreement and other related documents. However, upon issuance of such Letter of Intent, Applicant is prepared to proceed in reliance thereon.

Should there be any further questions or information which the city may require in evaluating this application, we will be most happy to discuss such matters.

Respectfully submitted,

PIXIUS COMMUNICATIONS, LLC

Jay S. Maxwell, Managing Member

City of Wichita
City Council Meeting
May 10, 2011

TO:	Mayor and City Council Members
SUBJECT:	Public Hearing and Approval of a Façade Improvement Project - 301 North Saint Francis (District VI)
INITIATED BY:	Office of Urban Development
AGENDA:	New Business

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

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

On April 5, 2011, the City Council accepted a petition from the owners of a building located at 301 North Saint Francis to create a special assessment benefit district and adopted a resolution authorizing façade improvements as part of a larger private renovation project. Adoption of a maximum assessment ordinance is needed in order to proceed with the façade improvement project.

Analysis: The overall renovation project includes a $3,300,000 purchase and renovation, including the addition of a new mezzanine level and extensive interior and exterior improvements to the building, which will serve as the corporate headquarters of Pixius Communications LLC. The project is proposed to be funded by $2,400,000 in industrial revenue bonds and $900,000 in façade improvement program financing. The $900,000 façade project will include new glazing, tuck-pointing, new entry features and sidewalk repairs. The Office of Urban Development reviewed the economic (gap) analysis of the project and determined a financial need for incentives based on the current market rates for economic rents.

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

Financial Considerations: The proposed maximum assessment amount is $1,151,000, based on the following uses of funds:

Façade improvement costs	$900,000
10% contingency	90,000
2% City administrative fee	19,800
Financing costs	141,200
Maximum Assessment	$1,151,000

The actual amount to be assessed to the property, not to exceed $1,151,000, will be based on a final statement of costs following completion of construction and will be financed with 15-year special assessment general obligation bonds. The project exceeds the $500,000 limit to receive a grant and therefore, no grant component is included.

To mitigate the City's risk that the special assessment cannot be spread to the property because the improvements are not completed, the owner will pay the construction costs until the façade project is completed. Once complete, as evidenced by an architect's certificate of completion, the property owner will submit a single draw request for the project. This will remove any impediment based on project completion to the City's ability to issue special assessment bonds and place a special tax lien on the property. Once special assessment bonds are issued, the City's risk will be secured by a tax lien on the property. If a tax foreclosure sale is required for repayment of the façade assessment, the City will have precedence over all other creditors. The maximum assessment amount is 6.35 times the current value of the property being improved, according to Sedgwick County records. The maximum assessment amount of $1,151,000, including a 10% contingency, financing fees and temporary interest, is 34% of the overall reconstruction costs of $3,300,000.

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

Legal Considerations: State statutes authorizing the use of special assessment funding for projects such as this require a public hearing as part of the approval process. The petition that was approved and the resolution that was adopted on April 5, 2011, included the petitioners' estimate of the façade improvement costs but did not set forth the maximum amount of special assessments. The attached amending resolution and revised petition also includes City financing costs and fees, and a 10% contingency amount is included in case of cost overruns or change orders. The actual amount to be assessed at the completion of construction may be less, but it may not exceed the amounts included in the petition, resolution and ordinance. To avoid the need to reschedule the public hearing, the petitioners have provided the City with the attached Waiver and Consent, signed by 100% of the property owners, waiving the public hearing requirement. The attached Façade Easement is granted to the City by the property owner to establish the City's legal right to make improvements to the building's façade.

The attached Maximum Assessment Ordinance, Façade Easement, Resolution, Petition and Waiver and Consent have been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council close the public hearing, approve the revised petition, adopt amending resolution, accept the waiver and consent, approve the façade easement and place the maximum assessment ordinance for the 301 North Saint Francis facade improvements on first reading.

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

ORDINANCE NO. 49-009 028001

AN ORDINANCE LEVYING AND ASSESSING MAXIMUM SPECIAL ASSESSMENTS ON CERTAIN LOTS, PIECES AND PARCELS OF LAND LIABLE FOR SUCH SPECIAL ASSESSMENTS TO PAY THE COSTS OF INTERNAL IMPROVEMENTS IN THE CITY OF WICHITA, KANSAS, AS AUTHORIZED BY RESOLUTION NO. 11-076 AS AMENDED BY RESOLUTION NO. 11-117 OF THE CITY (301 NORTH SAINT FRANCIS FACADE IMPROVEMENT DISTRICT).

WHEREAS, pursuant to Resolution No.11-076 of the City of Wichita, Kansas (the "City") adopted on April 5, 2011, the Governing Body has authorized the creation of an improvement district and the construction of the following improvements (the " Improvements"):

Facade Improvements at Lots 44 and 46 on Fourth, now St. Francis Avenue, J. R. Mead's Addition, Sedgwick County, Kansas

WHEREAS, pursuant to Resolution No. 11-117 of the City adopted on May 10, 2011 the City's Governing Body amended Resolution No. 11-076 to increase the estimated maximum cost of the Improvements, accepted a revised Petition and accepted a Waiver and Consent signed by 100% of the owners of 301 N. Saint Francis, waiving the public hearing requirement relating to the amendment of the aforementioned resolution; and

WHEREAS, prior to commencement of construction of the Improvements, the City has determined the maximum amount of assessment against each lot, piece or parcel of land deemed to be benefited by the Improvements based on the approved estimate of cost of the Improvements and has received from the owners of all property to be assessed for the Improvements an executed waiver of notice of the public hearing on the proposed maximum assessment and consent to levy the maximum assessments described on *Exhibit A* to this Ordinance; and

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

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

SECTION 2. The amounts so levied and assessed shall be due and payable from and after the date of publication of this Ordinance; and the City Clerk shall notify the owners of the

affected properties of the amounts of their assessments, bonds will be issued therefore and such assessments will be levied concurrently with general taxes and be payable in 15 annual installments.

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

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

PASSED by the Governing Body of the City of Wichita, Kansas, and approved by the Mayor on May 17, 2011.

(Seal)

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, City Attorney

EXHIBIT A

Building Facade Improvement 301 North Saint Francis

Property Subject to Assessment	**Proposed Maximum Assessment**
Lots 44 and 46 on Fourth, now St. Francis Avenue, J. R. Mead's Addition, Sedgwick County, Kansas	$1,151,000

RESOLUTION NO. 11-117

RESOLUTION AMENDING RESOLUTION NO. 11-076 AUTHORIZING FACADE IMPROVEMENTS TO THE PORTION OF 301 NORTH SAINT FRANCIS THAT ABUTS PUBLIC WAYS, INCLUDING SAINT FRANCIS AVENUE AND SECOND STREET IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

WHEREAS, the governing body of the City of Wichita adopted Resolution No. 11-076 on April 5, 2011, making findings of advisability and authorizing construction of improvements to area wall on public way or land abutting public ways consisting of facade improvements to the portion of 301 North Saint Francis that abuts public ways, including Saint Francis Avenue and Second Street in the City of Wichita, Kansas, in the amount not-to-exceed Nine Hundred Thousand Dollars ($900,000); and

WHEREAS, the City of Wichita has received an amended petition which increases the maximum cost of the façade improvement project to One Million One Hundred Fifty One Thousand Dollars ($1,151,000);

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

SECTION 1. That Section 2 of Resolution 11-076 is hereby amended to read as follows:

> "SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be One Million One Hundred Fifty One Thousand Dollars ($1,151,000)."

SECTION 2. That Section 2 of Resolution No. 11-076 as heretofore adopted is hereby repealed.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of May, 2011.

By:_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, City Attorney

FACADE EASEMENT
FACADE IMPROVEMENT PROGRAM

THIS FACADE EASEMENT made this ____ day of _____, 2011, by and between Pixius Communications, LLC, hereinafter called Grantor and the City of Wichita, Kansas, hereinafter called Grantee:

WITNESSETH THAT,

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

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

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

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

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

WHEREAS, the Grantor is the owner in fee simple of the improved real property consisting of two lots and building improvements located at 301 N. St. Francis, Wichita, Kansas; and,

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

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

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

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

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

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

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

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

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

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

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

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

8. In the event of a violation of any covenant or restriction herein, the Grantee, its successors and assigns, following reasonable notice to Grantor of the violation, may institute suit to enjoin such violation and to require restoration of the premises in compliance with the covenants or restrictions herein. The Grantee, its successors or assigns, shall also have available all legal and equitable remedies to enforce Grantor's obligations hereunder, and in the event Grantor is found to have violated any of its obligations, Grantor shall reimburse Grantee, its successors and assigns, for any costs or expenses incurred in connection therewith, including court costs and attorney's fees.

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

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

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

12. The Grantor shall maintain insurance on the premises in such amount and on such terms as will allow the Grantee to restore, repair or rebuild the facade of the premises in the event the facade is damaged or destroyed. In the event of damage to or destruction of the facades of the premises, the Grantor alone may determine that the facade of the premises cannot be reasonably restored, repaired or reconstructed. In such event, the Grantee shall be entitled to receive from the Grantor the greater of the following: the fair market value of the easement granted herein at the time the easement was granted or the fair market value of the easement granted herein immediately before the facade of the premises was damaged or destroyed. However, any payment to the Grantee under the terms of this paragraph shall not terminate the easement granted herein, and the terms of the easement which are still applicable to the

premises shall remain in full force and effect. The provisions of this paragraph shall apply whether or not the Grantor maintains the insurance coverage required by this paragraph. In the event the Grantee receives any payment under the terms of this paragraph, the Grantee shall use such payment in a manner consistent with the purpose of this easement.

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

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

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

[SIGNATURES FOLLOW ON PAGES BELOW]

GRANTOR:
Pixius Communications, LLC

5-2-11

Jay S. Maxwell. Partner, Pixius Communications, LLC **(Date)**
Managing Member

State of Kansas)
County of Sedgwick)

(Date) 5/2/11

Signed or attested before me on
5/2/11 **by**
Jay S. Maxwell
Managing Member, Pixius Communications, LLC

Koni Foster
Notary Public

(Seal)

KONI FOSTER
Notary Public - State of Kansas
My Appt. Expires July 24, 2014

My appointment expires:
July 24, 2014

GRANTEE:
CITY OF WICHITA, KANSAS
By Direction of the City Council

_____ _____
Carl Brewer, **(Date)**
Mayor

ATTEST:

_____ _____
Karen Sublett, **(Date)**
City Clerk

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

Signed or attested before me on
_____ by
_____
.

_____
Notary Public

(Seal)

My appointment expires:
_____

APPROVED AS TO FORM:

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

ATTACHMENT A

Lots 44 and 46 on Fourth, now St. Francis Avenue, J. R. Mead's Addition, City of Wichita, Sedgwick County, Kansas.

RECEIVED
APR 15 '11
CITY CLERK OFFICE

FACADE IMPROVEMENT PETITION

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

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

Lots 44 and 46 on Fourth, now St. Francis Avenue, J. R. Mead's Addition

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

(a) That it is in the public interest to construct improvements to area walls on public way or land abutting public ways consisting of facade improvements to the portion of 301 N. St. Francis that abuts public ways, including 2nd Street and St. Francis

(b) That the estimated and probable cost of the foregoing improvement being ONE MILLION ONE HUNDRED FIFTY ONE THOUSAND ($1,151,000), with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project.

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

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

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

Where the ownership of a single lot or tract is or may be divided into two or

more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

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

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

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

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

LEGAL DESCRIPTION	SIGNATURE	DATE
IMPROVEMENT DISTRICT		
Lots 44 and 46 on Fourth, now St. Francis Avenue, J. R. Mead's Addition		3.31.11

David Burk MGR.
DK #1, LLC

KEITH STEVENS

RECEIVED
APR 15 '11
CITY CLERK OFFICE

FACADE IMPROVEMENT PETITION

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

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

Lots 44 and 46 on Fourth, now St. Francis Avenue, J. R. Mead's Addition

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

(a) That it is in the public interest to construct improvements to area walls on public way or land abutting public ways consisting of facade improvements to the portion of 301 N. St. Francis that abuts public ways, including 2nd Street and St. Francis

(b) That the estimated and probable cost of the foregoing improvement being ONE MILLION ONE HUNDRED FIFTY ONE THOUSAND ($1,151,000), with 100 percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project.

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

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

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

Where the ownership of a single lot or tract is or may be divided into two or

more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

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

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

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

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

LEGAL DESCRIPTION	SIGNATURE	DATE
IMPROVEMENT DISTRICT		3-28-11
Lots 44 and 46 on Fourth, now St. Francis Avenue, J. R. Mead's Addition		

WAIVER AND CONSENT RELATING TO SPECIAL ASSESSMENTS BY THE CITY OF WICHITA, KANSAS, IN CONNECTION WITH CERTAIN IMPROVEMENTS AUTHORIZED BY RESOLUTION NO. 11-076 OF THE CITY OF WICHITA, KANSAS.

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

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

Facade Improvements at 301 North Saint Francis abutting public ways, including Saint Francis Avenue; and (hereinafter called the "Improvements") in the City of Wichita, Kansas (the "City"), as heretofore authorized by Resolution No. 11-076 of the City (the "Resolution").

The Owners also acknowledge that they have submitted a revised petition relating to the Improvements to the City and have requested that the maximum principal amount of the assessments be increased from the amount shown in Resolution No. 11-076 to the maximum assessment amount of $1,151,000 set forth in this Waiver and Consent.

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

[SIGNATURES FOLLOW ON PAGES BELOW]

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

Grantor: Pixius Communications, LLC

By: _____

Name: Jay S. Maxwell

Title: Manager Date: 4/18/11

Grantor: DK #1, LLC

By: _____

Name: Dave Burk

Title: Manager Date: 4/18/11

State of Kansas)
County of Sedgwick)

Signed or attested before me on this 18th day of April, 2011.
by Jay S. Maxwell, Manager, Pixius Communications, LLC

_____ My appointment expires 4/11/2014
Notary Public

TIMOTHY R. AUSTIN
Notary Public - State of Kansas
My Appt. Expires 4/11/2014

State of Kansas)
County of Sedgwick)

Signed or attested before me on this 18th day of April, 2011.
by Dave Burk, Manager, DK#1, LLC

Timothy Austin
Notary Public

My appointment expires 4/11/2014

TIMOTHY R. AUSTIN
Notary Public - State of Kansas
My Appt. Expires 4/11/2014

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

Grantor:

By: Keith Stevens

Name: Keith Stevens

Title: _____ Date: 4/22/11

Grantor:

By: _____

Name: _____

Title: _____ Date: _____

State of Kansas)
County of Sedgwick)

Signed or attested before me on this 22nd day of April, 2011.
Keith Stevens.

My appointment expires June 22, 2012

Notary Public

THERESA R. SCHIPPERS
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp 6-22-2012

EXHIBIT A

Building Facade Improvement 301 North Saint Francis

Property Subject to Assessment	**Proposed Maximum Assessment**
Lots 44 and 46 on Fourth, now St. Francis Avenue, J. R. Mead's Addition, Sedgwick County, Kansas	$1,151,000

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: Approval of Forgivable Loan Agreement (The Golf Warehouse) (District II)

INITIATED BY: Office of Urban Development

AGENDA: New Business

Recommendations: Approve the forgivable loan agreement and place the home rule ordinance on first reading.

Background: The Golf Warehouse ("TGW") was originally founded in Wichita in the early 1990s and is a national distributor of athletic equipment and apparel through internet and catalog sales. Its corporate offices, warehouse and fulfillment center are located at 8851 E. 34th Street North in the Comatara Industrial Park in northeast Wichita, with a satellite operation in Plainfield, Indiana. In 2006, TGW was acquired by Redcats USA, a subsidiary of Redcats International, a multinational clothing retail conglomerate based in France.

TGW has continued to grow its business and needs to expand its facilities in order to meet future growth requirements. Options for expansion include adding space in its Wichita location or moving Wichita operations to its Indiana facility where it has excess capacity. To assist with the evaluation of its options, TGW engaged the services of Genovus, an Indianapolis-based site selection consultant. Genovus contacted the Greater Wichita Economic Development Coalition which worked with City, County and State partners to fashion the incentive offer described below. Based on the incentives offered, TGW has decided to remain in Wichita and expand its operations here. The local incentives were offered subject to formal approval by the City and County governing bodies.

Analysis: To implement the expansion, TGW will lease approximately 20,000 square feet of warehouse space at 8908 E. 34th Street North, across the street from its present location. TGW will also acquire additional machinery and equipment in the amount of $5.3 million, for a total capital investment of $8.0 million. TWG will retain the existing 105,000 square feet at its current location.

TGW currently employs 211 workers in Wichita. As a result of the expansion, the company will hire an additional 105 employees over the next five years,. The average annual wage of the retained and new jobs will be $32,603.

PROPOSED INCENTIVES

State of Kansas:	Kansas Economic Opportunity Initiative Fund		$125,000
	Kansas Industrial Retraining		$100,000
	Kansas Industrial Training		$ 50,000
	Total State Incentive Package	$275,000	
Sedgwick County:	Forgivable Loan	$48,000	
City of Wichita:	Forgivable Loan	$48,000	

Under the terms of the attached Forgivable Loan Agreement and Promissory Note, the forgivable loan proceeds will be used to purchase new machinery and equipment or to provide employee trainning. The forgivable loan will have a term of five years ending December 31, 2016. Loan principal will be forgiven in equal annual installments at the end of each year, provided that the employment and wage commitments set forth in the agreement have been met. Unforgiven principal will carry forward and any unforgiven principal remaining at the end of the loan term shall be immediately due and payable. In the event TGW ceases operations in Wichita during the term of the loan, the entire original principal will be immediately due and payable, plus interest from the start of the loan at 12% APR.

Financial Considerations: The City's $48,000 forgivable loan will be paid from funds in the Economic Development Fund appropriated for that purpose. The fiscal impact analysis performed by WSU's Center for Economic Development and Business Research (CEDBR) shows the following ratios of benefits-to-costs:

City of Wichita	3.03to one
General Fund	1.51 to one
Debt Service	NA
Sedgwick County	1.53 to one
State of Kansas	NA

Goal Impact: Economic Vitality and Affordable Living. Providing economic development incentives to TGW retains critical manufacturing jobs and encourages future growth of the company.

Legal Considerations: The Law Department has approved the attached documents as to form. The City's exercise of home rule authority is necessary to provide the cash incentive; this requires the adoption of a home rule ordinance (attached) for approval.

Recommendation/Action(s): It is recommended that the City Council approve the forgivable loan agreement for TGW, place the home rule ordinance on first reading and authorize the necessary signatures.

Attachments Forgivable Loan Agreement and Promissory Note
Home Rule Ordinance

(PUBLISHED IN THE WICHITA EAGLE ON MAY20, 2011)

ORDINANCE NO. 49-003

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 THE GOLF WAREHOUSE, INC. AND THE CITY OF WICHITA, KANSAS.

WHEREAS, the City of Wichita, Kansas (the "City") is authorized by Article 12, Section 5, of the Kansas Constitution to determine, by ordinance, its local affairs and government; and,

WHEREAS, the Governing Body of the City finds and determines that it is desirable to act in cooperation with Sedgwick County and the State of Kansas in order to promote, stimulate and develop the general economic welfare and prosperity of the City and the State of Kansas, by taking action to approve a forgivable loan, conditioned on local job creation and retention, to assist The Golf Warehouse, Inc. in expanding its manufacturing and distribution facility located in Wichita, Kansas,

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

Section 1. Findings and Approval of Forgivable Loan. The City's Governing Body hereby finds that providing a forgivable loan in the amount of $48,000, to The Golf Warehouse, Inc., will advance economic development in Wichita, Kansas and will serve a public purpose.

Section 2. Authorization of the Forgivable Loan Agreement and Promissory Note. The Mayor of the City of Wichita, Kansas is hereby authorized and directed to execute and deliver the Forgivable Loan Agreement and Promissory Note presented herewith, by and between The Golf Warehouse, Inc. , as Borrower and the City of Wichita as Lender for and on behalf of and as the act and deed of the City with such minor corrections or amendments thereto as the Mayor shall approve (which approval shall be evidenced by his execution thereof) and any such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the purposes and intent of this Ordinance. The City Clerk and any Deputy City Clerk of the City are hereby authorized and directed to attest the execution of the Forgivable Loan Agreement and Promissory Note, and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 3. Further Authority. The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the provisions of this Ordinance.

Section 4. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by the Governing Body of the City of Wichita, Kansas and publication once in the official newspaper of the City.

PASSED by the Governing Body of the City of Wichita, Kansas this 17th day of May, 2011.

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

[Seal]

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, City Attorney

FORGIVABLE LOAN AGREEMENT and PROMISSORY NOTE

This Loan Agreement and Promissory Note (the "Agreement"), effective this ____ day of May 2011, is entered into between the following parties:

Lender: City of Wichita, Kansas ("Lender")
455 N. Main
Wichita, Kansas 67202
Contact Person/Title: Allen Bell, Director of Urban Development
Phone: 316-268-4524 EMAIL: abell@wichita.gov

Borrower: The Golf Warehouse, Inc.. ("Borrower")
2300 Southeastern Avenue
Indianapolis, IN 46201

Contact Person/Title: Chip Edgington /Executive Vice President Operations
Phone: (217) 266-3237 EMAIL: chip.edgington@redcatsusa.com
FEIN: #20-1260197

WHEREAS, it has been determined by the Lender that an economic emergency or unique opportunity exists which warrants funding to secure economic benefits or avoid or remedy economic losses; and

WHEREAS, the Borrower has specified that this funding will be used to purchase new machinery and equipment or provide employee training in Wichita, Sedgwick County, Kansas; and

WHEREAS, the Lender has authorized an expenditure of up to $48,000 for the purpose of making a loan to the Borrower under such terms and conditions as may be prescribed by the Lender.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements, the parties agree as follows:

1) **Loan Amount and Terms**: Subject to the terms and conditions of the Agreement, the Lender hereby agrees to provide the Borrower with the principal sum of up to **$48,000** for a sixty (60) month period. Interest will accrue from the date of disbursement at the rate of zero percent (0.0%) per annum on the unpaid balance. Should a default occur, repayment of all principal and interest will be made immediately in accordance with the provisions shown below. This loan is not transferable.

2) **Forgiveness of Debt**: The Borrower promises to create and maintain minimum employment levels at the Wichita, Sedgwick County, Kansas facility, starting from a base employment level of **211** full-time positions **($33,175 average salary**), at the end of each of five (5) years as shown in the following schedule:

	Year 1(2011)	**Year 2(2012)**	**Year 3(2013)**	**Year 4(2014)**	**Year 5(2015)**
New Positions:	24	22	21	20	18
Base Employment:	211	235	257	278	298
Total Employment:	**235**	**257**	**278**	**298**	**316**
Annualized Wages:	**$7,661,400**	**$8,270,048**	**$8,859,728**	**$9,452,528**	**$9,977,408**

Job figures reflect full-time equivalent (FTE) positions only. One FTE is equal to 2080 hours earned per year, including vacation. Average salary of retained and new positions shall be at least$$32,603 per year.

The outstanding principal balance will be divided by the total number of years in the term, and the resulting figure will be the "installment". The first anniversary date for meeting the first year's job creation commitment shall be **December 31, 2011**. On the first anniversary and at each scheduled anniversary date thereafter where the Borrower

has achieved the required job and wage commitment, an amount equal to an installment, plus any accrued interest, will be forgiven.

However, in the event the Borrower ceases to operate as **The Golf Warehouse, Inc.** in Wichita, Sedgwick County, Kansas during the term of this agreement, any principal and interest which has been forgiven will be repaid in accordance with paragraph (16) below.

In the event of a technical default under this section, the Borrower has the right of appeal to Lender, if compelling evidence can be presented demonstrating that the default is the result of dramatic, unforeseen changes in economic or market conditions. In the event of an appeal, the Lender will have the sole discretion to enforce the provisions as set forth in paragraph (16) below.

3) **Collateral**: None is required under this Agreement.

4) **Mortgage/Security Agreement**: Not applicable.

5) **Insurance**: The Borrower agrees to provide and maintain at its own expense casualty and hazard insurance covering loss by fire or wind with extended coverage insuring all of the real estate, buildings, fixtures and improvements and all business machinery, equipment, furnishings and furniture at its Wichita, Sedgwick County, Kansas facility. Evidence of such coverage will be provided to the Lender upon request. The total amount of the insurance policy shall be sufficient to pay all indebtedness to lien holders and other parties with an interest in this property, and pay the Lender the entire outstanding principal balance and accrued interest. In the event of such loss, the Borrower agrees to repay the Lender as detailed in section 16(A)(ii) below, subject to item (6).

6) **Force Majeure**: In the event that operations at the worksite are impaired or suspended due to uncontrollable forces of nature, the Borrower will be given a reasonable period of time, as determined in the sole discretion of the Lender, in which to reestablish any lost jobs. The term of this agreement will be extended by the length of this period, and no contractual penalty will be imposed on the company during this period.

7) **Release of Mortgage/Security Agreement**: Not applicable.

8) **Life Insurance**: Not applicable.

9) **Use of Funds**: The monies from this loan shall be used by the Borrower to pay for costs directly related to **The Golf Warehouse, Inc.** at the Borrower's worksite at 8851 E. 34th Street North and 8908 E. 34th Street North, Wichita, Sedgwick County, Kansas. Any machinery and equipment obtained using these loan funds will be promptly identified to the Lender, including narrative description and serial number, and will remain in the Wichita, Sedgwick County, Kansas facility for the duration of this agreement. The Lender or its representative shall be afforded the right of inspection of such machinery and equipment throughout the term of this agreement.

10) **Services Provided to Borrower**: The Lender is not obligated to provide any services to the Borrower other than those specified in the Agreement.

11) **Related Contracts**: The Borrower shall provide, upon written request, copies of all contracts entered into by the Borrower for activities covered by the loan monies.

12) **Period of Performance**: The Borrower may be reimbursed with loan funds for expenses incurred prior to the date of this Agreement, if they were made in connection with activities defined in item (9) above.

Activities will terminate when all conditions of the Agreement have been met within all specified time frames, or by mutual consent of all parties to the Agreement, or when a default situation arises, unless the Lender chooses not to terminate the Agreement.

13) **Financial Management**: Borrower shall keep accounting records in conformance with generally accepted accounting principles, and make such records and all related reports, files, documents and other papers pertaining to the funds provided under this Agreement available for audits, examinations and monitoring if requested by Lender; such records will be retained for a period of three (3) years after termination of the loan period or repayment of the debt in

full. The accounting system used by the Borrower shall clearly establish records of budgets and expenditures for the activities funded with the loan monies.

14) **Monitoring and Reporting**: A random audit, or audits, may be conducted by the Lender, or a designated representative of the Lender, to assure accountability of loan expenditures and examine the status of any machinery and equipment acquired with this loan funding.

The Borrower will provide to Lender, on an annual basis and for a period of five (5) years after completion of the term, a report for the Borrower's Wichita, Sedgwick County, Kansas facility which lists the number of full-time equivalent employees, the total payroll as defined in item (2) of this Agreement, and a record of capital investment for the most recent report period and accumulated since the beginning of the report periods. Each report will be submitted within 60 days of the anniversary date of this Agreement.

15) **Waivers**: The Borrower hereby waives presentment, demand of payment, protest, and any and all other notices and demands whatsoever. No waiver of any payment or other right under this Agreement shall operate as a waiver of any other payment or right.

16) **Default**: This Agreement shall be considered in default:

(A) Upon any default or failure to properly perform under any clause in this Agreement (or the provisions of any security agreement(s) or mortgage documents which secure this Agreement).

(i) If, on the scheduled anniversary, employment levels are below the minimums specified in item (2) of this Agreement, the following repayment is required within thirty (30) days:

a) the outstanding principal balance will be divided by the number of remaining anniversary dates, to produce the principal amount due, plus

b) interest accrued since the previously scheduled anniversary date.

(ii) If the Borrower ceases to operate in Wichita, Sedgwick County, Kansas during the term of this Agreement, the following repayment is required:

a) the entire outstanding principal amount is immediately due and payable, plus

b) any principal and interest previously forgiven as specified in item (2) above, plus

c) liquidated damages in the form of additional interest calculated at a twelve percent (12%) compounded annual rate (or if lower, the maximum rate allowed by Kansas law) for a 5 year period against the highest outstanding principal amount over the term of the loan.

(iii) If upon audit, any loan funds are shown to have been used for other than the intended purposes, such funds shall be repaid with interest to Lender by Borrower. Such unintended purposes would include, but not be limited to, the acquisition of machinery and equipment which is not used at the Wichita, Sedgwick County, Kansas facility throughout the term of this loan. The amount to be repaid shall be such principal plus twenty-five percent (25%) compounding interest (or if lower, the maximum rate allowed by Kansas law) accrued from the date of the initial draw-down against this loan.

(iv) If the Borrower otherwise defaults in any manner on the obligations set forth in this Agreement, which default continues for 15 days after written notice of such default from Lender to Borrower, the following repayment is required:

a) any principal balance outstanding on the loan is due and payable; and

b) liquidated damages in the form of additional interest calculated at a twelve percent (12%) compounded annual rate (or if lower, the maximum rate allowed by Kansas law) against the principal balance as of the date of default for the period during which it has been outstanding.

(B) Upon any occurrence under this Agreement or security agreements or mortgage documents by which this loan may or shall become due and payable.

(C) At any time that the Lender determines in good faith that the prospect of any payment required by this note is impaired.

In the event of continued default following a fifteen (15) day written notice of default, the Lender may, at its option, declare all unpaid indebtedness evidenced by this Agreement and any modifications thereof, immediately due and payable, without further notice, regardless of date of maturity. The Lender's failure to exercise this option when available at any point in time shall in no way invalidate its right to exercise the option in future default situations. Should it become necessary to collect the monetary obligations of this Agreement through an attorney, the Borrower

agrees to pay all costs of collecting these monies, including reasonable attorneys' fees to the extent permitted by law, whether collected by suit, foreclosure, or otherwise.

17) **Indemnification**: The Borrower shall indemnify, defend, and hold harmless the Lender and its respective officers and employees from any liabilities, claims, suits, judgments, and damages arising as a result of the performance of the obligations under this Agreement by the Borrower or any party in a relationship with the Borrower which is a result of this Agreement. The liability of the Borrower under this Agreement shall continue after the termination of the Agreement with respect to any liabilities, claims, suits, judgments and damages resulting from acts occurring prior to the termination of this Agreement.

18) **Amendments**: Changes to this Agreement will not be effective or binding unless in writing and signed by both parties to the Agreement.

19) **Compliance with the Law**: The Borrower agrees to operate in Wichita, Sedgwick County, Kansas in full compliance with applicable federal, state and local laws without limitation.

20) **Authorization to Contract**: Before or at the time of execution of the Agreement, the Borrower must be able to provide evidence that it is duly incorporated, in good standing in the state of its incorporation, authorized to do business in the State of Kansas, and authorized to borrow money; and evidence shall be provided that the person executing the Agreement and any supporting documents is authorized to act on behalf of the Borrower in such a transaction.

21) **Termination of Agreement**: Lender may terminate the loan, in whole or in part, if the Borrower has failed to comply with the conditions of the Agreement. The Borrower will receive written notice and the reasons for termination.

22) **Divisibility**: The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement, or any part thereof. Further, various headings included in this Agreement exist purely as an aid to locate particular wording, and do not in and of themselves in any way affect the substance of this Agreement.

23) **Complete Document**: The parties agree this Agreement is a complete document in which all obligations have been reduced to writing, and there are no understandings, agreements, conventions or covenants not included herein.

24) **Assignment**: The parties further agree that this Agreement may not be assigned by the Borrower without prior written approval by the Lender.

25) **Binding Effect**: The provisions of this Agreement shall both bind and benefit the Borrower's successors, assigns, guarantors, endorsers, and any other person or entity now or hereafter liable hereon.

26) **Notices**: Notifications required pursuant to this contract shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

Borrower: The Golf Warehouse, Inc.
2300 Southeastern Avenue Indianapolis, IN 46201
Contact Person/Title: Chip Edgington / Executive Vice President Operations

City: Wichita City Clerk's Office
525 N. Main, 13th Floor
Wichita, KS 67202

Office of Urban Development
Attn: Allen Bell, Director
455 N. Main, 13th Floor
Wichita, KS 67202

27) **Cash Basis and Budget Laws**. The right of Lender to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that Lender shall at all times stay in conformity with such laws, and as a condition of this Agreement Lender reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

28) **Equal Opportunity and Affirmative Action.**

In carrying out this contract, Borrower shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 et seq.

A. Borrower shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, or ancestry.

B. In all solicitations or advertisements for employees, Borrower shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

C. If Borrower fails to comply with the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, Borrower shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by Lender.

D. If Borrower 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, Borrower shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by Lender.

E. Borrower shall include the provisions of paragraphs A through D inclusively of this section in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

29) **Kansas Law.** This agreement shall be construed in accordance with the laws of the State of Kansas.
IN WITNESS WHEREOF, the parties have signed their names below.

LENDER:

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

BORROWER:

THE GOLF WAREHOUSE, INC.

_____
Chip Edgington, Executive Vice President Operations

APPROVED AS TO FORM:

_____
Gary Rebenstorf, City Attorney

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: Quarterly Financial Report for the Quarter Ending March 31, 2011

INITIATED BY: Department of Finance

AGENDA: New Business

Recommendation: Receive and file the quarterly financial report.

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

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

Financial highlights are summarized beginning on page iii, with financial statements beginning on page 1. Information supplementary to the financial statements begins on page 63, including information on the performance of invested funds, the City's bonded indebtedness relative to the legal debt limitations, capital projects currently underway, tax abatements, the status of the Debt Service fund relative to any debt service payments due from the tax increment financing districts, and a quarterly summary of disadvantaged and emerging business activity.

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

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

Legal Considerations: None.

Recommendations/Actions: It is recommended that the City Council receive and file the Quarterly Financial Report for the quarter ended March 31, 2011.

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: Wichita WaterWalk Art Project (District I)

INITIATED BY: Division of Arts & Cultural Services and Public Works

AGENDA: New Business

Recommendation: Approve the artistic concept by artist Albert Paley for Area One of the WaterWalk project.

Background: A national Request for Proposal was sent out in early 2010 requesting submittals for design concepts for the WaterWalk Art Project. The selected Area One site is located at the corner of Waterman and Main Streets and is approximately 125' x 125'. Sixteen national and three local artists submitted proposals for review. As a result of this process, Albert Paley was selected as the project artist based on his experience and prestige as a public artist, the size and scope of his previously completed public art, and the creative possibilities of the design concepts he proposed.

The City Council approved Mr. Paley as the artist of choice for the completion of the Area One artwork on September 14, 2010. A contract was initiated with Mr. Paley for $350,000 for the completion of the artwork, which includes all artist design costs, development, fabrication, and construction fees.

Analysis: Mr. Paley has worked with the architect on record, GossenLivingston McCluggage VanSickle to create a sculpture that will complement the existing design elements of the WaterWalk project. Mr. Paley proposes to create a free standing sculpture approximately 38' tall, which will serve as the entry way into the WaterWalk project.

The sculpture will be created from bronze, stainless steel, and CorTen steel. The proposed artwork includes shapes and colors suggestive of the natural environment significant to the Native American Indian. These components also complement the existing River Corridor project and its reflection of the Indian culture and symbology. Over time, the sculpture will patina from natural elements and will develop coloration reflective of earth, sky, water and air.

Financial Considerations: The complete WaterWalk Art Project budget total is $350,000, which is included within the overall $ 650,000 budget for Area One.

Goal Impact: This project addresses the Quality of Life goal by producing an aesthetically pleasing environment.

Legal Considerations: ~~The Legal Department has approved the contract to form.~~ ***None.***

Recommendation/Action: It is recommended that the City Council approve the design proposed by Albert Paley for the initiation of fabrication of the design.

Attachments: Image (1) – Wichita proposed model
Image (2) – Wichita Rendering

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: WaterWalk Aesthetic Design, Site Areas No. 2 (District I)

INITIATED BY: Department of Public Works & Utilities
Division of Arts and Cultural Services

AGENDA: New Business

Recommendation: Approve the aesthetic design.

Background: On September 14, 2010, City Council approved the latest master plan for WaterWalk. The site plan laid out the basic concept for the aesthetic improvements in Site Area 2. The primary change from the previous master plan approved on September 1, 2009 was to move the Waltzing Waters fountain about 100 ft. from the middle of the block to an area on the east side of Wichita Street. On November 9, 2010, Council approved a contract amendment authorizing GLMV, the project architect, to complete the design of Site Area 2 and prepare construction documents.

Analysis: Site Area 2 is the area of WaterWalk between Wichita Street and Water Street. It is the area where the Waltzing Waters Fountain will be located which will be a signature public attraction. From the beginning, the architects, landscape architects and engineers have worked together to maximize aesthetic features of their design for this project while working to control costs and protect the budget.

As part of the approved design process, the City of Wichita's Design Council recommended approval of the final aesthetic design on April 20, 2011. Final approval by the City Council of the aesthetic design is required to complete the construction plans.

Financial Considerations: The budget for Area 2 is $2,779,814 for the construction of public improvements including the aesthetic improvements, and to date $235,000 of that has been spent. The budget for Area 3 is $1,625,194. Final numbers will not be known until bids are received for Area 2. Funding is flexible and can be shifted from Area 3 to Area 2 if necessary as architectural services for Area 3 have not been secured

Goal Impact: This project addresses the Economic Vitality and the Quality of Life goals through the continued revitalization of the City's Core Area.

Legal Considerations: None

Recommendation/Action: It is recommended that the City Concil approve the aesthetic design.

Attachments: Aesthetic Workbook.

WATERWALK SITE AREA 2 AESTHETIC IMPROVEMENTS

The primary feature of Site Area 2 is the Waltzing Waters Fountain which is a complex 110 ft. long assembly of pumps, nozzels and lights that lays in a shallow 130 ft. by 35 ft. pool oriented north-south on the east side of Wichita Street. The mechanical, electrical, sound and filtration systems required to support the fountain will be located in a "basement" control room adacent to the fountain on its west side. When operating, the fountain will shoot water into the air in a variety of movements, all of which are coordinated to colored lights and to music playing through pole-mounted speakers.

To the east of the fountain will be a plaza and a line of businesses, cafes, etc., all of which will be constructed by the project developers. These commercial structures will be aligned in an arc that focuses on the fountain and provides a backdrop to the plaza. To the west of the fountain, across Wichita Street in the area between Gander Mountain and the Boat House, will be a public open area to be constructed in 2012 by the City of Wichita as the final public improvement in the WaterWalk project.

Aesthetic enhancements to Site Area 2 included in the public improvements are the following:

- A rock lined pond surrounded by landscaping and a walking surface will be constructed on the east side of the fountain pool which will separate the pool from the future plaza. This pond will be very natural in appearance to match the ponds already constructed in Site Area .
- Although the water in the fountain pool and the adjacent pond will be at the same level for easy viewing, it is important that the fountain pool water be separate from the pond water. Therefore about 16 inches of the top of the fountain pool wall will be exposed above the water level. This exposed wall surface will be covered with a tile selected to blend with the color and reflections of the water surrounding it.
- The top of the "basement" control room will serve as a public viewing area that will overlook the fountain pool. The viewing area will be surrounded by an aluminum railing system and will be ADA accessible.
- Unpaved areas around the west side of the fountain and viewing area will be landscaped.
- Speakers for the fountain sound system will be located on 6 poles 20 ft tall. These poles will each have 4 fabric banners mounted on brackets designed to hide the speakers. The design on the banners will be a vertical slice of the WaterWalk logo at a very large scale.
- The one aesthetic enhancement that is not in the area of the fountain will be a small rock lined pond located adjacent to a large project sign, provided by the developers, at the SE corner of Wichita and Waterman. That sign and pond will be similar to what was done earlier at the NW corner of Main and Dewey.

Agenda Item No. IV-7

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: Central Avenue Improvement, from Tara to West Parkway (between Rock and Webb) (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Approve the project.

Background: The Capital Improvement Program (CIP) adopted by the City Council includes funding to improve Central, between Tara and West Parkway. The District II Advisory Board held a neighborhood hearing for the project on February 7, 2011. The Board voted unanimously to recommend approval of the project.

Analysis: The proposed project will reconstruct Central, from Tara to West Parkway to provide a two-way center left turn lane and a west bound right turn/decal. Construction is planned to begin this spring and be completed in the fall.

Financial Consideration: On August 24, 2010, the City Council approved $110,000 for the preparation of construction plans. Estimated construction cost is $1,000,000. The current funding available in the 2009-2018 CIP to construct the project is $800,000. Additional funding is included in the Proposed 2011-2020 CIP for a total budget of $1,110,000. The finding source is General Obligation Bonds. In addition, a waterline will be relocated as part of the project at an estimated cost of $160,000, which is in the 2009-2018 CIP with Water Utility funding.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow through an important transportation corridor.

Legal Considerations: The Law Department has approved the amending ordinance as to legal form.

Recommendation/Action: It is recommended that the City Council approve the project, place the amending ordinance on first reading and authorize the necessary signatures.

Attachments: Map, CIP sheet and amending ordinance.

132019

Published in the Wichita Eagle on May 20, 2011

ORDINANCE NO. 49-004

AN ORDINANCE AMENDING ORDINANCE NO. **48-811** OF THE CITY OF WICHITA, KANSAS DECLARING **CENTRAL AVENUE, BETWEEN ROCK ROAD AND WEBB ROAD (472-84916)** 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.

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

SECTION 1. Section 2 of Ordinance No. **48-811** is hereby amended to read as follows:

"SECTION 2. It is hereby deemed and declared to be necessary by the governing body of the City of Wichita, Kansas, to make improvements to **Central Avenue, between Rock Road and Webb Road (472-84916)** as a main trafficway in the following particulars:

The design and construction of a roadway as necessary for a major traffic facility."

SECTION 2. SECTION 3 of Ordinance No. **48-811** is hereby amended to read as follows:

"SECTION 3. The cost of the above described improvements is estimated to be **One Million One Hundred Ten Thousand Dollars ($1,110,000)** exclusive of the cost of interest on borrowed money, with the total paid by the City of Wichita. Said City cost, when ascertained, shall be borne by the City of Wichita at large by the issuance of General Obligation Bonds under the authority of K.S.A. 12-689."

SECTION 3. The original SECTIONS 2 and 3 of Ordinance No. **48-811** are hereby repealed.

SECTION 4. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 17th day of May, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

Rock
Central
Tara
West Parkway
Webb

CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE:

To Initiate Project	
To Revise Project	X

1. Prepare in triplicate
2. Send original & 2 copies to budget.
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department.
6. Send 3rd copy to Controller.

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location
Public Works & Utilities	Eng &Arch	4/20/2011	Central, Tara - West Parkway

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
MS-		2011	

9. Estimated Start Date	10. Estimated Completion Date	11. Project Revised
As Required	As Required	

12. Project Cost Estimate

ITEM	GO	KDOT	*	TOTAL
Right of Way & Design				
Paving, grading & const.	$1,110,000			$1,110,000
Bridge & Culverts				
Drainage				
Sanitary Sewer				
Sidewalk				
Water				
Traffic Signals				
Totals	$1,110,000			$1,110,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

472-84916

13. Recommendation: Approve the project and place the amending ordinance on 1st reading

Division Head	Department Head	Budget Officer	City Manager
[signature]	[signature]	Date	Date

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: DER2011-00003: Douglas Avenue Corridor Transit Oriented Development Study (Districts I, IV, and VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: New Business

Recommendation: Approve the agreement and bonding ordinance

Background: On April 5, 2011, the City Council approved a grant application to the Wichita Area Metropolitan Planning Organization (WAMPO) to fund a Douglas Avenue Corridor Transit Oriented Development Study. Project Downtown: The Master Plan for Wichita identifies the Douglas Avenue corridor as Wichita's "postcard avenue" that is primed for reinvestment and activity that will bring its remaining empty and underutilized sites to life. Project Downtown identifies two strategies as critical to realizing this reinvestment potential along Douglas: 1) make Douglas a distinctive walking corridor and 2) make Douglas Wichita's premiere transit street. Project Downtown further identifies that additional planning is needed to identify alternative approaches, timing, and funding for improvements along Douglas prior to implementing improvements. The WAMPO grant will fund this additional planning through the development of a Douglas Avenue Corridor Transit Oriented Development Study. A detailed description of the planning study is contained in the attached Agreement for Professional Services.

WAMPO has awarded the grant to the City of Wichita, and grant funding will cover the entire cost of the study. In order to accept the grant, WAMPO requires the City Council to approve the attached agreement authorizing Design Workshop to prepare the study through the WAMPO grant program. Additionally, the grant is awarded on a reimbursement basis; therefore, the attached bonding ordinance needs to be approved by the City Council as a funding contingency for the unlikely situation that reimbursement is not realized.

Analysis: On April 8, 2011, the WAMPO Consultant Screening and Selection Committee met to interview consultants that responded to the Request for Proposals to prepare a Douglas Avenue Corridor Transit Oriented Development Study. Kittelson and Associates, AECOM, and Design Workshop submitted proposals and were interviewed to provide the desired services. There was a general consensus from the committee that Design Workshop's presentation and overall proposal was the strongest. The Design Workshop team also fielded the questions much better than the other two firms and proposed to provide the desired services for the lowest fee. The selection committee members discussed the various aspects of each consultant agency and rated each on established selection criteria. Based on the selection criteria ratings, Design Workshop was selected as the preferred consultant.

Financial Considerations: The WAMPO grant is for $86,500, and does not require a local match. The total cost of study is $125,000, with the remaining $38,500 funded by Wichita Transit using budgeted Federal Transit Administration planning funds.

Goal Impact: The Douglas Avenue Corridor Transit Oriented Development Study will help achieve the goals of Promoting Economic Vitality, Creating Vibrant Neighborhoods, and Ensuring Efficient Infrastructure.

Legal Considerations: The Agreement for Professional Services and the Bonding Ordinance have been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the Agreement for Professional Services and the Bonding Ordinance and authorize the necessary signatures.

Attachments: Agreement for Professional Services
Bonding Ordinance

OCA 150004

(Published in *The Wichita Eagle* on May 20, 2011.)

ORDINANCE NO. 49-008

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS AUTHORIZING THE ISSUANCE OF ITS GENERAL OBLIGATION BONDS TO PAY THE COSTS OF PRODUCING A DOUGLAS AVENUE CORRIDOR TRANSIT ORIENTED DEVELOPMENT STUDY.

WHEREAS, Article 12, Section 5 of the Kansas Constitution empowers cities to determine their local affairs and government; and

WHEREAS, the City of Wichita (the "City") desires to complete a Douglas Avenue corridor transit oriented development study to facilitate implementation of multimodal transportation improvements along the Douglas Avenue corridor and to make Douglas Avenue a distinctive walking corridor and Wichita's premiere transit street; and

WHEREAS, the Governing Body of the City hereby finds and determines that such is necessary and desirable and in the interest and for the general welfare of the City and its inhabitants; and

WHEREAS, under the authority of Article 12, Section 5 of the Kansas Constitution, the Governing Body of the City hereby further finds and determines that it is necessary and desirable and in the interest and for the general welfare of the City and its inhabitants, that general obligation bonds of the City in an amount not to exceed $125,000, exclusive of the cost of interest on borrowed money (the "Bonds") be authorized and issued for the purpose of paying costs associated with the completion of such study, said Bonds to be issued in accordance with the provisions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

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

SECTION 1. The Governing Body hereby finds and determines that it is necessary and desirable to authorize the issuance of general obligation bonds under the authority of Article 12, Section 5 of the Kansas Constitution in an amount not to exceed $125,000, exclusive of the costs of interest on borrowed money, for the purpose of paying costs associated with the completion of a Douglas Avenue corridor transit oriented development study (the "Project"). Such Bonds shall be sold and delivered in accordance with the provisions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

SECTION 2. It is hereby further authorized, ordered and directed that in order to temporarily finance the costs of the Project prior to the completion thereof and until issuance of the Bonds as hereinbefore provided, there may be issued temporary improvement notes (the "Notes"), the aggregate amount of which shall not exceed the sum of $125,000, such Notes to be issued from time to time upon subsequent ordinance of the City which shall provide and set forth the details of the Notes, including the fixing of the dates, terms, denominations, interest rates and maturity dates thereof. Such Notes shall be issued and provision shall be made therefor as funds are needed and required for the orderly completion of the Project. Any Notes issued under the authority of this Section shall be issued under and will contain a recital that they are issued under the authority of K.S.A. 10-123, as amended and supplemented, and Article 12, Section 5 of the Kansas Constitution, and shall contain all other usual and required recitals and covenants and be in the form required therefor by said K.S.A. 10-123, as amended and supplemented; and said Notes may be issued in combination with any other temporary notes being issued by the City as shall be determined by the Governing Body at the time of such issuance to be in the City's best interests.

SECTION 3. This Ordinance shall take effect and be in force from and after its passage and publication one time in the official City paper.

PASSED AND APPROVED by the governing body of the City of Wichita, Kansas and signed by the Mayor this 17th day of May, 2011.

_____

Carl Brewer, Mayor

Attest:

_____

Karen Sublett, City Clerk

(Seal)

Approved as to Form:

_____

Gary E. Rebenstorf, Director of Law

AGREEMENT FOR PROFESSIONAL SERVICES

Douglas Avenue Corridor Transit Oriented Development Study Consultant Agreement

THIS AGREEMENT made and entered into this ____ day of _____, 2011, by and between the Wichita Area Metropolitan Planning Organization (hereinafter referred to as WAMPO), and City of Wichita, (hereinafter referred to collectively as "the Client"); and Design Workshop (hereinafter referred to as "the Consultant").

WHEREAS, the Client and WAMPO want to contract for services to support the development of a Douglas Avenue Corridor Transit Oriented Development Study, has publicly solicited proposals for the same, and the Consultant has presented the best combination of services and price from among the vendors presenting proposals. Therefore, the Client and WAMPO wish to contract with the Consultant for those services. The Agreement is financed in part with funding from the Federal Transit Administration (FTA) and is subject to federal requirements and regulations. This Agreement is also financed in part by state funds from the Kansas Department of Transportation's (KDOT) Fund Exchange Program. The services performed under any resulting agreement shall comply with all federal, state and the City of Wichita laws and regulations. In addition, this Agreement will be subject to the requirements of 49 CFR 18 and cost eligibility reimbursement will be subject to 48 CFR 31.2; and

WHEREAS, the Consultant has the knowledge, experience and expertise in transportation planning to undertake this Project on behalf of the Client and WAMPO; and

WHEREAS, the Client and WAMPO desire to retain the services of the Consultant to provide support in the development and completion of the Douglas Avenue Corridor Transit Oriented Development Study.

NOW, THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. **DESCRIPTION OF SERVICES**. The Consultant will provide the services and deliver the documents required to complete the Douglas Avenue Corridor Transit Oriented Development Study as outlined in the Scope of Services set forth in Exhibit C and as follows.

A. To make available during regular office hours, all calculations, maps, drawings, and all other appropriate forms of representation such as the Client may wish to examine periodically during performance of this Agreement.

B. To attend meetings with the Client and other local, state and federal agencies as necessitated by the Scope of Services as set forth in Exhibit C, which by this reference is incorporated and made a part of this Agreement.

C. To save and hold the Client and WAMPO harmless against all suits, claims, and losses arising from or caused by errors, omissions or negligent acts of the Consultant, its agents, servants, employees, or subcontractors occurring in the performance of its services under this Agreement.

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

E. 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.

F. To be responsible for the professional and technical accuracies and the coordination of all designs, maps and presentation, drawings, specifications, plans and/or other work or material furnished by the Consultant under this Agreement. The Consultant further agrees that all designs, drawings, specifications, plans, and other work or material furnished by the Consultant, its agents, employees and subcontractors, under this Agreement, including any additions, alterations or amendments thereof, shall be free from negligent errors or omissions.

2. PERFORMANCE OF SERVICES. The Consultant shall determine the manner in which its services hereunder are to be performed and the specific hours to be worked in performing such services; provided, the Consultant will provide requested services and delivered documents as agreed between the Client, WAMPO, and the Consultant in Exhibit C.

3. PAYMENT. The Client will compensate upon finding that services and deliverables provided by the Consultant are acceptable under the terms of the Agreement for the direct hours worked by the Consultant's employee(s) at the rates set forth in Exhibit D, Fee Schedule, which by this reference is incorporated and made a part of this Agreement. The Client will compensate the Consultant upon finding that costs are acceptable under the terms of the Agreement for material and other direct costs specified in the Scope of Services and for reasonable expenses, including travel, incurred as a direct result of the Consultant's performance of services. The actual cost shall be incurred in conformity with the cost principles established in 23 CFR 172 and 48 CFR et seq. Unless acceptable by the Client and WAMPO, the maximum cost not-to-exceed dollar amount for the compensation for services detailed in this Agreement is $125,000. Final billing for the project including reimbursable expenses for the time they are productively engaged in work necessary to fulfill the terms of this Agreement must be submitted to the Client by December 8, 2011. During the progress of work covered by this Agreement, payments will be made to the Consultant at intervals of 30 days based on the statements provided by the Consultant itemizing the number of hours of work performed, the percentage of the services hereunder completed and in compliance with the Fee Schedule as set forth in Exhibit D, a copy of which is attached hereto and incorporated herein by reference. The Client will make payment within 30 days of a reconciled and approved invoice reflecting deliverables as

outlined by the scope of work. The Consultant will negotiate with the Client if there are any changes in deliverable dates. In addition, the Consultant agrees that;

A. The reimbursement for the professional services required by this Agreement will be based on the Consultant's actual costs, which can be less than the estimated amount. If additional work should be necessary, the Client will negotiate with the Consultant if there are any changes in the deliverables. 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 Client, WAMPO, and the Consultant.

B. The Client will inform the Consultant within 45 days of any dissatisfaction with deliverables or invoicing and will reimburse to the Consultant any withheld payment upon completion of the associated work effort to the Client's satisfaction.

C. The Client may withhold reimbursement of payment at the end of each 30-day cycle in the situation where deliverables applicable to the invoiced amount get delayed by more than two weeks without the Client's approval. Any payment withheld will be proportional to a reasonable estimate of the work effort that may be delayed. Reimbursement will be made promptly upon completion of the associated services to the satisfaction of the Client. The Consultant will not be responsible or held liable for delays occasioned by the actions or inactions on the part of the Client or for other unavoidable delays beyond the control of the Consultant.

D. At scheduled project meetings the Consultant will review with the Client the Consultant's progress with regard to both completed and ongoing work efforts. Progress will be assessed with regard to the status of completion of deliverables that are ongoing and the Consultant's efforts to resolve issues that may affect schedule. Deliverables as identified within the Scope of Services will be discussed as well as any known project issues that may be beyond the control of the Consultant that could affect the schedule. The Client may withhold payment in part or in whole for services not completed or for which work progress is not proportional to the level of effort invoiced. Any withheld payment will be proportional to the effort deemed necessary to bring the associated tasks or deliverables up to the level of effort that has been invoiced.

4. PROJECT MANAGEMENT. All parties agree that:

A. WAMPO and the Client will partner to administer and manage the Agreement. WAMPO will be the main contract administrator while the Client will be the main project manager. WAMPO and the Client will be coordinating both aspects to assure the project is on time and the activities are within the Scope of Services.

B. All activities must be eligible for reimbursement as match towards the Consolidated Planning Grant, which will be determined by the KDOT Urban Planning Unit. All activities must also be eligible for reimbursement for the KDOT

Fund Exchange Program, which will be determined by the KDOT Local Projects Unit. If any activities are not deemed eligible for reimbursement, the Client will not be reimbursed for those ineligible activities. The Client will be financially responsible for ineligible activities.

C. The Client will be the fiscal agent of the project, paying all expenses for the cost of the study. Eligible costs will be submitted to WAMPO for reimbursement by KDOT.

D. The Client will submit all paid eligible costs to the WAMPO for reimbursement by KDOT.

E. WAMPO will review and submit all eligible costs to KDOT for reimbursement to the fiscal agent of the project (Client).

F. Any billings submitted to WAMPO after 3:00 pm on December 9, 2011 will not be reimbursed and will be the responsibility of the Client.

G. Any costs incurred over the original Agreement amount will be the responsibility of the Client.

H. If the project is not completed by the December 8, 2011 deadline the Client will either reimburse the payments made by KDOT or complete the program at their own expense either in 2011 or 2012.

5. CASH BASIS AND BUDGET LAWS. The right of the Client and WAMPO to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the Client and WAMPO shall at all times stay in conformity with such laws, and as a condition of this Agreement the Client and WAMPO reserve the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

6. INDEMNIFICATION AGREEMENT. The Consultant agrees to fully indemnify, defend, and hold harmless the Client and WAMPO, its officers, employees, and volunteers from any and all loss, damage, liability, claim, demand, or cause of action whatsoever to the extent arising out of or resulting from or alleged to have arisen out of or have resulted from any negligent act or omission or willful misconduct of the Consultant, its officers, employees, independent contractors, or representatives in the performance of this Agreement.

7. TERM/TERMINATION. This Agreement shall run for the life of the project effective the date of the final signature of this Agreement. This Agreement shall terminate upon the satisfactory completion by the Consultant of the services and documents required to be provided hereunder, or at any time upon 20 days written notice of cancellation by the Client. Upon receipt of such notice of termination the Consultant shall discontinue and cause all such work to terminate upon the date specified in the notice from the Client. The Consultant will be entitled to compensation for actual effort

performed up to the date of termination. Any invoice for completed work or termination claim must be submitted to the Client within thirty (30) days after the effective date of termination. In the event of termination, such information prepared by the Consultant to carry out this Agreement, including data, studies, surveys, records, drawings, maps and reports shall, at the option of the Client, become the property of the Client and be immediately turned over to the Client. The Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

8. PROPRIETARY MATERIALS. Upon the successful completion of Agreement, all data provided by the Client, and any new data collected by the Consultant under this Agreement will be returned to the Client. The Consultant agrees to not keep copies of the provided or collected data after the successful completion of the Agreement for any other use, or transfer data to any other party without the written approval from the Client.

9. RELATIONSHIP OF PARTIES. It is understood and agreed that the Consultant is an independent contractor.

10. NOTICES. All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficient if delivered in person or deposited in the United States mail, postage prepaid, and addressed as follows:

For the Client:	Scott Knebel City of Wichita 455 North Main, 10th Floor Wichita, Kansas 67202	For WAMPO:	Mitch Coffman WAMPO 455 North Main, 10th Floor Wichita, Kansas 67202
For the Consultant:	Britt Palmburg Design Workshop 1390 Lawrence Street, Suite 200 Denver, Colorado 80204		

11. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement, either oral or written. This Agreement supersedes any prior written or oral agreement between the parties pertaining to the same subject matter.

12. AMENDMENT. This Agreement may be modified or amended if the modification or amendment is made in writing and signed by the Client, WAMPO, and the Consultant.

13. SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds any provision of this Agreement is invalid or unenforceable, but by limiting the applicability of such provision the entire Agreement would be valid and enforceable, then such provision shall be deemed to be written, construed and enforced as limited.

14. NO WAIVER OF CONTRACTUAL RIGHTS. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

15. APPLICABLE LAW. This Agreement shall be governed by the law of the State of Kansas. Venue shall lie in Sedgwick County District Court.

16. CONTRACTUAL PROVISIONS ATTACHMENT. The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this Agreement and made a part thereof, and are effective as to all parties. All other exhibits, labeled Exhibit A through Exhibit D to this Agreement are incorporated by reference and are as fully effective on all parties as if set forth here at length.

Approved as to form:

By Gary E. Rebenstorf 4-21-11
Gary E. Rebenstorf Date
City Attorney, City of Wichita

WICHITA AREA METROPOLITAN PLANNING ORGANIZATION:

Tim Norton Date
Transportation Policy Body Chairperson

CITY OF WICHITA AS FISCAL AGENT:

Carl Brewer Date
City of Wichita Mayor

ATTEST:

John Schlegel Date
WAMPO Secretary

DESIGN WORKSHOP

Kurt Culbertson Date
Chairman, Design Workshop

EXHIBIT A

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

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

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

B. Requirements of the State of Kansas:
   1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
   2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
   3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this Agreement and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
   4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
   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 Agreement, 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 Agreement and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

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

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

EXHIBIT B

State of Kansas
Department of Administration
DA-146a (Rev. 1-01)

CONTRACTUAL PROVISIONS ATTACHMENT

The parties agree that the following provisions are hereby incorporated into the Agreement to which it is attached and made a part thereof, said Agreement being the _____ day of _____ 2011.

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement in which this attachment is incorporated.
2. **Agreement With Kansas Law**: All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this Agreement, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the Agreement. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability**: Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Parties to this Agreement understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs

fewer than four employees during the term of such Agreement or whose contracts with the contracting state agency cumulatively total $5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract**: This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency or municipality thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract**: By signing this Agreement, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this Agreement on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes**: The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this Agreement.
10. **Insurance**: The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this Agreement relates, nor shall this Agreement require the State to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.
11. **Information**: **No provision of this Agreement shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**
12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this Agreement shall be deemed a waiver of the Eleventh Amendment."

EXHIBIT C

Scope of Services

Project management – the consultant will provide a project management plan that:

- Integrates activities with the City of Wichita Project Manager and WAMPO staff.
- Includes a schedule that will meet all requirements contained in this RFP. The schedule shall include tasks and subtasks to accommodate the WAMPO and City of Wichita timeline, which has the project completed and final billings received by the City of Wichita by December 8, 2011.
- Includes significant involvement of the City of Wichita, WAMPO, KDOT, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and other state and federal agencies as appropriate.
- Clearly indicates how this study will be performed.
- Suggests methods to communicate the Study process, analysis, decision making, conclusions, and recommendations in an understandable, meaningful manner.
- Use a steering committee of project stakeholders to ensure that the study accomplishes all aspects of the objectives and scope of services.

Study Content – the consultant will provide:

- Prioritized alternative strategies and a designated preferred approach for right-of-way allocations for the various transportation modes and on-street parking within the corridor to support a complete streets design for the corridor.
- Prioritized alternative strategies and a designated preferred approach for infrastructure and other improvements (including ITS) needed to make Douglas Avenue a distinctive walking corridor and Wichita's premiere transit street.
- Prioritized alternative strategies and a designated preferred approach to creating the transportation-land use connections necessary to foster transit oriented development.
- Strategies for coordinating the multimodal transportation improvements with other plans, including: Metropolitan Transportation Plan 2035, Transportation/Air Quality Document, Safety Plan, Intelligent Transportation System Regional Architecture, Congestion Management Process, Wichita Regional Transit Plan, Douglas Design District Streetscape Improvement Plan, and Delano Neighborhood Revitalization Plan.
- Strategies for coordinating the multimodal transportation improvements with regional, state, and national transportation systems.
- Cost estimates for construction, maintenance, and operation of the identified multimodal transportation improvements, including prioritized alternative strategies and a designated preferred approach to project phasing and financing.
- The completed transportation planning study must provide specific and detailed guidance for construction designs as well as the construction and implementation of multimodal transportation improvements along the Douglas Avenue corridor.

Goals and Objectives- the consultant will:

- Use guiding principles that are consistent with the objectives of the Metropolitan Transportation Plan 2035 and will be used as a benchmark to ensure that all

recommendations will further one or more of the guiding principles, with an approach towards establishing the appropriate balance. The guiding principles include:

- Improve air quality.
- Increase multimodal options and access and the percentage of the population using alternative modes of transportation.
- Improve transportation safety.
- Reduce energy consumption used for transportation.
- Increase transportation affordability.
- Reduce barriers to transportation system access for persons with disabilities and low-income and minority communities.
- Make transportation improvements that support transit oriented development.

Public involvement- the consultant will:

- Use a robust community engagement process (including outreach to persons with disabilities and low-income and minority communities) to ensure community consensus regarding recommendations of the study.

Federal Regulations- the consultant will:

- Develop the Douglas Avenue Corridor Transit Oriented Development Study within the limits of existing and pending federal, state, and local rules, regulations, and laws.

Document production – In consultation/coordination with WAMPO and City of Wichita staff the consultant will prepare:

- All documents in Microsoft Office 2007 program (Word, Excel, Access, and PowerPoint) and Adobe pdf electronic formats to allow easy editing of the documents.
- Updates on the progress of the study.
- Fifty (50) bound hard copies of the draft executive summary and report containing the analysis, strategies, the methodology, cost estimates, and any recommendations.
- Thirty (30) bound hard copies of the final executive summary and report containing the analysis, strategies, the methodology, cost estimates, and any recommendations.
- Twenty-five (25) CD or DVD copies with labels containing the executive summary, the entire study report, and all appendices, maps, and attachments in Adobe pdf format.
- Twenty-five (25) CD or DVD copies of a supplemental technical report documenting working procedures and information, analysis decisions, and project data.
- All reports will be produced with associated text, graphics, tables, maps and figures and should be printed in 8 ½ x 11 inch format with 11 x 17 inch fold out graphics as necessary.

EXHIBIT D

Fee Schedule

DOUGLAS AVENUE PROJECT	Kurt Culbertson	Britt Palmberg	Mary Martinich	Jessie Young	Tim Aziere	Russ Ewy	Jeff Bradley	Gordon Shaw	Genevieve Evans	Jason Briedis
DESIGN WORKSHOP FEE SCHEDULE	Design Workshop	Design Workshop	Design Workshop	Design Workshop	Baughman Co	Baughman Co	Baughman Co	LSC	LSC	LSC
	$250	$150	$80	$80	$90	$90	$125	$195	$95	$95
Task 1: Project Initiation										
Task 1.1: Project Management (Hours distributed throughout project to various tasks)										
Task 1.2: Project Kick-off Meeting	4	4	0	0	8	4	4	4	0	0
Task 2: Inventory and Analysis of Existing Conditions										
Task 2.1: Document Review & Data Collection	2	4	16	4	24	4	2	2	4	4
Task 2.2: Existing Physical Conditions Analysis & Base Map Preparation	2	4	16	4	24	4	2	2	4	4
Task 2.3: Review of Existing Infrastructure	2	4	16	4	4	2	2	2	4	4
Task 2.4: Identification of Existing and Future Land use	2	4	16	4	2	4	2	2	2	2
Task 2.5: Multi-Modal Transportation Analysis	4	4	16	4	8	2	2	8	10	10
Task 2.6: Visioning Sessions and Open House with the Community	8	16	0	16	8	2	2	12	2	2
Task 3: Creation and Presentation of Alternative Strategies										
Task 3.1: Alternatives Development, Screening, Evaluation, and Selection	4	4	16	4	8	8	4	2	6	6
Task 3.2: Design Refinement: Traffic, Safety and Access Issues, Integration with Other Plans	8	4	16	4	8	2	4	2	6	6
Task 3.3: Design Refinement: Communitiy Integration, Land Use, and Development Issues	8	4	16	4	8	8	2	2	2	2
Task 3.4: Public Open House to Present Alternative Strategies	8	16	0	4	16	8	4	12	2	2
Task 4: Design Refinement and Presentation of Designated Preferred Approach										
Task 4.1: Design Refinement: Facility Engineering and Design	8	6	20	8	8	2	2	2	4	4
Task 4.2: Cost Estimate and Analysis of Capital, Operating, Maintenance, and Life-Cycle Costs	4	4	20	4	8	4	2	2	4	4
Task 4.3: Final Public Open House to Present Preferred Alternatives	8	16	8	8	16	2	4	2	4	4
Task 5: Final Douglas Ave Corridor TOD Plan Document	8	20	40	32	24	8	8	4	4	4
Total Hours --->	80	114	216	104	174	64	46	60	58	58
Total Fee --->	$20,000	$17,100	$17,280	$8,320	$15,660	$5,760	$5,750	$11,700	$5,510	$5,510
TOTAL LABOR --->	$112,590									
TOTAL TRAVEL -->	$5,160									
TOTAL OTHER REIMBURSABLES --->	$7,250									
TOTAL BUDGET	$125,000									

Agenda Item No. V- 1

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: CON2010-00008 – Request for a Conditional Use to allow a Wrecking/Salvage Yard on property located at the southwest corner of 29th Street North and Mead Street. (District VI)

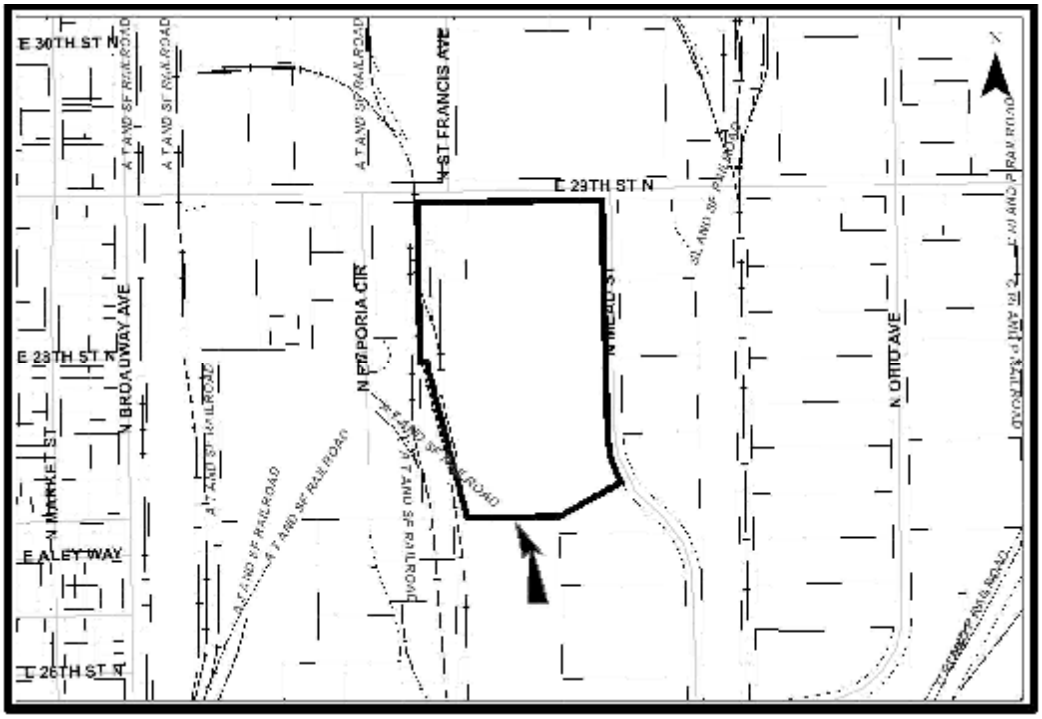
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approve, subject to amended staff conditions (6-5, 8-1 and 9-1).

MAPD Staff Recommendations: Approve, with conditions.

DAB VI Recommendation: Deny (5-0); Approve, with amended staff conditions (4-3).



Background: The application is a request to establish a "wrecking/salvage yard" on property located at the southwest corner of 29th Street North and Mead Street. The request was originally heard by District Advisory Board ("DAB") VI on March 17, 2010, at which time the DAB recommended denial. The Metropolitan Area Planning Commission ("MAPC") initially reviewed the request on March 18, 2010, and they recommended approval. On June 15, 2010, the Wichita City Council ("WCC") first heard the request, and they returned the application to DAB VI and the MAPC for additional consideration.

District Advisory Board VI heard the request the second time on August 18, 2010, and reversed its initial recommendation of denial when it recommended approval. The MAPC heard this application the second time on August 19, 2010, and upheld its previous recommendation of approval. On September 21, 2010 and on October 19, 2010, the application was presented to the WCC (second and third WCC hearings), where both times the applicant requested the hearing be deferred until all Council members could be present. The WCC granted both deferral requests. All WCC members were present on November 2, 2010, at which time the WCC voted to return the application to the MAPC (fourth WCC hearing).

The MAPC heard the application for a third time on January 6, 2011, and recommended approval. On February 8, 2011, the application was returned for WCC consideration (fifth WCC hearing), at which time the applicant asked for the WCC to defer action until its April 12, 2011, meeting. The WCC granted the request. On March 1, 2011, the WCC considered (sixth WCC hearing) another request by the applicant to move the hearing date from April 12, 2011, to April 5, 2011; that request was approved. Since there only six City Council members present at the April 5, 2011, meeting, the action of the WCC (seventh WCC hearing) was to defer action until May 10, 2011. The application is now before the WCC for final action.

The applicant, Midwest Scrap Management, Inc., is seeking a Conditional Use to permit a "wrecking/salvage yard" on property zoned GI General Industrial ("GI"). Initially, the application area included the entire 25.68-acre site; however, the application area has been reduced to only that part of the site (approximately 13.2 acres) located south of the existing office building except the northern portion may be used for traffic circulation to permit trucks to enter the site from 29th Street North. The southern side of the existing office building is located approximately 586 feet south of 29th Street North, and, except for traffic circulation, "wrecking/salvage" activities permitted by the proposed Conditional Use will not be permitted in the northern approximately 586 feet of the applicant's ownership.

Midwest Scrap Management, Inc. intends to operate a metal and scrap salvaging, sorting and shredding operation. Material will be brought in primarily by truck; however, processed material is primarily shipped out by rail. Trucks will be used for local delivery. It is estimated that incoming truck trips will be fewer than 20 on an average day and up to 60 on busier days. As a result of a recent change, primary access to the site is proposed to be from 29th Street North. The existing 29th Street North driveway, located in the northwest corner of the property, will be relocated closer to the northeastern corner of the property. Access to the subject site from Mead Street will be prohibited, except for emergency vehicles. Scrap piles may reach 35 feet in height. The applicant does not part-out vehicles. Inoperable vehicles located on-site will be shredded into "fist-sized" pieces. The business expects to employ up to 50 office workers, truck drivers and heavy equipment operators.

The *Wichita-Sedgwick County Unified Zoning Code*, Sec. II-B.14.r defines "wrecking/salvage yard as a lot used for the collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage material, junk or discarded materials; and/or for the sale of parts thereof." A wrecking/salvage yard is allowed by Conditional Use permit in the LI Limited Industrial ("LI") and GI districts and is allowed by right in the Air Force Base ("AFB") District, subject to Supplementary Use Regulations Sec. III-D.6.e (1) the use is not abutting an arterial street, expressway or freeway; (2) in the opinion of the Planning Commission, the use will not adversely affect the character of the neighborhood; and (3) is enclosed by a fence or wall not less than eight feet in height and having cracks and openings in excess of five percent of the area of such fence. With respect to the requirement that the use not abut an arterial street, Planning Department staff has been advised by the Office of Central Inspection that as long as the use is located at least 150 feet from arterial street right-of-

way, it is considered to not be abutting. The existing chain-link fence does not meet the opacity requirement mentioned above. The screening wall needs to also meet the standards outlined in Sec. IV-B.3.h: "Screening walls and fences shall be constructed of standard building materials customarily used for wall and fence construction such as brick, stone, concrete masonry, stucco, concrete or wood."

All surrounding property is zoned GI and is used for a variety of industrial uses including: warehousing, steel fabricating, grain elevators, outside storage of trailers, offices and manufacturing and salvage and wrecking. Glickman Metal Recycling is located just west of the application area and contains significant piles of scrap metal.

The following is a list of items that have been modified since the original application, all of which may not have been discussed with DAB VI, the MAPC or interested parties:
1) Increased the height of screening berms and wall screening from fourteen to sixteen feet (new).
2) Increased the amount of plantings by one-and one-half code minimum to be located between the street and the screening wall (new).
3) Reduced the size of the area to be used for wrecking and salvage from 25.68 acres to 13.23 acres located 586 feet south of 29th Street North.
4) Close the existing driveway to 29th Street North located in the northwest corner of the property and install a new driveway closer to the northeast corner (new).
5) Limit the Mead Street entrance to emergency vehicles only.
6) Limit the area used for loading rail cars to that area located immediately west of the application area (new).

Those items listed above as (new) were not included in the motion approved by the MAPC on January 6, 2011. The applicant's enhanced screening includes a six-foot berm that would be topped with a ten-foot tall masonry wall. Combined the berm and masonry wall would create a 16-foot tall screen. The screening is proposed to be located along the southern property line, beginning adjacent to the northern end of the grain elevator, then run east to Mead Street, then north along Mead to the entrance on Mead, then west along the southern side of the driveway into the proposed facility. The berm and wall would then resume on the north side of the Mead Street driveway, then run north to 29th Street North and then west along 29th Street to the corner, except for the break for the driveway. In the event that the existing building is removed, the applicant agreed to install berms and screening walls similar to previously described along the north line of the reduced application area. The screening is proposed to be further enhanced by the addition of trees or shrubs.

Analysis: District Advisory Board ("DAB") VI heard this request the first time at its March 17, 2010, meeting. The DAB voted (5-0) to deny the request. Eight property owners spoke in opposition, many of them referencing an association with the Bridgeport Area Business Association. The property owners' opposition centered on the argument that the businesses that they run are primarily indoor activities that do not involve the outdoor processing or storage of materials like those that are typically associated with a wrecking and salvage yard. The speakers asserted that they have made significant investments in higher quality facilities than are found in a typical industrial area and approval of the requested use will devalue their investments. Some of the protesters referred to their area as an "industrial park" as a way to contrast their ownerships with the proposed project. It is their contention that a wrecking and salvage yard will bring visual blight; that the screening offered will not hide the scrap piles; traffic will increase and the potential for explosions and air and ground pollution will also increase.

DAB VI heard this request a second time on August 18, 2010, and they voted (4-3) to recommend approval. Seven members of the public spoke in opposition; three spoke in favor. People who spoke in opposition cited arguments similar to those made at the earlier DAB meeting. The people speaking in support noted that wrecking and salvage is an activity that is essential to Wichita; recycling is an essential business and the location is the appropriate site. (See the attached March 17, 2010, and August 19, 2010, DAB VI memos and opposition letters.)

Initially, the MAPC heard this request at their March 18, 2010, meeting. Approximately, the same number of folks that spoke in opposition at the DAB VI meeting also spoke in opposition at MAPC, citing concerns similar to those expressed at the DAB meeting. The MAPC voted (6-5) to approve the request subject to conditions.

The MAPC heard the application for a second time on August 19, 2010. As at the previous meetings, a similar number of people spoke in opposition citing concerns similar to those presented at previous meetings. There were also speakers in support of the application repeating comments similar to those made at the second DAB VI meeting.

On January 6, 2011, the MAPC heard the application for the third time. As at the previous meetings, individuals were present to speak in opposition citing reasons similar to those presented at the original meeting. The MAPC voted 9-1 to recommend approval to the following amended conditions that were agreed to by the applicant:

1. The Conditional Use shall permit the torch cutting, crushing, shearing, baling, shredding, storage and shipping of motor vehicles, appliances and other industrial scrap materials on the approximately 13.2 acres located 586 feet south of 29th Street's southern right-of-way. Recycling, salvage or wrecking activity, except traffic circulation, is not permitted within 586 feet of 29th Street's southern right-of-way (or north of the south elevation of the existing principal building).

2. Screening walls shall consist of landscaping, and a combination of earthen berms and masonry walls with a total height of 14 feet. Landscaping, berms and walls shall be installed as shown on the color site plan submitted by the applicant dated 4-6-09. Except for deviations listed in this Conditional Use, screening shall comply with Unified Zoning Code, Sec. IV-B.3.h. The use of large rectangular concrete blocks as screening or fencing material is prohibited. In the event that the existing building is removed, screening as described above shall be installed along the north line of the area where wrecking and salvage operations are permitted.

3. Unless modified by this Conditional Use, the site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. Material used for the screening wall shall be identified on the approved site plan.

4. Access is restricted to 29th Street North. Except for emergency access, access to Mead Street is prohibited. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.

5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection. Materials stored outside shall not exceed 35 feet in height.

6. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.

7. Storage of all of scrap materials (vehicles, metals, appliances, etc., including baled material) waiting to be processed and the containers they are stored in shall be organized and be maintained in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.

8. The applicant shall maintain at all times an active program for the eradication and control of rodents.

9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.

10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.

11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.

12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.

13. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.

14. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.

15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

A 47.08 percent protest has been registered, triggering a three-fourths vote requirement by the governing body to approve the request. (Since this request was returned to the MAPC, the two-thirds vote requirement normally required to override the MAPC's recommendation has been eliminated.)

Financial Considerations: Approval of this request will not create any financial obligations for the City of Wichita.

Goal Impact: If approved, the project would support the City's goal to Promote Economic Vitality and Affordable Living.

Legal Considerations: The resolution has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: 1) Concur with the findings of the MAPC, approve the Conditional Use, subject to the recommended conditions and authorize the Mayor to sign the resolution (requires a three-fourths majority); OR 2) Concur with the findings of the MAPC, approve the Conditional Use, subject to amended conditions (requires a three-fourths majority) OR 3) Deny the Conditional Use request by making alternative findings, and override the MAPC's recommendation (requires simple majority).

Attachments: Resolution, two protest maps, three site plans, March 18, 2010, August 19, 2010, and January 6, 2011, MAPC minutes, March 17 and August 19, 2010, DAB VI minutes, Kamen letter, an e-mail and letter with attached map.

OCA 150004

RESOLUTION No. 11-119

A RESOLUTION AUTHORIZING A CONDITIONAL USE TO ALLOW A WRECKING AND SALVAGE YARD ON A PORTION OF THE 25.68 ACRES ZONED GI GENERAL INDUSTRIAL ("GI"), GENERALLY LOCATED ON THE SOUTHWEST CORNER OF 21ST STREET NORTH AND MEADE AVENUE, IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D, AS ADOPTED BY ORDINANCE NO. 48-451, AS AMENDED.

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

SECTION 1. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita-Sedgwick County Unified Zoning Code, permit a wrecking and salvage yard on a portion of the 25.68 acres zoned GI General Industrial, legally described below:

Case No. CON2010-00008

Lot 1, Block 1, North Industrial Park Addition to Sedgwick County, Kansas, except the north 586.00 feet, generally located on the southwest corner of 21st Street North and Meade Avenue.

SUBJECT TO THE FOLLOWING CONDITIONS:

1. The Conditional Use shall permit the torch cutting, crushing, shearing, baling, shredding, storage and shipping of motor vehicles, appliances and other industrial scrap materials on the approximately 13.2 acres located 586 feet south of 29th Street's southern right-of-way. Recycling, salvage or wrecking activity, except traffic circulation, is not permitted within 586 feet of 29th Street's southern right-of-way (or north of the south elevation of the existing principal building).

2. Screening walls shall consist of landscaping, and a combination of earthen berms and masonry walls with a total height of 14 feet. Landscaping, berms and walls shall be installed as shown on the color site plan submitted by the applicant dated 4-6-09. Except for deviations listed in this Conditional Use, screening shall comply with Unified Zoning Code, Sec. IV-B.3.h. The use of large rectangular concrete blocks as screening or fencing material is prohibited. In the event that the existing building is removed, screening as described above shall be installed along the north line of the area where wrecking and salvage operations are permitted.

3. Unless modified by this Conditional Use, the site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. Material used for the screening wall shall be identified on the approved site plan.

4. Access is restricted to 29th Street North. Use of Mead Street is prohibited for Wrecking and Salvage activities. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.

5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection. Materials stored outside shall not exceed 35 feet in height.

6. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.

7. Storage of all of scrap materials (vehicles, metals, appliances, etc., including baled material) waiting to be processed and the containers they are stored in shall be organized and be maintained in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.

8. The applicant shall maintain at all times an active program for the eradication and control of rodents.

9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.

10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.

11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.

12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.

13. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.

14. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.

15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

SECTION 2. That upon the taking effect of this Resolution, the notation of such Conditional Use permit shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION 3. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date, May 10, 2011.

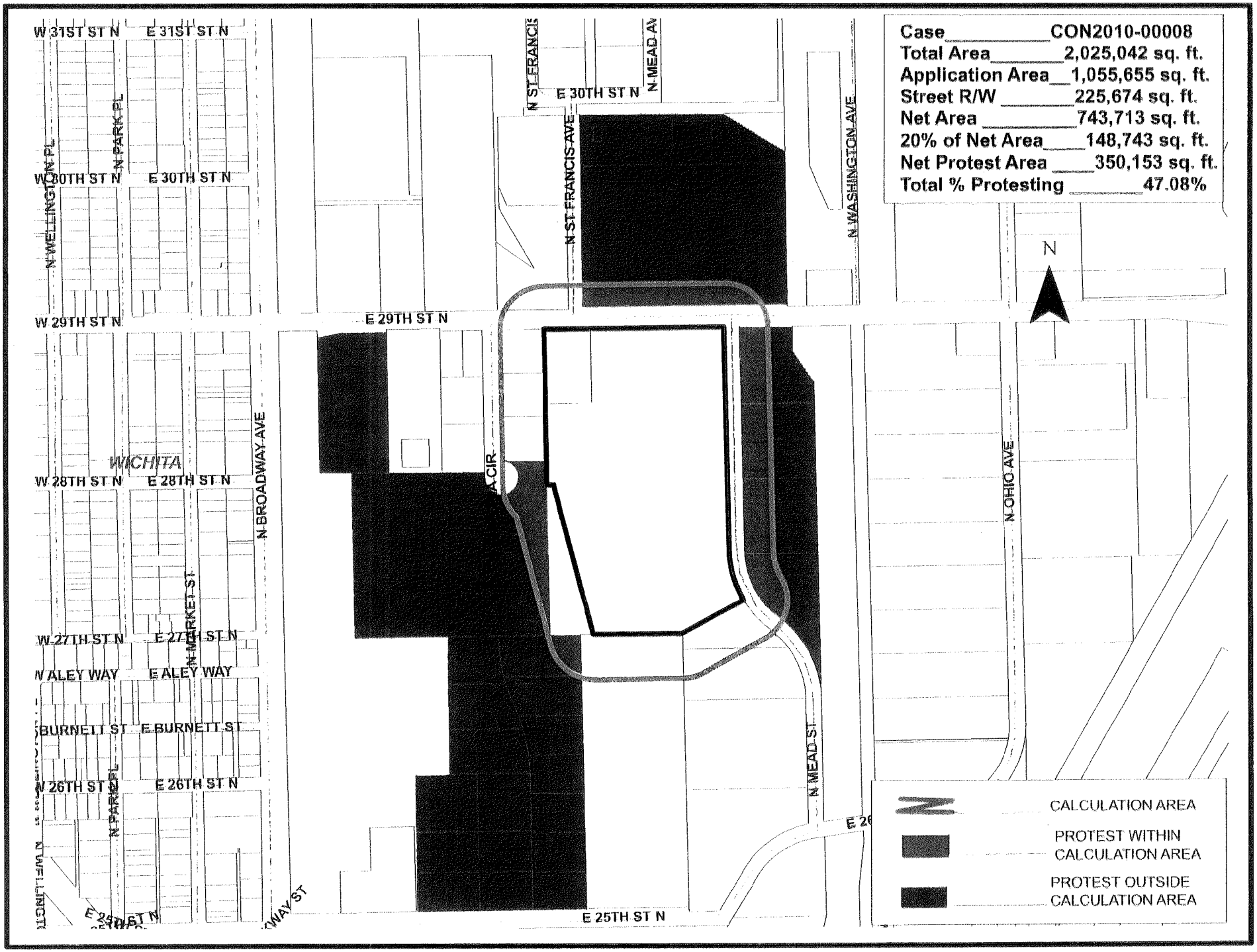
_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, City Attorney


Case CON2010-00008
Total Area 2,025,042 sq. ft.
Application Area 1,055,655 sq. ft.
Street R/W 225,674 sq. ft.
Net Area 743,713 sq. ft.
20% of Net Area 148,743 sq. ft.
Net Protest Area 350,153 sq. ft.
Total % Protesting 47.08%
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PROTEST WITHIN CALCULATION AREA
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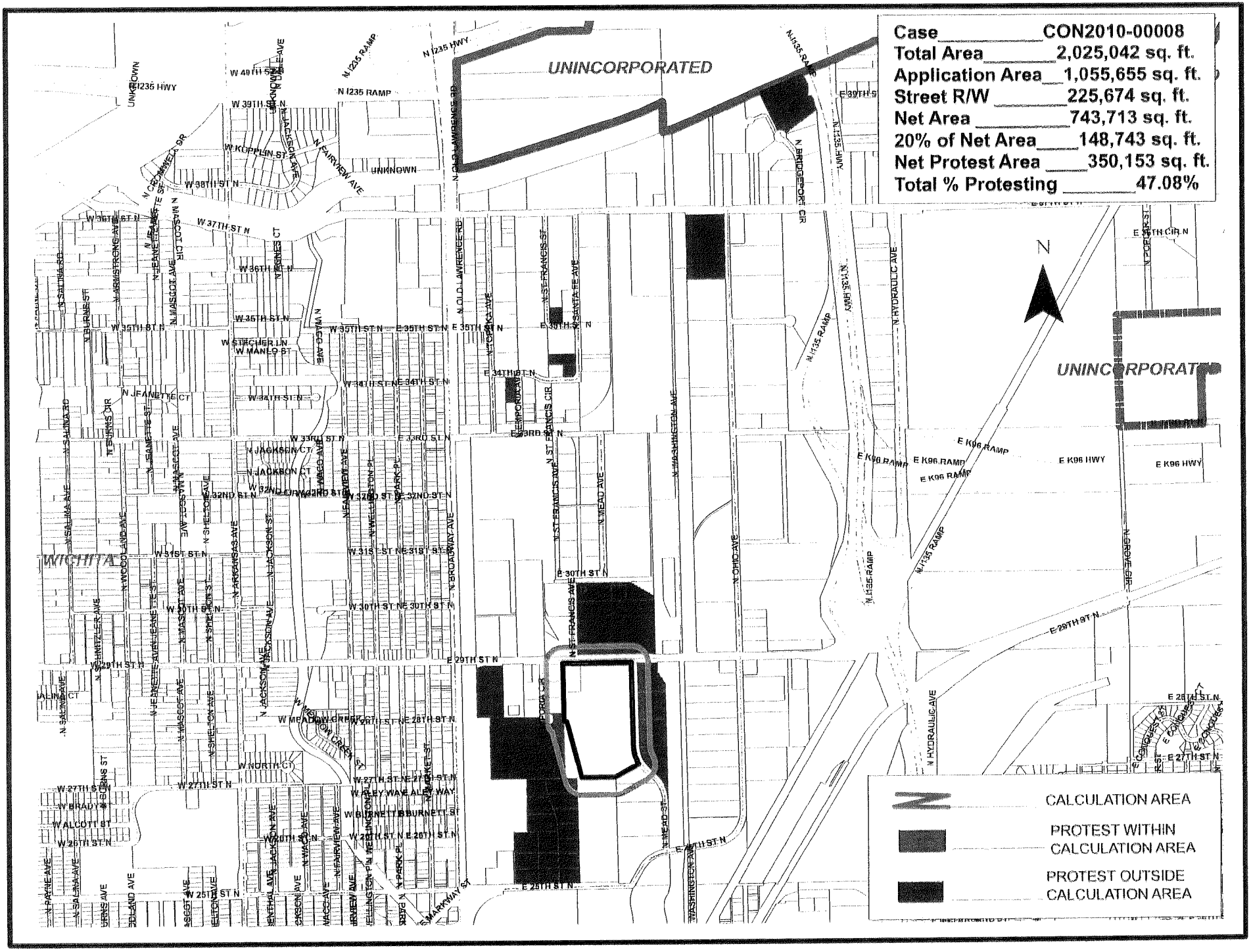
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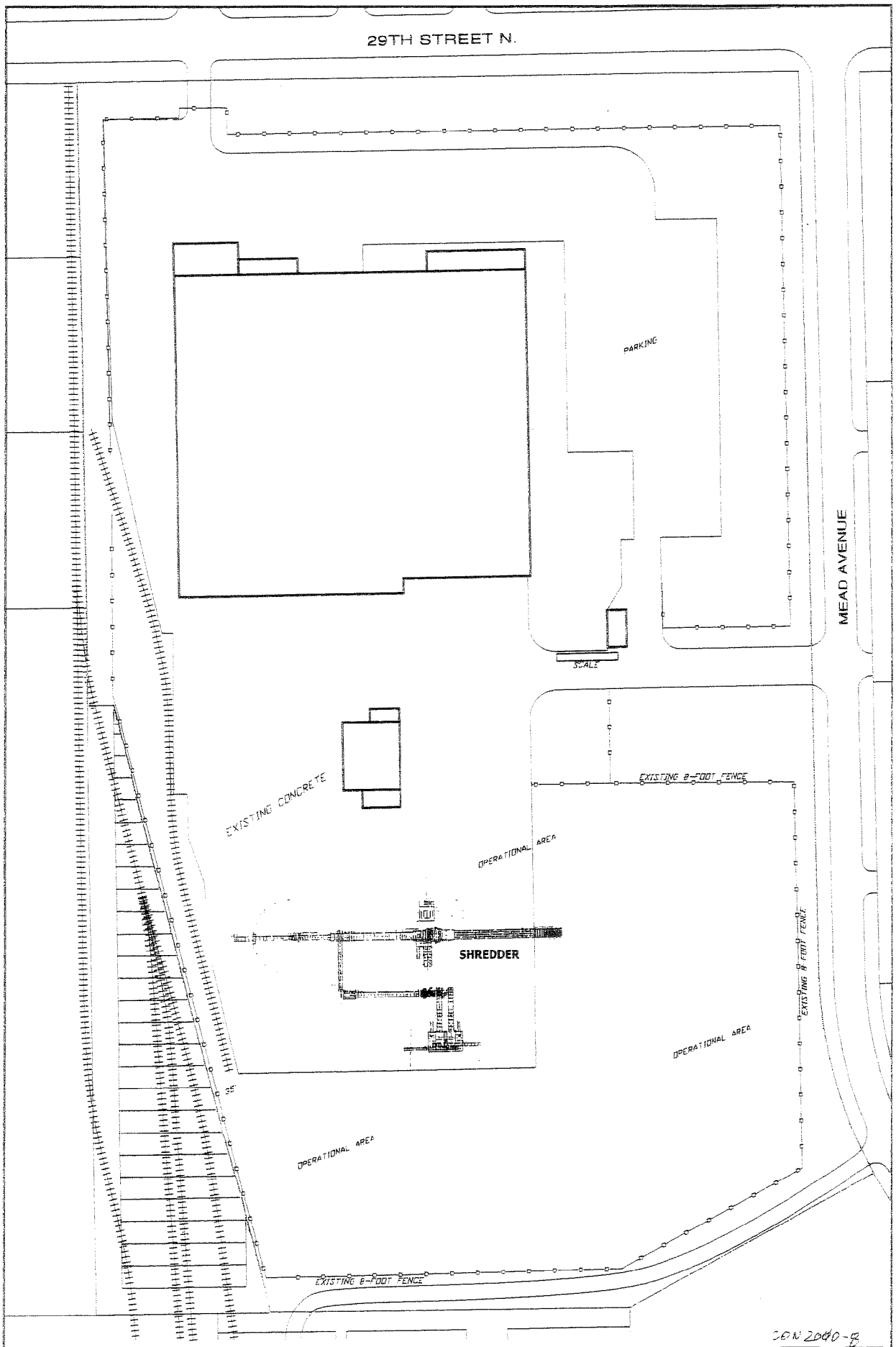


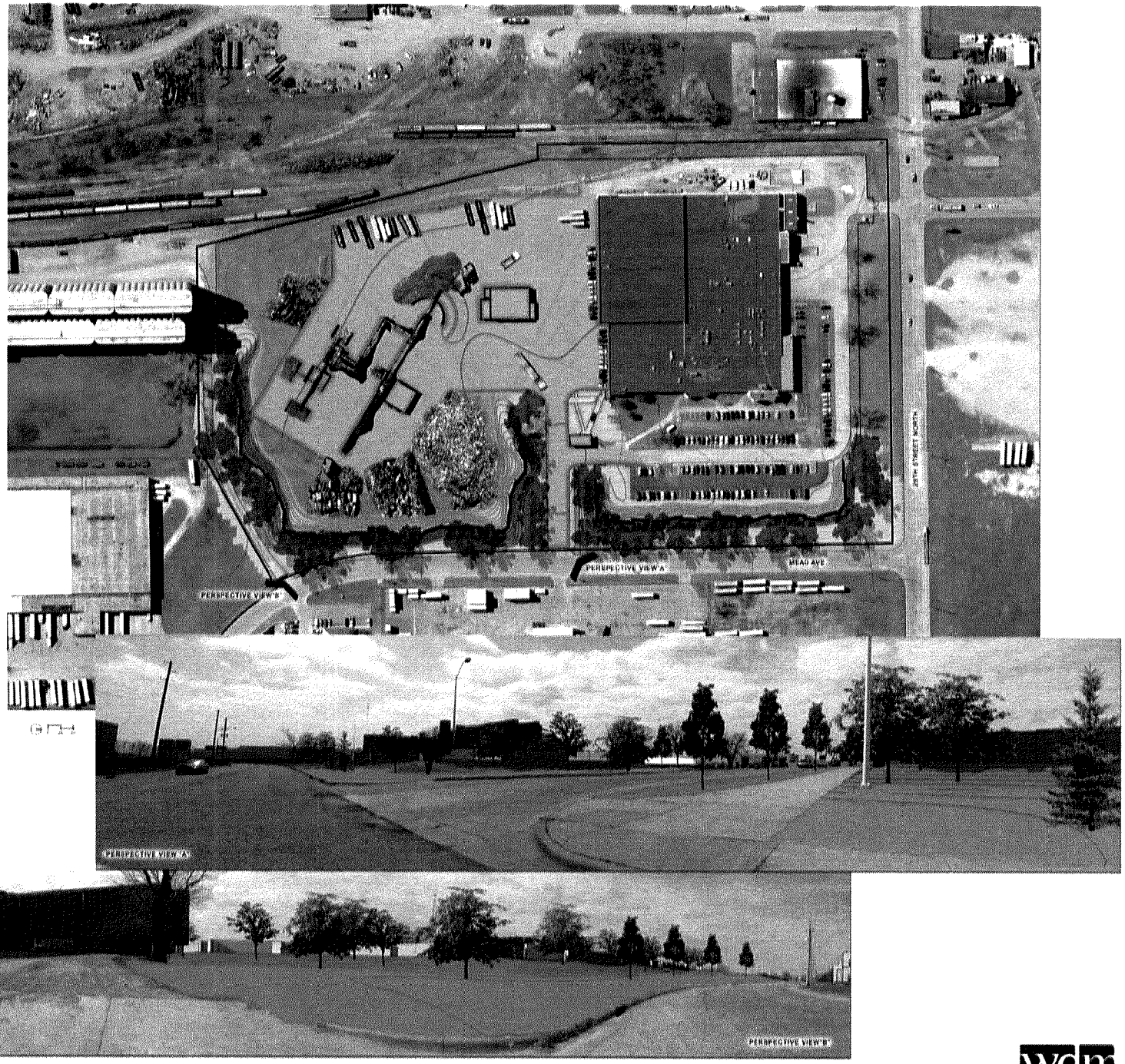
CON 2010-?

SITE PLAN - CON2010-??

MIDWEST SCRAP MANAGEMENT

SCALE: 1" = 100'

Baughman
ENGINEERING · SURVEYING · PLANNING
LANDSCAPE ARCHITECTURE



PROPOSED METAL RECYCLING FACILITY

04 08 09

wdm ARCHITECTS

MASTER PLAN - 2010

WICHITA, KANSAS

75'

EXCERPT MINUTES OF THE JANUARY 6, 2011 METROPOLITAN AREA PLANNING COMMISSION HEARING

Case No.: CON2010-08 – Midwest Scrap Management, Inc. and Robert Kaplan request a City Conditional Use permit for a wrecking and salvage operation.

Lot 1 except beginning at the Northwest corner of Lot 1; thence East 213.12 feet; thence South 340 feet; thence West 213.12 feet; thence North 340 feet to beginning, Block 1, North Industrial Park Addition to Sedgwick County, Kansas.
AND
Beginning at the Northwest corner of Lot 1; thence East 213.12 feet; thence South 340 feet; West 213.12 feet; thence North 340 feet to beginning, Block 1, North Industrial Park Addition to Sedgwick County, Kansas.

BACKGROUND: This application was originally heard by District Advisory Board ("DAB") VI on March 17, 2010, (deny); by the Metropolitan Area Planning Commission ("MAPC") March 18, 2010, (approval) and on June 15, 2010, by the Wichita City Council ("WCC"). On June 15th the action of the WCC was to return the application to both DAB VI and MAPC for additional consideration. DAB VI reheard the request on August 18, 2010, and reversed their initial recommendation of denial recommendation by recommending approval. The Metropolitan Area Planning Commission ("MAPC") reheard this application on August 19, 2010, and upheld their original recommendation of approval. The WCC reconsidered this application on September 21, 2010, and October 19, 2010, where the applicant requested to defer the hearing until all Council members are present. The WCC granted both requests. All WCC members were present on October 19, 2010, at which time the WCC voted to return the application to the MAPC for a third hearing.

In comparison to the original report, the "background" section and the conditions of approval contained in this report have been amended to reflect modifications made at the various meetings.

The application area is located at the southwest corner of North 29th Street East and North Mead Avenue, and is zoned GI General Industrial ("GI"). Midwest Scrap Management, Inc. intends to convert the property into a metal and scrap salvaging, sorting and shredding operation. The applicant was originally seeking a Conditional Use to permit "wrecking and salvage" on the entire 25.68-acre site that is developed with an office building. However, the area where scrap material will be deposited, sorted, shredded, stored and shipped has been reduced to the southernmost 12.4 acres; the area located south of the existing building's southern facade. The northern 13.28 acres that contains the existing building and associated parking field would be allowed to be used for ingress and egress for the scrap operation as the applicant has agreed to limit access to the site from 29th Street only. Scrap trucks would be prohibited from using Mead Street. Material will be brought in primarily by truck; however processed material is to be primarily shipped out by rail. Trucks will be used for local delivery. It is estimated that incoming truck trips will be fewer than 20 on an average day, and up to 60 on a busier day. Scrap piles may reach 35 feet in height. The applicant's do not part-out vehicles. Inoperable vehicles located on-site will be shredded. Shredded material ends up in "fist-sized" pieces. The application area has one access point each to 29th Street and to Mead. The business expects to employ up to 50 office workers, truck drivers and heavy equipment operators.

Other modifications the applicant has made in an effort to address concerns identified during the various meetings include the installation of a six to eight-foot berm that would be topped with an eight-foot tall masonry wall. Combined the berm and wall would create a 14 to 16-foot tall screen that should effectively screen from view along Mead Street and 29th Street scrap piles up to approximately 75 feet.

The screening is proposed to be located along the southern property line, beginning adjacent to the northern end of the grain elevator, then east to Mead Street, then north along Mead to the entrance on Mead, then west along the southern side of the driveway to the proposed facility. The berm and wall would then resume on the north side of the Mead Street driveway, then run north to 29th Street North and then west along 29th Street to the corner of the main driveway serving the parking lot to be located to the east of the main office building. The screening is proposed to be further enhanced by the addition of trees and shrubs.

The *Wichita-Sedgwick County Unified Zoning Code*, Sec. II-B.14.r defines "wrecking/salvage yard as a lot used for the collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage material, junk or discarded materials; and/or for the sale of parts thereof. A wrecking and salvage yard is allowed by Conditional Use permit in the LI Limited Industrial ("LI") and GI districts, and allowed by right in the Air Force Base ("AFB") District, subject to Supplementary Use Regulations Sec. III-D.6.e (1) the use is not abutting an arterial street, expressway or freeway; (2) in the opinion of the Planning Commission, the use will not adversely affect the character of the neighborhood; and (3) is enclosed by a fence or wall not less than eight feet in height and having cracks and openings in excess of five percent the area of such fence. With respect to the requirement that the use not abut an arterial street, planning staff has been advised by the Office Central Inspection that as long as the use is located at least 150' from arterial street right-of-way it is considered to not be abutting. The existing chain-link fence depicted on the submitted site plan does not meet the opacity requirement mentioned above. The screening wall needs to also meet the standards outlined in Sec. IV-B.3.h: screening walls and fences shall be constructed of standard building materials customarily used for wall and fence construction such as brick, stone, concrete masonry, stucco, concrete or wood. In the past, staff has received complaints regarding the use of large rectangular concrete blocks as screening material. It is recommended that such fencing material be prohibited from meeting the screening requirement.

Surrounding property is all zoned GI, and is used for a variety of industrial uses including warehousing, steel fabricating, grain elevators, outside storage of trailers, offices and manufacturing, and salvage and wrecking. Glickman Metal Recycling is located just east of the application area, and contains significant piles of scrap metal.

Neighborhood opposition has been present from the start of this application. Members of the Bridgeport Area Business Association ("BABA") were among some the most consistent expressing opposition. BABA is an association comprised of property and business owners located primarily north of 29th Street, west of I-135, east of Broadway and approximately I-235 on the north. BABA's opposition centered on the argument that the businesses they run are primarily indoor activities that do not involve the outdoor processing or storage of materials similar to those that are typically associated with a wrecking and salvage yard. The speakers asserted that they have made significant investments in higher quality facilities than are typically found in industrial areas, and approval of the requested use will devalue their investments. Some of the protestors referred to their area as an "industrial park" as a way to contrast their activities with the proposed project. It is the protestor's contention that a wrecking and salvage yard will bring visual blight; that the screening offered will not hide the scrap piles; traffic will increase and the potential for explosions, air and water pollution will also increase. A 47.08 percent protest has been registered.

The application also drew speakers who were supportive. Supporters of the application stated that wrecking and salvage is an essential part of the community's business cycle; recycling is important to the successful operation of Wichita's commercial and manufacturing companies. It was also the supporter's contention, given the area's historical and existing uses and GI zoning, that this site is an appropriate location for wrecking and salvage.

CASE HISTORY: The site appears to have been zoned heavy industrial in 1958, and was platted as the North Industrial Park Addition in June 1972.

ADJACENT ZONING AND LAND USE:

NORTH:	GI General Industrial; elevator, manufacturing
SOUTH:	GI General Industrial; grain elevator
EAST:	GI General Industrial; outside storage of semi-truck trailers and mobile home-type trailers, warehousing
WEST:	GI General Industrial; outside metal recycling; steel fabricating

PUBLIC SERVICES: 29th Street is a paved four-lane arterial with approximately 50 feet of half-street right-of-way. Mead is a paved two-lane street with 35 feet of half-street right-of-way.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide depicts this site as being appropriate for "employment / industry center." Employment / industry centers encompass areas with uses that constitute center or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The GI zoning district is the most intense zoning district contained in Wichita-Sedgwick County Unified Zoning Code ("UZC"), except for the Air Force Base ("AFB") district.

The application area is still subject to the amended November 27, 1972, General Urban Renewal Plan. The General Land Use Plan map of that document depicts this site as appropriate for "heavy manufacturing" that is a category of industries which are apt to have an extensive impact on the surrounding area. Included are heavy assembly and fabrication uses which may create considerable traffic volume, noise, dust, odor, blast and smoke. Floor area to lot area ratio shall not exceed 3.00 with maximum lot coverage limited to a maximum of 50 percent. As currently developed the site complies with these development standards.

The January 4, 2005, 21st Street North Corridor Revitalization Plan's Preferred 20+ Land Use Plan depicts the site as appropriate for "general industrial" uses, that acknowledges the importance of heavy industry in the Wichita region and specifically the importance of rail dependent uses in the plan area. Rail dependent and heavy industrial uses are allowed in this category. Light industrial uses are also allowed.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The Conditional Use shall permit the torch cutting, crushing, shearing, baling, shredding, storage and shipping of motor vehicles, appliances and other industrial scrap materials on the approximately 12.4 acres located 586 feet south of 29th Street's southern right-of-way. Recycling, salvage or wrecking activity, except traffic circulation, is not permitted within 586 feet of 29th Street's southern right-of-way (or north of the south elevation of the existing principal building).

2. Screening walls shall consist of landscaping, and a combination of earthen berms and masonry walls with a total height of 14 feet. Landscaping, berms and walls shall be installed as shown on the color site plan submitted by the applicant dated 4-6-09. Except for deviations listed in this Conditional Use, screening shall comply with Unified Zoning Code, Sec. IV-B.3.h. The use of large rectangular concrete blocks as screening or fencing material is prohibited.

3. Unless modified by this Conditional Use, the site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. Material used for the screening wall shall be identified on the approved site plan.

4. Access is restricted to 29th Street North. Except for emergency access, access to Mead Street is prohibited. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.

5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection. Materials stored outside shall not exceed 35 feet in height.

6. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.

7. Storage of all of scrap materials (vehicles, metals, appliances, etc., including baled material) waiting to be processed and the containers they are stored in shall be organized and be maintained in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.

8. The applicant shall maintain at all times an active program for the eradication and control of rodents.

9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.

10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.

11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.

12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.

13. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.

14. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.

15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All surrounding property is zoned GI General Industrial, and is used for industrial activities ranging from outside storage of trailers, warehousing, manufacturing, steel fabricating or wrecking and salvage. The wrecking and salvage operation has extensive piles of scrap.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned GI General Industrial which permits a very wide range of commercial, office and industrial uses. The site is developed with an office building and has some room for additional building. The site could be used as currently zoned; however, there has been increasing interest in wrecking and salvage, as demonstrated by two recent development applications within the vicinity of this application, and city-wide there have been a total of 10 requests in the last two years.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval are designed to minimize foreseen impacts to nearby property owners.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval would provide another location for the disposal of scrap material. Denial would presumabley present the prospective purchaser with delays that could result in a loss of income and business opportunity.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is in conformance with adopted plans as described in the conformance with plans and policies section located above.

6. Impact of the proposed development on community facilities: Existing community facilities are in place to address anticipated demand on community facilities. Truck traffic would potentially increase but the streets in the area were developed to accommodate industrial traffic.

7. Neighborhood support or opposition: As indicated above, a 47.08 percent protest has been registered and there has been support.

DALE MILLER, Planning Staff presented the Staff Report.

MCKAY asked if the 47% protest was all located within 200 feet of the site.

MILLER responded yes.

MCKAY suggested since this was the third time this item has been heard by the Commission that no additional time, other than the required 5 minutes per person, be granted for public comment.

BOB KAPLAN, AGENT FOR MIDWEST SCRAP MANAGEMENT, INC. commented that the Planning Commission knows this case because they have heard it twice and approved it twice. He clarified that the case did not come back from City Council because they disagreed with the Planning

Commission's recommendation, but because of the percentage of protests, it required 6 affirmative votes for approval of the application. There were insufficient votes to deny or approve the application. He commented that a majority of the protest was from Mr. Glickman who owns the only shredder in town and wants to keep it that way. He said this area is about the only area in town that will accommodate this use. He listed 15 reasons, including, but not limited to: The site will use approximately $1,000,000 annually in electricity to be provided by Westar through a dedicated line; the operation needs substantial rail and the 29th and Mead location has that and adequate spur track; the operation will not impair anyone else's use of rail in the area; the site has easy access to I-35 and 81Highway; there is no residential use in the neighborhood; the whole area is industrial and heavy industrial and has been for years. He said a conditional use permit is still needed for this type of operation. He added that the applicant looked for years to find this site. He concluded by stating that DAB VI also recommended approval of the application. He said they realize this is not an easy thing to locate, but reiterated "if not here, where?" He listed several recycling businesses currently operating in the area. He said the applicant has made major concessions such as reducing the requested operational area by 50%; recirculation of their own water so that no waste water goes into the storm sewer or sanitary sewer systems; and providing landscaping including a berm, masonry wall, shrubs, trees and grass. In addition, the applicant has accepted every condition in the Staff Report. He concluded by asking the Planning Commission to once again approve the application.

NICK STAIB, WDM ARCHITECTS reviewed several drawings and maps of the property with the imposed graphics of the 6-8 foot berm, 8-foot wall and landscape of trees, shrubs and grass. He said it will blend in so well that people will not be able to see it, he added; however, that from a distance people may be able to see part of the operation.

KAPLAN said between the screening, berming, and landscaping, the scrap heap will not be seen from the street.

MARNELL asked Mr. Kaplan if his client agreed to the 15 conditions listed in the Staff Report.

KAPLAN said yes they absolutely agree to all the conditions listed and have imposed some of their own conditions.

HILLMAN said while he appreciated the landscaping, he said he didn't see a whole lot of traffic at ground level; that most of the traffic will be going along I-35, the elevated area of the canal route. He said people coming into Wichita will be able to see the piles of rubble which will make a significant impression and he is concerned about that.

KAPLAN said he couldn't tell the Commission if an architectural design would make the area not visible from 1-35. He said if it was doable and the Commission made it part of the conditions, they would do it.

STAIB said the shade trees will be about 30-40 feet tall once they mature in time. He added that the site is ½ mile away from the interstate.

HENTZEN asked if the speakers would let the Commission know where they were located in the red area of the protest map.

RICK LOWE, 1509 SOUTH SPRING HOLLOW CIRLCE, PRESIDENT, BRIDGEPORT AREA BUSINESS ASSOCIATION (BABA) said he would like to note that the first time DAB VI heard this conditional use request they recommended denial. He also noted that the Planning Commission voted for approval 6-5 the first time this case was heard. He mentioned that at that meeting he left with "a bad taste in his mouth" because Commissioner Sherman had asked if he should recuse himself from the

proceedings because he worked for Westar and was advised by legal staff that he could vote on the application. He said Commissioner Sherman voted and that was the deciding vote on the issue. He said when the request came back a second time with the inclusion of the berm and masonry wall, DAB VI did recommend approval and the issue passed the Planning Commission at the second hearing by a wider margin. He said the vast majority of the area inside the protest petition calculation does not belong to Glickman, but adjacent landowners to the east or north. He said he does not think the statement that Glickman is trying to keep a competitor from coming to town is fair. In addition, he said the statement has been made "if not here, where?" and added that they have had several discussions with the applicant about alternate sites. He said to say no other sites are available is not true; there are sites in General Industrial zoning with rail access and access to I-35 within 2 miles of this location, but the applicant owns this site. He said any of those sites would be better from a public policy perspective. He concluded by asking why would the City spend millions of dollars to clean up scrap yards on 21st Street and then place a scrap yard on 29th Street.

MIKE BOYD, PARNTER, GODSEND LP, 2822 NORTH MEAD commented that you can see his building from I-35 because you can count the skylights on top of it so a 35-foot stack of metal directly across the street will also be visible from I-35.

TOM OLSEN, EXECUTIVE VICE PRESIDENT, HOC INDUSTRIES, 3511 NORTH OHIO said he was present to represent himself and Bill and Jennifer Nath, the largest land owners in the Bridgeport area who own 2888 N. Mead and have filed a formal protest on this application. He said this use will make property values in the area go down. He said one of the largest employers in the Bridgeport area Johnson Controls located just north of the site is opposed to this use. He said wrecking and salvage operations create blight regardless of the number of trees that are planted. He said you can go on-line and see pictures of the applicant's property in Kansas City. He suggested the Planning Commissioners check it out. In addition, he said the applicant has had a number of safety infractions, fires and violations of Kansas Department of Transportation (KDOT) regulations at that location. He said businesses in the Bridgeport area have invested millions of dollar in their property in the last 29 years. He said they have been at their North Ohio address since 1987 and have invested millions of dollars in their location. He mentioned that Johnson Controls who employs over 1,200 people signed the protective overlay petition to keep these types of processes out of the area. He said this operation simply does not fit in the area and he respectfully requested that the City deny the application.

DENISE FERBER, MORRIS COLLECTIONS, INC. 128 N. DELLROSE, (PROPERTY OWNERS OF 330 NORTH OHIO) said she has talked about the decrease in property values in the past. She said she wanted to talk about the rail study and how rail car switching will impact the area. She said there are many businesses with many employees traveling 29th Street on a daily basis. In addition, she said the original Staff Report estimated between 20-30 trucks a day arriving/leaving the site; however, the applicant has stated that it may be up to 60 trucks a day which will have a dramatic impact on streets in the area. She questioned the applicant's safety record at their operation in Missouri and cited transportation violations and safety issues with projectiles caused by these large shredding machines. She said she believes the applicants voluntarily reducing the size of the area is a ploy and that they will utilize the north area of the site for a use not yet disclosed. She asked if the Commission could require the applicant to provide a buffer to the north if the building is torn down in the future.

LOUIS EFTINK, 1330 EAST 27TH STREET NORTH said he was present to speak in opposition to the proposed use because he does not believe it fits into the area. He said 70% of York International employees leave the area using 29th Street, which is congested with truck and rail traffic now. This proposed use will only make the situation worse. He said the Cargill sign, which can be seen from I-35, is not as high as the piles of trash that will be allowed with this use. He said this is not adding any beauty to Wichita as people come in from the north side of the City.

JOHNSON (Out @3:15 p.m.)

JOHN PRATHER, 1224 WEST 6TH STREET, EL DORADO, KS, VICE PRESIDENT CORPORATE RELATIONS, GROENDYKE TRANSPORTATION, INC, 3550 NORTH OHIO STREET said they are in opposition to this variance. He said Groendyke spent over a decade planning the move of their transportation business to the Bridgeport area. He referred to a City Planning document (brochure) that encouraged businesses to relocate to the area. He said they are around like neighbors with compatible uses and based their investment decision on the planning issues. He said this is not about the permit for a conditional use; it is about compatible traffic and infrastructure associated with businesses in the area. He said BABA was formed to deal with traffic issues on Ohio and preservation of future property values. He said the group is about helping out neighbors and maintaining safety on public thoroughfares in the area. He said at the time BABA was formed 29th Street and Ohio was extremely hazardous because of traffic patterns in the area. He said as a result of BABA's efforts, traffic control devices were installed and that the signals were a very important safety measure. He said that feeling of success and accomplishing something together as neighbors is what BABA is about. He said they are concerned about compatibility of this proposed use and preserving City property taxes in the area, preservation of property values and employee safety and security. He said he doesn't see how this use will improve or add to any of the items he just mentioned; therefore, they are opposed to the application.

HENTZEN (Out @3:20 p.m.)

JOHN C.WADSWORTH, PRESIDENT AND OWNER, PIPING & EQUPMENT COMPANY, INC. 1111 EAST 37TH STREET NORTH. He said his company is a 65 year old mechanical contractor who has been located in the Bridgeport area for 65 years. He said in 2010, he issued 620 W-2 forms and provided over $12,000,000 in payroll to his employees.

WADSWORTH said he was present as a concerned citizen and a 50 year resident of Wichita who has a substantial investment in the Bridgeport area, his company, and his employees. He said he has observed the development of the Bridgeport area into a first class industrial park. He said it is an area where construction, transportation, service and manufacturing companies have migrated due to the unique characteristics of the area. He said it is a great area for employment and industrial companies and is zoned General Industrial. He said there are many valuable businesses in the area employing well over 10,000 employees. He said he understood the need for heavy industrial zoning and why conditional use permits are required for certain business operations.

WADSWORTH mentioned several City Ordinance violations in the area including Andale Concrete Trucks using jake brakes within the City limits; the mountains of concrete and asphalt that Cornejo and Andale Concrete have dumped along Ohio Street for use in their paving operation, which requires a conditional use permit which he understands has not been approved, but the business goes on. He said he used to sell his industrial scrap iron to Axis Metal for them to sell as scrap iron until he found out they were operating without a conditional use permit.

WADSWORTH asked the Planning Commission to answer several questions about the proposed conditional use including: what kind of machine will be used to shred the scrap metal; who is the manufacturer; what is the size of the machine; what is the noise level when the machine is in operation; how does the machine prevent projectiles from being thrown when they are shredded; what happens when a propane bottle is in the vehicle being shredded; how many trucks will enter the site each day; what is the impact to the traffic along 29th Street; what is the traffic pattern for all trucks to enter the site; how will the applicant manage their trucking fleet different than their Kansas City operation which had 72 KDOT inspections of their trucks in a 2-year period resulting in 40 out of service violations; how will the

applicant manage this operation differently than their operation in St. Joseph, Missouri which had so many fires (7 major fires in a 4-year period) that the Fire chief asked to shut down the business; what happens to emergency responders when there is a fire and 29th Street is blocked by rail cars; what is the applicant's plan to dispose of tires and gas tanks, which they have indicated cars to be shredded will not include; how many rail cars a day will enter and leave the site; when will the switching occur; how long will 29th Street be blocked with rail cars.

MOTION: To grant the speaker 1 additional minute.

HILLMAN moved, **FARNEY** seconded the motion, and it carried (10-0).

He asked how Commissioners can vote on this issue if they cannot answer the following questions: How can they vote on this Conditional Use permit without accurate information; make a decision that this application fits the uses and character of the neighborhood; indicate the application does not detrimentally affect nearby property; determine the application does not impact public health, safety, and welfare; vote on the application with staff recommendations that are basically unenforceable; vote on the application when a majority of the surrounding property owners and businesses in the area oppose the application; vote on the application when the Staff Report is inaccurate due to information provided by the applicant and lack of understanding of the business and their operations and their performance at their other facilities. He concluded by saying that he believed it was up to the Planning Commission to make an informed and educated decision while following the "Golden Rules" and the Ordinances of the City. He said he didn't understand how any of the Planning Commission could vote on this application.

KAPLAN briefly reviewed the history of the case including the fact that the conditional use had been to DAB VI and the City Council twice. He said there has been much supposition and speculation as to where the applicant ought to locate their operation by people who know nothing of the criteria and requirements for this type of operation. He said the objections of neighboring owners are one factor to consider during deliberations on the merits of the application, not a basis for denial of anything. He said the neighbors are not experts in land use. He said the Planning Commission has heard the material before and he would answer any and all questions. He briefly reviewed the proposed screening, masonry wall, berm, shrubs, trees and grass. He said this will develop 50 permanent jobs for the area, as well as several hundred temporary jobs during the construction phase of the project. He said no truck traffic will be allowed on Mead, and added that this is a 25 acre property that will generate traffic no matter what is located at the site. He introduced Nick Hayes, Midwest Scrap Management, who will be managing the site and was also present to answer questions.

FOSTER asked if keeping the building at the site was in the conditions.

MILLER said there was no specific condition for that and it was stated in the applicant/agent's testimony that the building would remain as a buffer to the north.

FOSTER asked if staff could add a condition that the building stay in place or if it is demolished, that the applicant be required to provide the same type of screening as the screening on the east side of the site.

KAPLAN commented that the applicant intends to do that.

HILLMAN said he seemed to recall that the applicant indicated they would use the building for materials storage.

FOSTER asked if 29th Street was considered a minor arterial.

MILLER said 29th Street is an arterial street.

HILLMAN asked how many exits from the property.

MILLER said one exit onto 29th Street and mentioned that it was agreed that trucks would not use Mead Street.

> **MOTION:** To approve subject to staff recommendation and add language to condition #2 to the effect that if the building is removed from the front part of the property, that area will need to be bermed and landscaped with appropriate screening similar to the east side of the site.
>
> **MARNELL** moved, **KLAUSMEYER** seconded the motion.

HILLMAN said unless one of the speakers is interested in buying back the property and developing it in some other manner, he said he would have to support the motion. He said it is a shame to have salvage in this area but at one time this was the outermost part of the City and a City as developed as Wichita needs a number of salvage operations. He said sometimes long-term planning is not always able to address all issues that will arise.

FOSTER said this is a tough decision but he believes the applicant has made efforts to address the impact on the neighborhood with the fence, berming and other landscape items.

MOTION CARRIED 9-1. **MCKAY** – No.

EXCERPT OF THE MARCH 18, 2010 MAPC HEARING

Case No.: CON2010-08 - Cargill Meat Solutions Corporation (property owner), Midwest Scrap Management, Inc. (prospective purchaser) / Robert Kaplan (agent) requests a City Conditional Use to permit wrecking and salvage on property described as:

Lot 1 except beginning at the Northwest corner of Lot 1; thence East 213.12 feet; thence South 340 feet; thence West 213.12 feet; thence North 340 feet to beginning, Block 1, North Industrial Park Addition to Sedgwick County, Kansas.
AND
Beginning at the Northwest corner of Lot 1; thence East 213.12 feet; thence South 340 feet; West 213.12 feet; thence North 340 feet to beginning, Block 1, North Industrial Park Addition to Sedgwick County, Kansas. Generally located at the southwest corner of 29th Street North and North Mead Avenue (2901 N. Mead).

BACKGROUND: The application area is located at the southwest corner of north 29th Street and Meade Street, and is zoned GI General Industrial ("GI"). The applicant is seeking a Conditional Use to permit "wrecking and salvage" on the 25.68-acre site that is developed with an office building that currently houses Cargill Meat Solutions. The current owner intends to sell the property to Midwest Scrap Management, Inc., who intends to operate a metal and scrap salvaging, sorting and shredding operation. Material will be brought in primarily by truck; however processed material is primarily shipped out by rail. Trucks will be used for local delivery. It is estimated that incoming truck trips will be fewer than 20 on an average day and up to 30 on a busier day. Scrap piles may reach 30 feet in height. The applicant's do not part-out vehicles. Inoperable vehicles located on-site will be shredded. Shredded material ends up in "fist-sized" pieces. The application area has one access point each to 29th Street and to Meade. The business expects to employ up to 50 office workers, truck drivers and heavy equipment operators.

The *Wichita-Sedgwick County Unified Zoning Code*, Sec. II-B.14.r defines "wrecking/salvage yard as a lot used for the collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage material, junk or discarded materials; and/or for the sale of parts thereof. A wrecking and salvage yard is allowed by Conditional Use permit in the LI Limited Industrial ("LI") and GI districts, and allowed by right in the Air Force Base ("AFB") District, subject to Supplementary Use Regulations Sec. III-D.6.e (1) the use is not abutting an arterial street, expressway or freeway; (2) in the opinion of the Planning Commission, the use will not adversely affect the character of the neighborhood; and (3) is enclosed by a fence or wall not less than eight feet in height and having cracks and openings in excess of five percent the area of such fence. With respect to the requirement that the use not abut an arterial street, planning staff has been advised by the Office Central Inspection that as long as the use is located at least 150 from arterial street right-of-way it is considered to not be abutting. The existing chain-link fence depicted on the submitted site plan does not meet the opacity requirement mention above. The screening wall needs to also meet the standards outlined in Sec. IV-B.3.h: screening walls and fences shall be constructed of standard building materials customarily used for wall and fence construction such as brick, stone, concrete masonry, stucco, concrete or wood. In the past, staff has received complaints regarding the use of large rectangular concrete blocks as screening material. It is recommended that such fencing material be prohibited from meeting the screening requirement.

Surrounding property is all zoned GI, and is used for a variety of industrial uses including warehousing, steel fabricating, grain elevators, outside storage of trailers, offices and manufacturing, and salvage and wrecking. Glickman Metal Recycling is located just east of the application area, and contains significant piles of scrap metal.

CASE HISTORY: The site appears to have been zoned heavy industrial in 1958, and was platted as the North Industrial Park Addition in June 1972.

ADJACENT ZONING AND LAND USE:

NORTH:	GI	General Industrial; elevator, manufacturing
SOUTH:	GI	General Industrial; grain elevator
EAST:	GI	General Industrial; outside storage of semi-truck trailers and mobile home-type trailers, warehousing
WEST:	GI	General Industrial; outside metal recycling; steel fabricating

PUBLIC SERVICES: 29th Street is a paved four-lane arterial with approximately 50 feet of half-street right-of-way. Meade is a paved two-lane street with 35 feet of half-street right-of-way.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide depicts this site as being appropriate for "employment / industry center." Employment / industry centers encompass areas with uses that constitute center or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The GI zoning district is the most intense zoning district contained in Wichita-Sedgwick County Unified Zoning Code ("UZC"), except for the Air Force Base ("AFB") district.

The application area is still subject to the amended November 27, 1972, General Urban Renewal Plan. The General Land Use Plan map of that document depicts this site as appropriate for "heavy manufacturing" that is a category of industries which are apt to have an extensive impact on the surrounding area. Included are heavy assembly and fabrication uses which may create considerable traffic volume, noise, dust, odor, blast and smoke. Floor area to lot area ratio shall not exceed 3.00 with maximum lot coverage limited to a maximum of 50 percent. As currently developed the site complies with these development standards.

The January 4, 2005, 21st Street North Corridor Revitalization Plan's Preferred 20+ Land Use Plan depicts the site as appropriate for "general industrial" uses, that acknowledges the importance of heavy industry in the Wichita region and specifically the importance of rail dependent uses in the plan area. Rail dependent and heavy industrial uses are allowed in this category. Light industrial uses area also allowed.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The Conditional Use shall permit the torch cutting, crushing, shearing, baling, shredding, storage and shipping of motor vehicles, appliances and other industrial scrap materials. Recycling, salvage or wrecking activity is not permitted within 150 feet of 29th Street's southern right-of-way.

2. Screening walls shall comply with Sec. IV-B.3.h, except that the use of the large rectangular concrete blocks as fencing material is prohibited.

3. The site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. Material used for the screening wall shall be identified on the approved site plan.

4. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.

5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection.

6. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.

7. Storage of all of scrap materials (vehicles, metals, appliances, etc., including baled material) waiting to be processed and the containers they are stored in shall be organized and be maintained in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.

8. The applicant shall maintain at all times an active program for the eradication and control of rodents.

9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.

10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.

11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.

12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.

13. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.

14. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.

15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All surrounding property is zoned GI General Industrial, and is used for industrial activities ranging from outside storage of trailers, warehousing, manufacturing, steel fabricating or wrecking and salvage. The wrecking and salvage operation has extensive piles of scrap.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned GI General Industrial which permits a very wide range of commercial, office and industrial uses. The site is developed with an office building and has some room for additional building. The site could be used as currently zoned; however, there has been increasing interest in wrecking and salvage, as demonstrated by two recent development applications within the vicinity of this application, and city-wide there have been a total of 10 requests in the last two years.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval are designed to minimize foreseen impacts to nearby property owners.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval would provide another location for the disposal of scrap material. Denial would presumable present the prospective purchaser with delays that could result in a loss of income and business opportunity.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is in conformance with adopted plans as described in the conformance with plans and policies section located above.

6. Impact of the proposed development on community facilities: Existing community facilities are in place to address anticipated demand on community facilities. Truck traffic would potentially increase but the streets in the area were developed to accommodate industrial traffic.

DALE MILLER, Planning Staff presented the Staff Report.

He reported that Cargill was not related to this application, it is an application by Midwest Scrap Management, Inc. He said the sale had not been finalized when the ownership list was received from the title company. He reported that eight to nine people spoke in opposition to the proposal at the DAB VI meeting. He said the DAB voted 5-0 to recommend denial of the request. He said he would like to address some of the questions that came up at the DAB meeting in case the same issues come up today. He said the Glickman northern property line is 640 feet from 29th Street and he said 29th Street is 571 feet from the rear of the existing (formerly Cargill) building at the site. He said another issue that was discussed was the 2005 application located further north of 33rd Street on St. Francis which was the Campbell's wrecking and salvage application. He said that case was put on hold by the MAPC while staff developed an amendment to the Unified Zoning Code (UZC) which would have liberalized the recycling processing code. He said that proposed amendment was denied by the MAPC. He said the Campbell's took their case to the City Council who in turn denied their proposal.

MITCHELL asked so to the best of staff's knowledge the Campbell operation is still going on.

MILLER said yes. He said the original legal use is going on, but they did not get approved for the extra recycling processing they requested. He said how legal the operation is today may be debatable.

BOB KAPLAN, AGENT FOR THE APPLICANT introduced **NICK HAYES, MIDWEST SCRAP MANAGEMENT, INC.** who he said will be managing the local facility if the proposal is approved. He showed a short slide presentation of the operation including the proposed sample screening fencing, which was cast concrete. There was also a short slide presentation entitled "Today's Scrap Recycling Industry" by the Institute of Scrap Recycling Industries, Inc.

KAPLAN commented that **MR. HAYES** was present to answer any questions regarding the operational aspect of the proposal. He said **RUSS EWY, BAUGHMAN COMPANY, PA.,** was present to speak to the land plan and **GRANT TIDMAN, J.P. WIEGAND,** was present to discuss finding an available site. He said this site they have acquired is appropriate for this type of business because it is in a GI General Industrial zoned district. He said the Bridgeport area permits outright most manufacturing and large industrial uses such as asphalt and concrete plants, gas and fuel storage, landfills, rock crushing operations, transfer stations and wrecking and salvage operations. He said Bridgeport is an industrial area and that is why it is zoned the way it is. He said what they propose is similar to the Glickman Iron and Metal shredder next door, which they feel is the beauty of the site, a similar use already exists in the area. He said they will build screening along 29th Street and have no plan to do anything with the building so that will remain as is to buffer and screen to 29th Street. He said the operations and shredding will take place on the south side of the site. He said all non-ferrous metal will go inside the warehouse. He said steel will be stored outside. He said GI is the most intensive zoning district. He said this proposed use complies with the 2030 Functional Land Use Guide and also with the 21st Street North Corridor Revitalization Plan. He said the property is attractive because it is already zoned properly and it is next to rail service which is critical to a wrecking/salvage operation. He said all scrap materials are shipped out by rail car. He said there are environmental monitoring wells on site; they have a dust suppression system and they will screen off the shredder. He said they feel all conditions in the Staff Report are appropriate and they will comply. He said they located this property after a two-year search and that Midwest Scrap Management will be investing approximately $20 million in the operation. He said they operate "state of the art" facilities and referred Commissioners to the booklet distributed as a handout with pictures of the Kansas City operation. He said he understood the neighborhood opposition and the complaint that the storage piles exceed the height of the screening fence, but he said they will have those two objections no matter where they go.

MOTION: To give the agent/applicant an additional two minutes.

HENTZEN moved, **DOWNING** seconded the motion, and it carried (11-0).

NICK HAYES, MIDWEST SCRAP MANAGEMENT, INC., 5539 RUSSELL STREET, MISSION, KS said this will be a "state of the art" shredding operation. He said they will invest $20 million in the shredder alone in addition to the property, equipment and additional materials they will acquire for the site. He said this site will be built from the ground up and will be environmentally compliant. He said there is ground water monitoring on site and they will use a closed-loop water injection system to keep dust down. He said the closed loop system injects water into the mill where the material is shredded and the system recycles the water. He said the machine will have a screen over the area where material falls. He said they use a produced called "Fluff" for trash which is a favorite of local landfills because it provides a top coat which helps with odor control. He said the system they would like to install shreds 300 tons an hour. He said it can shred one car and sort it every 15 seconds. He said all cars will have gas tanks and fluids removed from the cars before shredding. He said they will be generating additional revenue streams for materials, equipment, trucks, etc. to service customers in the area.

HILLMAN asked about a fence tall enough to cover and shade materials.

HAYES said the piles of material will be right around 30 feet which is what they keep at their current location. He said the material will be piled in the middle of the operation and he didn't know what height would be high enough to cover that. He said the machine processes materials very quickly so the majority of piling will be about the size of a fist and that will be shipped out to be reused. He said they will build a cast concrete fence to the height that is required.

MARNELL asked about the existing shredder that has explosions and asked if that was from the gas tanks?

HAYES said yes, but they will require that gas tanks be removed before they accept cars at this facility.

MITCHELL clarified that **MR. KAPLAN** said the proposal complies with the 2030 Functional Land Use Guide.

KAPLAN replied yes sir it does.

MITCHELL asked how many employees are anticipated at this operation.

KAPLAN said between 30-40 initially, and probably expanding to 50-60 and they will not be minimum salary jobs, but skilled individuals like truck drivers and machine operators, which he said they believe fits the description of "employment industry center."

KLAUSMEYER asked for a clarification on the screening.

KAPLAN said the fence will be solid cast concrete. He said the UZC requirement is eight feet in height; however, they will take the fence to any reasonable height that the Commission requires.

RICK LOWE, 1509 SOUTH SPRINGHOLLOW CIRCLE said he owns and operates a business in Bridgeport and that he was present as President of the Bridgeport Area Business Association (BABA) which was founded in 2007. He said one of the first things the Association did was contact city staff and start working on land use issues just like the type of things that are being discussed today. He commented that the group has a great deal of regard for Planning Staff and their tremendous help with what the Association is trying to do in the Bridgeport area. He said there are several reasons why BABA members object to this proposal. He said he would like to take exception to staff's findings, specifically item #5 on page 4. He said he was not sure if he agreed with the comment that this is in accordance with the Comprehensive Plan, especially the 21st Street North Corridor Revitalization Plan. He mentioned a previous case which was CON2005-11, a conditional use for wrecking and salvage that was denied because of the conflict between the proposed use and the 21st Street North Corridor Revitalization Plan and added that property was not located on an arterial. He also mentioned item #3 which talked about the extent to which removal of the restrictions will detrimentally affect nearby property. He said the salvage piles can be up to 30 feet high. He said at the company's current operations in Kansas City, (which another speaker has pictures of) the piles look to be considerably taller than that. He said an eight-foot screening fence is not going to do a whole lot to block a 30-foot pile of scrap metal. He said it is impossible to have a 30-foot high pile of metal with only a 150-foot setback from the arterial and not have a detrimental effect on nearby property. He reiterated that DAB VI voted unanimously to deny the request. He referred to the booklet entitled "Bridgeport Area Business Association – Working Together for Business Success" which highlighted the types of businesses that are located in the Bridgeport area. He said although it is a GI zoned area which is the heaviest use in the zoning code, a lot of the businesses in the area are very nice, high quality, very pristine and if this request is approval, it will be very detrimental to the businesses in the area. He mentioned several other businesses that have located to Bridgeport and made multi-million dollar investments in the area.

MITCHELL asked for an estimate of the number of employees in the Bridgeport business district.

LOWE responded off the cuff between 5,000 – 6,000 people.

HILLMAN commented that there were nice businesses in the area that he has visited and done business with and he appreciates what they are trying to do. He said he noticed Glickman, as well as a number of other salvage yards, was not one of their members. He asked if BABA has approached those people.

LOWE said yes. He added that BABA refers to itself as the area east of Broadway; west of I-135; south of the Big Ditch; then south of 29th Street to 25th Street. He said they have members south of 29th Street, but Glickman is not on the list because they have not joined BABA. He said Glickman has talked to them about on-going land use issues and cleaning up the area.

HILLMAN asked if they have had discussions concerning screening fences or containment of blowing of trash.

LOWE responded to date, no they haven't

HILLMAN asked if the Commission approves this application, will BABA have interactions with this group.

LOWE said that discussion is appropriate for this board to have if the application is approved it is reasonable and prudent for this body to discuss types of restrictions such as the height of the screening and depth of setback. He said he doesn't think the 150-foot setback noted in the report is adequate. He said that would allow the piling of scrap three to four stories tall north of the frontage of the building. He said if the application is approved there is nothing that would keep them from tearing the building down and stacking material up to 29th Street.

LEONARD HICKS, 2230 CARDINAL DRIVE, MEMBER OF BABA said he owns two buildings in the Bridgeport area. He said he took time to take pictures of Midwest Scrap Management's Kansas City operation, which he referred to in a presentation. He mentioned a conditional use case from 2003 that requested expansion on 21st Street east of Broadway and at that time Planning Staff stated expansion of salvage operations in this corridor was a major concern due to the recruitment and retention of industrial businesses. He said he has previously lived in Kansas City and that there was a constant problem with salvaged cars because the salvage yards did not take gas tanks. He said the gas tanks were basically thrown all over the city. He said 135 is an elevated expressway that looks down into this area. He said an eight to ten-foot screening fence is not going to help. He said the gas tanks are a major concern of his. He concluded by stating that Glickman was a non-conforming site that should not be taken into consideration to accept this use. He referred to the picture presentation which showed that most of the piles were over 30 feet tall.

FARNEY asked if that location was in the state of Kansas or Missouri.

HICKS said Kansas City, MO. in a hidden area so the fencing was not as critical.

TOM OLSEN, EXECUTIVE VICE PRESIDENT, HOC INDUSTRIES, 3511 NORTH OHIO said he has worked for HOC Industries for 29 years. He said they moved to Bridgeport in 1997, when there wasn't much up there. He said within the last 10 years millions of dollars have been invested in property in the area including several Fortune 500 companies including Wal-Mart, Family Dollar, Dollar General, Coleman Company, U.S. Department of Defense, Bed Bath and Beyond and many others. He said they

have corporate clients that come to their offices. He said Johnson Controls, who has 1,200 employees, also has corporate clients coming in and they were a major objector to the 2005 application that was eventually rejected by the MAPC. He said they have spent millions of dollars to make a nice business park in this area. He said he understood that there has to be recycling somewhere, but that there were certain things that just do not fit in this area. He said the Planning Department is currently working with BABA to create a "protective overly" which will give them the opportunity to attract other quality businesses into the area who may employee 500-1,000, and they have the area to do it up there. He said these types of businesses are not going to move into areas that have salvage yards, he can guarantee and in fact, some businesses may move out if this continues to happen. He said once these things are approved it opens "Pandora's Box" for those types of businesses to come in all over the area. He said BABA has made tremendous strides and they would appreciate it if they didn't go backwards. He reiterated that DAB VI recommended denial. He said this business is just not a fit for the business park. He said the Planning Department is currently working on a protective overlay for the area and added that there are several types of businesses they would like to exclude including wrecking and salvage type operations. He said a wrecking and salvage yard is not a "permitted business" in GI zoning. He said it is only permitted with a conditional use. He said he thought it was kind of arrogant to buy a property and spend that much money knowing you haven't got permission to use it as a wrecking and salvage yard. He referred to map which showed the businesses that are willing to agree to the protective overlay. He said they defined the Bridgeport area as businesses on Meade, 25th Street, Ohio and boundaries of Broadway, 135 and 29th Street. He said the owner of the company owns a lot of property in the area and they are concerned about the value of their properties falling. He said they have one piece of property directly across the street from this site and they are scared to death that the property will be worth zip if this conditional use is approved. He concluded by asking the Commission to support denying this application.

MARNELL asked if the Glickman Salvage operation has been there for an extended period of time?

OLSEN said Glickman has been there since they moved in 1987.

MARNELL asked about another salvage operation north of 29th

OLSEN said the only other one he can think of since 1986-87 is the Campbell's, but he said that is very limited but neighbors say they are not abiding by the limitations on which they received the permit.

MARNELL asked what type of business was that.

OLSEN responded a recycling business but they are not supposed to be doing any industrial recycling.

MARNELL asked if he had any idea how long that business has been there?

OLSEN said a couple of years.

MARNELL commented then it is relatively new, but Glickman has been there a long time.

OLSEN said yes it has and been a physical blight to the area for a long time.

MARNELL commented so your company still chose to build there anyway?

OLSEN said yes they did.

BOB ALDRICH, VICE PRESIDENT FOR WINDY CITY RAILWAY SERVICES, MEMBER OF BABA said for the last couple of years BABA has been working with Planning Staff to develop a

protective overlay to limit the type of businesses that are going into the Bridgeport area such as salvage yards, rock crushers and sexually oriented businesses. He said this is a very pristine industrial park area with nice, clean types of businesses. He said a salvage yard will have a detrimental effect on the other businesses in the area. He said these businesses have sunk millions of dollars into their businesses and clean up of the area. He said at one time it wasn't so nice up there. He said these businesses employee 6,000 plus employees. He said this area is literally the gateway to the northern part of Wichita along 135. He said the first thing you see is this nice industrial park area. He said if this salvage yard is approved, it will be the first thing that will hit you as you drive into Wichita and it will have a negative effect on Wichita. He mentioned the photographs of the Kansas City operations with a crane and a pile of scrap that is well over 60 feet high. He said no screening, unless you come up with a bubble, is going to hide that from the area. He said he believes this is going to have an adverse affect on some of the other businesses and he is afraid that once the door is opened up, they will not be able to stop it because of the zoning. He said just because it is a GI area and everything is allowed in there but the kitchen sink doesn't necessarily mean that all types of businesses are appropriate for the area. He said especially after they have spent many hours developing the protective overlay. He said it is very rare that businesses come in and police themselves. He said this is a unique area to the City. He concluded by asking the Planning Commission to deny this because this would have an adverse effect on what they are trying to do in the area. He commented that Campbell Recycling is very limited in what they can do, but they are doing baling, scraping and processing which they do not have permission to do. He said they came back to the Commission and tried to get approval but he recalls that Commissioner McKay commented at the time of the denial that it would have an adverse effect on the quality type industrial park they are trying to do at Bridgeport.

MARNELL asked if the type of business he conducts at his location could be conducted in a lower zoning classification than GI.

ALDRICH said his office is located downtown, but he is a member of BABA. He said he buys and sells railroad car parts, so that is not issue with the Bridgeport area.

RITA _____HOSPITALS OF HOPE, 3545 NORTH SANTA FE said she was present to express her concern about this issue. She said she agreed with Mr. Lowe and Mr. Hicks and said there was no way that this kind of visual blight and noise pollution will not affect property values in a negative way. She said they are also concerned that this may cause increased crime by lowering property values and providing motivation for crime. She said they have had issues in the past when parts were stolen off of their vehicles for scrap and they are concerned that this could happen again.

MARNELL asked if she knew if Hospitals of Hope could operate in lower zoning than GI.

RITA _____ said they are a non-profit organization with an office and warehouse located in Bridgeport and that she didn't know exactly what the zoning requirement would be for that.

DENISE GERBER, 2612 N. LONFGELLOW, FINANCIAL MANAGER AND RECORDING SECRETARY FOR MOORES COLLECTIONS, LLC. she said Moores Collections invests in commercial real estate and leases property for rental income. She said typically they hold real estate long term and acquire quality and functional properties in good locations and lease them to financially sound and quality tenants that take pride in operating their businesses at these locations. She said last June the company acquired 3030 N. Ohio, which is located two blocks east of 29th Street and Meade. She said this 10,000 square foot warehouse is located in the Bridgeport Industrial Park and they have made a substantial investment. She said they were successful in leasing the property in less than 6 months to a truck servicing operation, which they felt was good considering the downturn in the economy. She said the tenant and company have made substantial investments in property improvements. She said their

major concern is retaining the economic value in this property. She said they are worried that the market value of this property will be difficult to sustain if this conditional use for a scrap yard is approved. She said they worry if they will have difficulty retaining their current tenant or attracting any future tenants. She said they are also concerned about visual blight. She asked the Commission to visualize three floors of piled junk cars or scrap metal. She also mentioned potential noise, airborne and ground pollution, and extra traffic. She said they believe allowing a wrecking and scrap operation will detract from other businesses in the area and negatively affect property value; therefore, they oppose the proposed conditional use.

JOHN C. WADSWORTH, 1418 SPORT OF KINGS, PRESIDENT AND OWNER, PIPING AND EQUIPMENT CO., 1111 EAST 37TH STREET NORTH said they are a 64-year old mechanical contractor that builds refineries, power plants, pipelines and other stuff that people don't want in their backyard. He said they have been in the Bridgeport area for 64 years and employee anywhere from 150-300 employees on a full-time basis and spend between $10-$15 million dollars per year in salaries. He said they were located on North Topeka Street, but three years ago he purchased property on North Ohio and 37th Street and has invested approximately $3.5 million dollars on that manufacturing facility that includes an office building and fabrication shop. He said he is against the proposal and staff report and recommendation. He said he believes they need to ask more questions on some of the staff report recommendations. He specifically referred to page 4 of the report, item #5 that talked about storage of materials, bales, and scrap metals on surfaces approved by the Office of Central Inspection (OCI). He said he did not know what an "approved surface" was and he said he was not sure whether OCI has the staff to enforce that, which he said has been proven over and again by the condition of the Campbell Scrap Yard. He said the Campbell Recycling Center has a lot of industrial waste that is not permitted but they continue to be in operation. He referenced item #7 that talked about "storage of all metals shall be organized and in an orderly manner." He said he was not sure what that definition means. He asked how you store scrap metal that is over 30-feet tall. He mentioned Cornejo's storage of materials in south Wichita and said he assumed that was considered orderly. He mentioned item #9 which talked about weed control. He said he would like to know how to do that on his eight acres because weeds are very tough to control. He mentioned Kansas Department of Health and Environment (KDHE) regulations and said he would like to know how you take in salvage vehicles without liquids. He asked how you get liquids out of vehicles and motors. He said he understands gas tanks will not be part of this process and will be disposed of in other places. He concluded by saying in short Piping and Equipment located on North Ohio is against staff's recommendation without further information.

MARNELL asked if Mr. Wadsworth's manufacturing facility required GI zoning?

WADSWORTH responded yes, their operation requires GI type zoning. He added that when he was recruited to move his business to Park City, he decided to stay in the Bridgeport area because of the zoning and the location of the highways. He also said he believed the Siemens plant would have been located in Wichita if the city had done a better job of promoting the Bridgeport area.

LOU EFTINK, PRESIDENT OF DESIGN BUILD CONSTRUCTION said he also bought property a couple of years ago at **1330 E. 37th STREET NORTH.** He said he is a member of BABA who has been working diligently on a protective overlay. He said he strongly opposes this proposal, not because he agrees there are areas that you can put this operation other than GI. He opposes it because the applicants themselves said everywhere they go they are opposed to. He said because they pile trash so high and then only have an eight-foot fence, they are not trying to be a good neighbor. He said he does not have the answer. He said he knows things can be done inside and that things don't have to be piled 30-feet high. He said these are not even options. He said once they move in, they can pile debris 30-feet high and are not limited to three stories; it can be up to four and five stories. He said we can't control it. He said just because Glickman is there, they can't change that but they don't have to compound it. He said they are

just asking that they become a good neighbor and figure out a solution. He said they are the ones bringing this problem into the area. He said anyone in this room who owns property knows this is not going to increase the value of their property. He said he strongly opposes this until they come up with an environmentally friendly plan to be in an upper end industrial zone. He asked the Commission not to accept the proposal as it was presented today. He said once they are there OCI does not have authority to enforce the conditional use and the language is so generic, how do they enforce it? He asked how you define controlling weeds. He said they are battling in other areas and when it is brought to the City's attention, someone says that is acceptable. He concluded by saying that the City spends a lot of time trying to enforce something that just should not have been approved to begin with.

KAPLAN referred to a map that depicted 12 recycling facilities, scrap facilities, and auto recycling facilities between 21st and 31st Streets, and from the Bypass to Broadway. He said those are similar industries to what he is seeking a conditional use for today. He said there are one dozen of them and there is a reason they are located within this area. He said they are not there coincidentally or by accident. He said they are there because that is the area that was designed and planned to house them. He said they are concentrated in that area for a reason, it just didn't happen. He said that is where the City put them because that is the suitable area for them. He said they have GI zoning and access to rail. He said he tries very hard not to put on his lawyer's hat and not to get adversarial at administrative hearings; he saves that for the courtroom. He referred to several slides of areas located in Bridgeport. He said the slides are self-explanatory. He said they have heard that this is a pristine area. He mentioned the recycle oil plant, trailer storage and a pipeline. He commented these slides are the nature of area the area and that is what you see from 135 and the immediate neighborhood. He said this is an industrial park that houses many recyclers and salvage operations. He concluded by saying that he tried very hard to get a meeting with these folks to discuss these matters and said he got no response.

HENTZEN asked when this area for this type of activity was established by the City?

MILLER said between 1937 and 1958. He said when researching that question, he found a 1937 map that showed "F" Zoning which was the old heavy industrial designation south of 29th Street, then in 1958 there was a City map that showed heavy industrial zoning up to 37th Street.

SHERMAN referenced a letter in the applicant's packet from Westar Energy concerning energy estimates from someone who reports to him. He said this was a service Westar provides to all new customers. He asked if that put him in conflict on this proposal.

LANG said he would not think that would cause a conflict of interest. He said that was someone providing information and not part of the application.

HENTZEN said he should ask the same question, since he owns and operates out of 3711 N. Hillside.

LANG said that address was not located in the notice area for this application.

MITCHELL said he was going to recommend denial of the application on the basis that it is not compatible with the 2030 Functional Land Use Guide; does not increase the potential for employment and it has not been shown to be a compatible use for this area.

MOTION: To deny the application.

MITCHELL moved, **HILLMAN** seconded the motion.

MARNELL said he was going to be the "odd man out" today. He said he was going to make a substitute motion to approve per staff comments. He said he has commented before that this is zoned GI, which is the most heavily zoned area the City has. He said since the 1970's the City has spent a lot of money dealing with groundwater issues in the Bridgeport area to make the land usable for industrial use. He said he believed some purchasers took advantage of the lower land costs in the area and now want to have the area be something other than what it is which is a heavy industrial area. He said that is why he is making the motion.

> **SUBSTITUTE MOTION:** To approve subject to staff recommendation. (And later added a 35-foot height restriction and that no materials could be stored outdoor further north than the south side of the existing building.)
>
> **MARNELL** moved, **SHERMAN** seconded the motion.

SHERMAN asked if there was any limitation on how high the stacks can be.

MILLER said he couldn't remember if there was a height limit in the zoning district, but said typically that is a building issue which means it is unlimited, other than just being able to hold the pile with a slope.

SHERMAN asked if it was prudent to amend that motion to have a height limit.

MILLER responded that the Commission could place a maximum height limit.

MILLER commented there was an 80-foot building height limit.

MARNELL suggested a maximum of 35-feet in height.

HAYES commented that they would be okay with 35-feet if that is what it takes to satisfy the Commission.

HILLMAN asked if they would be willing to build a 35-foot wall.

HAYES said he didn't know if that was possible. He said they would like to work with the Commission, but he didn't know about that.

HILLMAN suggested a 20-foot wall and limiting the stacks to 20 feet.

HAYES commented that 20 feet was pretty low and they would rather get approval for something that was 30-35-feet high.

SHERMAN asked about the buffer from 29th Street.

HAYES said the building was going to remain, but if the Commission would like more restrictions where they are actually storing materials outside, they would be fine with that. He said they have no intention of storing materials in front of the building on 29th Street.

KAPLAN asked for clarification on the height restriction.

SHERMAN said 35-feet from the motion maker.

KAPLAN replied that they would accept the lesser height restriction if that was the will of Commission.

MARNELL said he would like to change the substitute motion to include a 35-foot height restriction; and no materials being stored outdoor further north than the south side of the building.

HILLMAN asked the motion maker if he wanted to add anything to the eight-foot designated wall.

MARNELL responded that he didn't think there was anything you can do in terms of the interstate being an elevated road. He said as far back from 29th Street as this operation is going to be, he said he believes it will pretty much over most of the operation.

FOSTER asked if the there has been any discussion about limits of the proposed protective overlay within this GI zoning

MILLER deferred to **DONNA GOLTRY,** Planning Staff.

GOLTRY said geographically the protective overlay mostly focused on 29th Street and south. But he may want to ask the members of BABA who were present for clarification on that.

FOSTER clarified that if for unknown reasons the building is taken down at the site, the only requirement is an eight-foot solid screening 150 feet south of 29th Street.

MILLER asked for clarification of the current motion to see if the height of the screening was higher than the 8-feet required by the UZC.

FOSTER asked for clarification on the protective overlay limits.

MILLER explained that the property owners in the area submitted a proposal, but that staff doesn't have anything drafted up yet.

HENTZEN said this question applies to the bigger picture of Wichita and Sedgwick County because of the hundreds and of thousands of cars. He asked what are we going to do about them if we can't put them in the lowest zoning area that the City has? He said this is a real problem and suggested that they get it settled because they spend three to four hours on discussion every time there is an application for a salvage yard. He said what are they going to do and what should they do?

DIRECTOR SCHLEGEL commented that sounded more like a rhetorical question. He said Wichita-Sedgwick County does not have a wrecking/salvage yard plan. He said each case is addressed on a case-by-case basis, with each case being judged on its individual merits.

MITCHELL asked that the map be displayed reflecting salvage operations in the area. He said with all those salvage companies in one area, it doesn't seem to him like there is a pressing need to add one more.

HENTZEN said he thinks it is pressing with the number of cars in the area.

SUBSTITUE MOTION PASSED (6-5).
DOWNING, HENTZEN, HILLMAN, MILLER STEVENS and **MITCHELL** – No.

EXCERPT OF THE AUGUST 19, 2010 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING HEARING

Case No.: CON2010-08 (Returned by City Council 6-15-2010) - Midwest Scrap Management, Inc. (owner) / Robert Kaplan (agent) Request City Conditional Use to permit wrecking and salvage at 2901 N. Mead Avenue on property described as;

Lot 1 except beginning at the Northwest corner of Lot 1; thence East 213.12 feet; thence South 340 feet; thence West 213.12 feet; thence North 340 feet to beginning, Block 1,
North Industrial Park Addition to Sedgwick County, Kansas.
AND
Beginning at the Northwest corner of Lot 1; thence East 213.12 feet; thence South 340 feet; West 213.12 feet; thence North 340 feet to beginning, Block 1, North Industrial Park Addition to Sedgwick County, Kansas, generally located At the southwest corner of 29th Street North and North Mead Avenue.

BACKGROUND: The application area is located at the southwest corner of north 29th Street and Meade Avenue, and is zoned GI General Industrial ("GI"). The applicant is seeking a Conditional Use to permit "wrecking and salvage" on the 25.68-acre site that is developed with an office building. Midwest Scrap Management, Inc., intends to operate a metal and scrap salvaging, sorting and shredding operation. Material will be brought in primarily by truck; however processed material is primarily shipped out by rail. Trucks will be used for local delivery. It is estimated that incoming truck trips will be fewer than 20 on an average day and up to 30 on a busier day. Scrap piles may reach 30 feet in height. The applicant's do not part-out vehicles. Inoperable vehicles located on-site will be shredded. Shredded material ends up in "fist-sized" pieces. The application area has one access point each to 29th Street and to Meade. The business expects to employ up to 50 office workers, truck drivers and heavy equipment operators.

The *Wichita-Sedgwick County Unified Zoning Code*, Sec. II-B.14.r defines "wrecking/salvage yard as a lot used for the collecting, dismantling, storing, and/or salvaging of machinery, equipment, appliances, inoperable vehicles, vehicle parts, bulky waste, salvage material, junk or discarded materials; and/or for the sale of parts thereof. A wrecking and salvage yard is allowed by Conditional Use permit in the LI Limited Industrial ("LI") and GI districts, and allowed by right in the Air Force Base ("AFB") District, subject to Supplementary Use Regulations Sec. III-D.6.e (1) the use is not abutting an arterial street, expressway or freeway; (2) in the opinion of the Planning Commission, the use will not adversely affect the character of the neighborhood; and (3) is enclosed by a fence or wall not less than eight feet in height and having cracks and openings in excess of five percent the area of such fence. With respect to the requirement that the use not abut an arterial street, planning staff has been advised by the Office Central Inspection that as long as the use is located at least 150 from arterial street right-of-way it is considered to not be abutting. The existing chain-link fence depicted on the submitted site plan does not meet the opacity requirement mention above. The screening wall needs to also meet the standards outlined in Sec. IV-B.3.h: screening walls and fences shall be constructed of standard building materials customarily used for wall and fence construction such as brick, stone, concrete masonry, stucco, concrete or wood. In the past, staff has received complaints regarding the use of large rectangular concrete blocks as screening material. It is recommended that such fencing material be prohibited from meeting the screening requirement.

Surrounding property is all zoned GI, and is used for a variety of industrial uses including warehousing, steel fabricating, grain elevators, outside storage of trailers, offices and manufacturing, and salvage and wrecking. Glickman Metal Recycling is located just east of the application area, and contains significant piles of scrap metal.

CASE HISTORY: The site appears to have been zoned heavy industrial in 1958, and was platted as the North Industrial Park Addition in June 1972. The request was sent to the City Council on June 15, 2010. The action of the City Council was to return the request to the District Advisory Board and the MAPC for further consideration. The City Council minutes of June 15, 2010, are attached.

ADJACENT ZONING AND LAND USE:

NORTH:	GI General Industrial; elevator, manufacturing
SOUTH:	GI General Industrial; grain elevator
EAST:	GI General Industrial; outside storage of semi-truck trailers and mobile home-type trailers, warehousing
WEST:	GI General Industrial; outside metal recycling; steel fabricating

PUBLIC SERVICES: 29th Street is a paved four-lane arterial with approximately 50 feet of half-street right-of-way. Meade is a paved two-lane street with 35 feet of half-street right-of-way.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide depicts this site as being appropriate for "employment / industry center." Employment / industry centers encompass areas with uses that constitute center or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The GI zoning district is the most intense zoning district contained in Wichita-Sedgwick County Unified Zoning Code ("UZC"), except for the Air Force Base ("AFB") district.

The application area is still subject to the amended November 27, 1972, General Urban Renewal Plan. The General Land Use Plan map of that document depicts this site as appropriate for "heavy manufacturing" that is a category of industries which are apt to have an extensive impact on the surrounding area. Included are heavy assembly and fabrication uses which may create considerable traffic volume, noise, dust, odor, blast and smoke. Floor area to lot area ratio shall not exceed 3.00 with maximum lot coverage limited to a maximum of 50 percent. As currently developed the site complies with these development standards.

The January 4, 2005, 21st Street North Corridor Revitalization Plan's Preferred 20+ Land Use Plan depicts the site as appropriate for "general industrial" uses, that acknowledges the importance of heavy industry in the Wichita region and specifically the importance of rail dependent uses in the plan area. Rail dependent and heavy industrial uses are allowed in this category. Light industrial uses area also allowed.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The Conditional Use shall permit the torch cutting, crushing, shearing, baling, shredding, storage and shipping of motor vehicles, appliances and other industrial scrap materials. Recycling, salvage or wrecking activity is not permitted within 570 feet of 29th Street's southern right-of-way.

2. Screening walls shall comply with Sec. IV-B.3.h, except that the use of the large rectangular concrete blocks as fencing material is prohibited.

3. The site shall be developed and operated in compliance with all of the conditions of UZC, Art III, Sec. III-D.6.e, including the use of approved fencing or wall materials, and the approved site plan. Material used for the screening wall shall be identified on the approved site plan.

4. Employee parking spaces shall be provided per the UZC on an area paved with asphalt or concrete.

5. Stored materials, containers or bales shall be stored on a surface approved by the Office of Central Inspection.

6. A revised site plan addressing the conditions of approval shall be approved by the Planning Director prior to the beginning of the operation.

7. Storage of all of scrap materials (vehicles, metals, appliances, etc., including baled material) waiting to be processed and the containers they are stored in shall be organized and be maintained in an orderly manner, including an exposed perimeter, as specified by Environmental Services to prevent rodent harborage and breeding.

8. The applicant shall maintain at all times an active program for the eradication and control of rodents.

9. Weeds shall be controlled within the subject property and adjacent to and along the outside perimeter of the screening fence.

10. Any locking devices on entrance gates shall meet Fire Department requirements. Access to and within the site shall be provided by fire lanes per the direction and approval of the Fire Department.

11. Access to the subject property shall be provided for on-going inspections of the site for groundwater and soil contaminants by Environmental Services and other applicable governmental agencies. If the inspections determine it to be necessary, the applicant shall be required to install monitoring wells and/or perform soil testing on the property to monitor the quality of groundwater and/or soil, and shall pay the cost of an annual groundwater and/or soil test for contaminants as designated by the Environmental Services.

12. Notification shall be given to Environmental Services of any on-site storage of fuels, oils, chemicals, or hazardous wastes or materials. A disposal plan for fuels, oils, chemicals, or hazardous wastes or materials shall be placed on file with Environmental Services. All manifests for the disposal of fuels, oils, chemicals, or hazardous wastes or materials must be kept on file at the site and available for review by the Environmental Services.

13. The applicant shall implement a drainage plan approved the City Engineer prior to the commencement of operations that minimizes non-point source contamination of surface and ground water.

14. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the operation of the storage of scrap metal waiting to be processed and storage of the scrap metal bales.

15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth

in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: All surrounding property is zoned GI General Industrial, and is used for industrial activities ranging from outside storage of trailers, warehousing, manufacturing, steel fabricating or wrecking and salvage. The wrecking and salvage operation has extensive piles of scrap.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned GI General Industrial which permits a very wide range of commercial, office and industrial uses. The site is developed with an office building and has some room for additional building. The site could be used as currently zoned; however, there has been increasing interest in wrecking and salvage, as demonstrated by two recent development applications within the vicinity of this application, and city-wide there have been a total of 10 requests in the last two years.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The recommended conditions of approval are designed to minimize foreseen impacts to nearby property owners.

4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval would provide another location for the disposal of scrap material. Denial would presumable present the prospective purchaser with delays that could result in a loss of income and business opportunity.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The request is in conformance with adopted plans as described in the conformance with plans and policies section located above.

6. Impact of the proposed development on community facilities: Existing community facilities are in place to address anticipated demand on community facilities. Truck traffic would potentially increase but the streets in the area were developed to accommodate industrial traffic.

DALE MILLER, Planning Staff presented the Staff Report. He reported that DAB VI voted 4-3 to recommend approval of the application.

FOSTER asked about the noise ordinance with regard to the decibels generated by the shredding machine.

MILLER commented that the noise ordinance addresses "ambient level" where readings are taken to see if noise generates a certain level of decibels above the ambient level. He said in industrial areas there are more tolerant noise levels.

FARNEY asked if there was any update on the number of truck trips or on the rail issue.

MILLER said the applicants have indicated that it is important to their operation that they have railroad access and that was one of the keys to their selection of this site. He said at the DAB meeting the applicants indicated that there would be up to 60 heavy trucks a day coming and going from the site.

BOB KAPLAN, 1600 EPIC CENTER, AGENT FOR THE APPLICANT said Landscape Architect Dan Wilson from Wilson, Darnell and Mann was present to review the revised, updated landscape plan for the site, as well as Rick Hayes from Midwest Scrap Management, Inc., who will be the Operations Manager of the site. He reminded the Commission that they approved this conditional use on March 18, 2010. He said when the matter went before the City Council; the Council referred the issue back to the DAB and Planning Commission due in part to concerns expressed by the neighbors. He said DAB VI reheard the case last night and recommended approval of the application. He said enhancements have occurred to the plan since previously approved by the Commission including a very sophisticated landscape plan designed by Wilson, Darnell and Mann. He said they have also been discussing and will offer not to use Mead Street for ingress/egress onto the property but use 29th Street only. In addition, he said they have decreased the size of the application area from approximately 25 acres to 12.4 acres. They will also make no changes to the building facing on 29th Street. He referred to a booklet which was a handout and briefly outlined the contents including a cover letter highlighting several issues they felt were salient to consideration of the application, a letter from Westar Energy, site map, several landscape renderings of the site and pictures of surrounding properties. He mentioned that this was a GI General Industrial zoned area with close access to I-135. He said this is not near a residential area, and asked the question "If not here, where." He concluded by mentioning the private covenant and conditions the applicant has offered the Bridgeport Area Business Association (BABA), which included not only staff conditions but additional conditions they have agreed to. He also mentioned that Recreational Vehicle Products has withdrawn their protest petition, and the 47% protest included about three properties.

DAN WILSON, WILSON, DARNELL AND MANN, LANDSCAPE ARCHITECTS, 105 SOUTH WASHINGTON referred Commission members to several renderings of the landscaping plan for the property. He mentioned the proposed berm along Mead Street and a portion of 29th Street. He said this will provide screening from a lot of different locations; however, the top of the shredder can be seen from the southeast. He said there will be an 8-foot decorative concrete wall on top of the 6-8- berm. He said in addition, there will be landscaping to soften the view including trees and low level plantings that will be large enough to make the landscape meaningful. He said the perspective or visual cone works well close to the site but added that away from sight you might be able to see a little more.

DIRECTOR SCHLEGEL asked Mr. Wilson to describe the boundaries of the smaller conditional use application area and the proposal to cut off access to the site from the east along Mead Street.

WILSON said it is the applicant's intention to use 29th Street as the main access onto the site. He said they had planned to leave the access drive from Mead Street onto the site open; however, if the Commission desires that closed, they are willing to do that. He said the 12.4 acres encompasses from the end of the building to the south property line, which is approximately one half of the original site application.

NICK HAYES, WICHITA OPERATIONS MANAGER, MIDWEST SCRAP MANAGEMENT, INC, 5539 RUSSELL ST, MISSION, KS said they will be operating a state of the art facility not only visually but the shredder operation itself. He said this is identical to the plant they operate in Kansas City. He said this shredder has the capacity to shred and sort a car in 15 seconds. He briefly explained the operation and commented that the landfills like to use the "fluff" which is one of the byproducts to keep down odor. He said all materials will be stored on concrete until they are trucked to the landfill. He said the steel will be loaded onto rail cars to be sent to steel mills across the country where it will be recycled. He reviewed the collection process; compliance regulations; and dust suppression system. He said they take no cars with gas tanks or fluids or any kind. He mentioned they obtain most of the cars from auto salvage and other scrap yards so the tanks and fluids are removed before they receive them.

MOTION: To grant the speaker two additional minutes.

JOHNSON moved, **FARNEY** seconded the motion, and it carried (9-0).

He said as far as any environmental issues, they are closely monitored by Kansas Department of Health and Environment (KDHE); there is concrete around the shredder; and they have a water reclamation system which they use to keep dust down at the site. In addition, he said any run-off is collected in concrete tanks and recycled to cut down on dust. He said a crane; other equipment; and improvements to the site will be incorporated into the project.

DOWNING asked for clarification about the "fluff " material keeping down odors.

HAYES clarified that the "fluff" was used at the landfill sites to cut down odors.

DOWNING asked the applicant if they were willing to physically close the entrance from Mead Street onto the site.

HAYES replied yes; however, he noted that the Fire Department may request that it be left open as an alternative entrance into the site and for emergency purposes.

FOSTER asked if the revised conditional use application area to 50% of what was originally requested will affect the viability of the operation.

HAYES said they did not think so because the machine processes materials so quickly.

FOSTER asked about the decibel level of the shredding operation.

HAYES said since the machine is larger with thicker inner linings, it actually cuts down on the noise level, but he added they will comply with the City Ordinance.

HENTZEN (In @ 2:40 P.M.)

FARNEY asked how long the material sits on the ground before it is loaded onto a railcar.

HAYES said not longer than one month because they are constantly processing material.

GEORGE E. PEARSON, 821 EAST 25TH STREET, PEARSON EXCAVATING said he works close by and drives by the site on his way to work. He said sitting in his office he sees the same thing down the street from him. He said this type of operation fits into the area since people are conducting this type of operation already. He said he sees nothing wrong with the application and added that it creates jobs and adds to the tax base. He said the bottom line is he is in favor of approval of the application.

SCOTT EILERT, CARGILL, 2901 NORTH MEAD STREET said they rent the facility from Midwest Scrap Management and that he was speaking in favor of their proposal. He commented that Midwest purchased the site from Cargill and that they are leasing the facility from Midwest for approximately 18-24 months while they are finishing their new facility to be located on First Street downtown. He said he wanted to acknowledge that Midwest purchasing this property was a key element in their project to build a $15,000,000 facility downtown. He said they felt this was a win/win situation. He said Midwest is creating jobs and is a company willing to move in and invest in Wichita. He said granted, not at the same level as Cargill, but they are supportive of businesses that are willing to make investments in the area and create jobs. He said the proposal is consistent with zoning in the area. He added that he felt they would set a new precedent for curb appeal and appearance with the improvements

the owners are willing to make to the property. He concluded by saying that he hoped the Commission would look favorably on the proposal.

MCKAY asked if there were any conditions on the sale of the property, such as approval of this conditional use permit or did Midwest buy the property outright.

EILERT responded that Midwest bought the property outright.

RANDY SPARKMAN said as a former City employee and zoning supervisor in the Office of Central Inspection (OCI) he was present to speak in favor of the proposed project. He said he was not only speaking for this project but for use of the GI General Industrial district in general. He said he understands owners in the area are concerned and want this GI zoned area restricted to some other uses. He commented that the GI zoning district is the least restrictive zoning district and hazardous uses are very rarely restricted in the district. He said he believed staff has levied some very good restrictions on the proposed business and specifically mentioned the 35-foot material height. He said there was a statement made at the DAB that you can see this product from the highway and various other locations. He said he submits that someone has to have extremely good vision to identify exactly what the material is from the highway. He said he was very impressed with the proposed screening and landscaping the applicant was willing to provide to protect the surrounding neighborhood. He said this area was designed specifically for this kind of use.

FOSTER asked what type of screening is required and mentioned some of the operations along 21st Street east and the 21st Street Revitalization Plan. He asked about screening where this site abuts the railroad tracks.

SPARKMAN said he was not wholly familiar with the 21st Street Revitalization Plan. He said most of the operations on east 21st Street are not wrecking and salvage, but recycling which he believed required different levels of screening. He said the Office of Central Inspection (OCI) currently has enforcement issues on screening along 21st Street.

MILLER commented that Glickman Metal Recycling is between Broadway and the applicant's site.

BRIAN TURNER, HALL INDUSTRIAL SERVICES, 1221 EAST MURDOCK AVENUE said he owns lots 2 and 3 in the Bridgeport Industrial Addition which are adjacent to this site. He said he was in favor of the proposal. He said he has personally been in scrap yards in Kansas City, Oklahoma City, Dallas and Houston and said he has never been in one that looks as nice as this one does. He also mentioned that there were similar businesses in the area. He concluded by saying he was in favor of the application.

LAURIE CAMPBELL, OWNER, 3423 NORTH ST. FRANCIS, 3428 NORTH EMPORIA, AND LOT 2, BLOCK 3 BRIDGEPORT INDSUTRIAL ADDITION said she is in the recycling business and supports Midwest's conditional use request. She said this is the type of business that belongs in the area since Bridgeport and the surrounding area is GI General Industrial zoned. She said she has not been approached by BABA concerning this proposal. She mentioned increased traffic in the area which resulted in the installation of a stop sign at 29th Street and Ohio Street. She said if trucks are moving in the area, that means people are doing business and money is being made, which is better than having a for sale sign on the property. She commented that you have to wait for the train in the area now. She said Midwest is making a huge investment in the community, creating jobs, paying taxes, using utilities and that this operation will provide a beneficial service to the community. She said the aircraft companies not working at their full potential right now. She said there is a shredding operation a stone's throw from this site and added that is another reason this is the best place for this type of activity. She said GI zoning will

accommodate the Midwest Scrap operation and that Midwest has bent over backwards to try to accommodate the neighbors. She said Midwest has the right to operate a business and that this is the correct location to put it in. She concluded by asking the Planning Commission to approve the conditional use request.

BOB ALDRICH, 804 NORTH MAIN STREET said he was present to speak in opposition of the proposed scrap and metal salvage yard. He said the Bridgeport area was created by the City of Wichita to clean up a blighted area, create tax revenues and produce jobs. He mentioned the three phases of the Bridgeport Development. He said 18 companies originally located in the industrial park because they believed it was going to be a high end industrial park. He said these companies included Coleman, Love Box, Excel and others. He said that number has grown to 43 companies on the 80-acre Bridgeport site ranging in size from ½ acre to 18 acre lots. He said this area is ideal because of its close proximity and access from K-96, I-135 and I-235 highways. He said the main purpose and intent of the City in creating this high end industrial park was to attract more job opportunities into the area. He said several of the companies' employee several thousand employees, whereas the scrap metal business will only create approximately 20 jobs. He mentioned the 21st Street Revitalization Plan and added that just because GI zoning was a catch all area, that doesn't mean everything fits into that zoning. He said if this request is approved it will be detrimental to the rest of the businesses in the area who will hesitate to expand and create more jobs. He asked the Planning Commission to consider denial of the application.

RICK LOWE, 1509 SOUTH SPRINGHOLLOW CIRCLE said he owns and operates two businesses in the area and is President of BABA (Bridgeport Area Business Association). He gave a brief review of the origin of BABA which began in conjunction with discussion of the 21st Street Revitalization Plan. He said land use issues are what brought the group together. He pointed out the fact that just because the area is zoned GI, doesn't mean anything and everything fits into it. He said the conditional use procedure was put in place and designed so the City can address each application on a case-by-case basis. He said they are looking for higher end industrial use and something that will fit the character of the neighborhood. He said they are currently working on a Protective Overlay (PO) for the area with Planning Staff and added that just because a site isn't in the PO area doesn't mean they shouldn't be concerned about it. He said they will be notifying landowners within 200 feet of the PO. He commented that the Planning Commission denied a conditional use permit for a piece of property further north of 29th Street on Ohio Street. He said if this request is approved it doesn't take a rocket scientist to realize that next month the Commission will be talking about a permit on Ohio Street again. He said they don't want to see a trend started of these types of industry processing uses in the area. He mentioned the 2030 Functional Land Use Guide that said the area should be used as an employment industry center. He said taking this 25 acre site and converting it to use that will employ 10-15-20 people is not compatible with the Land Use Guide. He concluded by stating that he did not believe this conditional use application was a good fit for this neighborhood and suggested they locate south of 25th Street where the other wrecking/salvage yards are located.

JOHN C. WADSWORTH, 14810 SPORT OF KINGS, OWNER AND PRESIDENT OF PIPING AND EQUIPMENT said he employees over 200 people with a payroll of $10,000,000 - $12,000,000 annually. He referred to the map of scrap yards in the area provided by Mr. Kaplan at the March 18, 2010, Planning Commission Hearing. He said he did not believe the map was accurate and was misleading as to the actual number of operations in the area. He briefly went through the 12 locations one-by-one referring to pictures he took of each operation. He said of the 12 locations referred to on the map, only seven were actually in operation, and five of those seven were located on east 21st Street. He referred to the area along north 21st Street between Broadway and I-135 and commented that there was absolutely no development in that area. He concluded by referring to a map of the Bridgeport area today and commented that it was not an area for recyclers. He referred to the newspaper articles provided as a handout where the St. Joseph Fire Chief suggested closing down the Midwest Scrap Management

operation in Kansas City. He ended his presentation by asking the Commission to deny the conditional use application.

JOHN PRATHER, 1833 RIDGE ROAD, EL DORADO, VICE PRESIDENT CORPORATE RELATIONS, GROENDYKE TRANSPORTATION, INC., 3550 NORTH OHIO STREET provided a hand out which was two articles from the *St. Joseph News-Press* dated March, 2004, regarding fires and repeated Code violations at the Midwest Scrap Management facility in St. Joseph. He said as a safety supervisor and member of the State Commission on emergency preparedness and response he has witnessed a lot of operations and been involved with safety issues and public responsibility in transporting and dealing with hazardous materials. He said Groendyke moved from Valley Center to the Bridgeport Industrial Park for ease of access to the interstate and currently has 100 employees at the Ohio Street address. He said they want to be located with "like" neighbors who are conscientious of safety and security. He said they have concerns about the track record of this operation making application to come into the Bridgeport area. He referred to the newspaper articles and said that operational issues such as these are just the tip of the iceberg. He mentioned transportation congestion and railroad tie ups and added that this operation just does not fit into this area. He commented that when Groendyke moved to Bridgeport they were looking into the future and willing to invest; however, he said this operation is contrary to the future development of Bridgeport. He concluded by saying that compliance with City, State, and Federal regulations is important and the neighbors don't feel that any fence or berm to hide a bad operation or one that is not in total compliance with regulations will help the area.

DENISE GERBER, MORRIS COLLECTION, 128 SOUTH DELLROSE said they own a commercial rental property at 3030 N. Ohio Street located a couple of blocks east of Ohio and 29th Streets. She said they have it rented to a transportation service operation that employees approximately 80 people. She said she would like to talk to the Commission about land valuations in the north industrial corridor. She referred to 2 handouts which where maps that reflected the 2009 land values per square foot by parcel north and south of 29th Street. She commented that land north of 29th Street averages 57 cents per square foot and noted how valuable the land has become. She said land south of 29th Street where most of the scrapping operations are located along 21st Street averages 27 cents per square foot. She said she had three observations regarding this information: #1 – the further away from the 21st businesses area, the higher the land value; #2– businesses north of 25th and 29th Streets would not be located there today if a third scrap yard was in the area; and #3 - she suggested that if the applicant located this operation south of 29th Street, they would still have railroad and arterial access in additional to it being a prime location for a scrap yard. She commented that the information from the County Appraisers office indicated that neighbors will be impacted by non-typical uses. She commented that the Midwest Scrap Management operation will cause economic obsolescence to the businesses currently located in Bridgeport with the noise, dust, smoke, ground water pollution and hazardous and dangerous conditions. She said scrap and salvage operations reduce property values and can adversely impact an area and neighbors. She said given a choice, businesses will not locate near a scrap yard.

MOTION: To grant the speaker 1 additional minute.

JOHNSON moved, **HENTZEN** seconded the motion, and it carried (9-0).

She asked the Commission to consider compatibility of the application and nature of the use. She said this operation is not typical of the adjoining neighbors and will lower the value of the neighbor's properties. She asked the Commission not to drive away potential future and current businesses and added that the Commission had a responsibility to make this an even better industrial park like the City leaders envisioned back in the 1970's. She asked the Commission to please vote no to the conditional land use application.

PAT HUGHES, 1635 NORTH WATERFRONT PARKWAY, ATTORNEY, ADAMS JONES LAW FIRM said he was present on behalf of BABA. He said he was present to tie together what the Bridgeport area is, future land uses, and the impact of the proposed development and how these concerns should drive the Commission to a decision to deny the application. He mentioned land use and how it should be discussed in the particular context of this case, not as an ad hoc decision based on the applicant's proposal or the surrounding neighbors concerns, but in the broader picture and future land use questions that are involved as to how land is going to be developed in the City of Wichita. He referred to the 2030 Functional Land Use Guide which he believed was developed as a planning tool to guide the City on decisions like this current application and good land use practices. He said the Commission needs to evaluate if the 2030 Functional Land Use Guide principles are still valid. He commented that prior to 2005 the Land Use Guide designated the Bridgeport area as industrial/transportation/ utility and communication. He said the Land Use guide calls for this area to be used as an employment/industry center. He said this proposed use is clearly not an employment center. He said the use is in the category of processing center, and added that this distinction is completely left out of the Staff Report. He said the previous planning calls for the sort of use that is already in the area, which is the combined office/warehouse facility that Cargill had. He said the applicant has not shown that the 2030 Functional Land Use Guide was ill-conceived. He said the scrapping operation is not serving a need that is being generated in the area, but is importing scrap so it is not an adjunct to the existing uses in the area. He mentioned the Golden Factors and character of the neighborhood. He said the site is compatible with the current uses which are office/warehouse; he said it is not compatible with the scrapping operation next door. He mentioned removal of the restrictions and how it will detrimentally affect nearby property. He said they question the truck traffic and violation of KDHE and Kansas Department of Transportation (KDOT) regulations that seem to go along with this type of operation and whether those violations are dangerous to the community. He said the property is not vacant and it is not necessary to remove the current property restrictions for the property to be economically productive. He said any hardship on the applicant is self-incurred, if it exists. He mentioned conformity with plans and referred to the 2030 Functional Land Use Guide, which this application does not conform to.

MOTION: To grant the speaker 2 additional minutes.

DOWNING moved, **JOHNSON** seconded the motion, and it carried (9-0).

He said impact on community facilities remains unclear and whether the railroad use at this location will cause problems for traffic on 29th Street. He said there is an overwhelming opposition to the application by the neighbors. He said the supporters of the proposal want to use their properties or have applied to use their properties for scrapping operations in the Bridgeport area. He said staff's recommendation does not show the difference of employment/industry centers and processing industry uses. He said because of these reasons they feel the right result is to deny the application.

MIKE BOYD, PARTNER, GODSEND LP, 2822 NORTH MEAD STREET which currently houses the tenant Mahaney Roofing and is located directly across from the proposed shredder site. He said he has heard testimony that this is a land use issue, which is defined by zoning which did not include the 2030 Functional Land Use Guide. He asked how the decision can be limited to one issue when the issue can have such a deep impact on an area. He said he was alarmed when the Commission approved the use and 35 foot piles of scrap metal with only an eight-foot chain link fence as a barrier. He said he was one of the four surrounding property owners that filed a protest on the Commission's decision. He said he listened to Midwest's proposal for additional screening and thought the proposed new screening was good. He questioned some of the architectural renderings and perspectives. He mentioned that Mead Street is about three feet above the roadbed. He said he does not want the Commission to make a good decision based on bad information. He mentioned other concerns such as the applicant's plans to control the rodent problem, control dust production, provide water to cover the debris on site to cut down on the

smell, creating noise from shredding car bodies and operating a site attractive to birds. He said none of these items is attractive to surrounding neighbors and that it will adversely affect businesses near the site. He said this operation will negatively impact the entire area. He questioned Midwest's claim of investing $30,000,000 into the facility, and said the $20,000,000 shredding machine will not be bought in Wichita. He commented that within the last several years Groendyke Trucking and Piping and Equipment have invested $8,500,000 in buildings in the Bridgeport area. He said Mahaney Roofing employees 87 people and has a payroll of approximately $3,000,000 annually. He said the investment of the companies currently located in the Bridgeport area is being ignored; however, he feels what the companies currently located in Bridgeport have invested much more than the $30,000,000 Midwest is suggesting. He said this investment has resulted in creating approximately 6,000 jobs in the Bridgeport area. He asked the Commission to review the statutes and guidelines to see that the community benefits from this use. He said he feels as it stands; only Midwest will benefit and all the other businesses in Bridgeport will be devalued. He asked the Commission to deny the permit.

LEWIS EFTINK, 1330 EAST 37TH STREET NORTH said he was a member of BABA and supported their position on this application. He read a letter from William R. Nath, President, HOC Industries, 3511 N. Ohio Street wherein he stated that the was "adamantly and unconditionally opposed to the conditional use application to permit wrecking and salvage at 2901 N. Mead Street by Midwest Scrap Management." He commented on the detrimental effect on property values in the area and that it will deter other desirable businesses from locating in the Bridgeport. He also mentioned that granting the conditional use permit is not fair to those businesses who have invested much time and money over the years to build property values in the area.

KAPLAN said he thought it was interesting that the only thing opponents to the plan can focus on is the 2030 Functional Land Use Guide. He said it clearly states in the Staff Report that this proposal is in compliance with that Plan. He said the 2030 Guide indicates industrial use and employment; it does not quantify employment. He said 40 jobs are better than no jobs and added that the jobs created will not be menial jobs but will be machine operators and truck drivers. He said professional Planning Staff have made a finding that the conditional use request is compliant with 2030 Functional Land Use Guide so that issue really isn't an issue at all. He said this is all subject to interpretation and commented that if the building is left empty, there will be no jobs at all.

MOTION: To grant the speaker 1 additional minute.

JOHNSON moved, **HENTZEN** seconded the motion, and it carried (9-0).

He commented that this case was previously approved by the Planning Commission and that when the applicant still received complaints they went to the neighbors and as a result of those conversations they enhanced the request to make Mead Street a private driveway to cut down on traffic; they reduced the application area to 12.4 acres; they agreed to leave the current building and parking lot in tact; and provide additional landscaping. He said this is a better plan than the Commission already approved. He asked the Commission to approve the application so they can go back to the City Council.

JOHNSON said he has not talked to anyone about this application; however, he was going to support the application for three reasons. First, he said this is a quality facility that will put other scrap facilities to shame and perhaps encourage them to clean up in the future. He said the applicant presented greatly improved screening and volunteered to cut off access to Mead Street, if the Commission so desired it. He also mentioned that by putting the entire operation on the south of the property the building and hedge will provide a buffer to the north off of 29th Street. In addition, he said the size of the area they are requesting for the operation is one half of the original request. He said for those reasons he will be supporting the application.

MOTION: To approve subject to staff recommendation and the 12.4-acre limitation on size of the application; improved landscaping plan; emergency access only to Mead Street; and if an emergency access was not required, the berm would go all the way across the road.

JOHNSON moved, **KLAUSMEYER** seconded the motion.

FARNEY asked if the applicant would be subject to the scrap metal licensing procedures.

SHARON DICKGRAFE, ASSISTANT CITY ATTORNEY said as an auto wrecker, they are subject to a different type of license.

MCKAY commented that he wasn't present the last time this issue was discussed and that he had some problems. He said whether there were in fact 12 scrap yards in the area was immaterial as far as he is concerned. He said he understood a lot of the reason the Bridgeport area was developed was to clean up the area. He said the area was previously used for the operation of meat packing plants and stock yards, which was one of the reasons the Cargill plant was located there. He said land was cheap and it was in close proximity to the railroad tracks on the west. He said people are concerned that property values are going to go down, he asked where it stops. He said he listened to a presentation this morning at the Advance Plans Committee about developing an overlay for ground north of 29th Street. He said there was also discussion at this meeting about approving this request, but disapproving a request north of 29th Street. He asked what provision is there to keep this whole area from becoming salvage yards. He said he has some bad feelings going forward that this will be setting a precedent in an area the City is trying to clean up. He said he doesn't care how nice the area is, there are already 7-12 scrap yards in the area. He said he believes approving this would create a problem rather than solving one so he will not be supporting the motion.

DENNIS said this area is zoned for what they are talking about. He said he keeps coming back to the question "if not here where." He said, therefore, he was going to support motion, not that he thinks this operation will enhance the area.

MCKAY said if the area was zoned for this type of activity, they wouldn't have to be getting a conditional use.

JOHNSON said a conditional use permit is required no matter where this type of activity is located.

GOLTRY clarified that a conditional use is required in LI Limited Industrial and GI General Industrial zoning.

JOHNSON said so this type of activity requires a conditional use no matter where it is located?

GOLTRY said this type of operation could be located in the Air Force Base Overlay without a conditional use permit.

DICKGRAFE clarified that the motion included that the conditional use permit was for 12.4 acres.

The Motion carried (8-1). **MCKAY** – No.

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: MAPC Members

FROM: Terri Dozal, Neighborhood Assistant, District VI

SUBJECT: **CON2010-00008** City Conditional Use to permit wrecking and salvage at 2901 N. Mead Avenue, generally located at the southwest corner of 29th Street North and North Mead Avenue.

DATE: March 17, 2010

On Wednesday, March 17, 2010 the District VI Advisory Board (DAB) considered a City Conditional Use to permit wrecking and salvage at 2901 N. Mead.

The members were provided the MAPD staff report for review prior to the meeting. *Dale Miller*, Planner presented the case background, reviewed the staff recommendation and answered questions of members and the public.

The Board asked the following questions/comments:

- How far is the existing metal recycling in the area from this location?
- What is the height for screening?
- What would be the highest estimate of trucks coming to the property on a daily basis as the staff report said fewer than 20?
- Will they recycle fuel tanks and tires?
- What controls do you have in place to keep down dust?
- Will there be hazardous liquid leaching into the ground?
- Will there be retail of yard metal to the public?
- Has the applicant met with the surrounding neighbors about the business they are bringing to the area?
- What impact will the existing businesses have from this recycling center?

Eight members of the public made the following comments, asked questions or expressed opposition of the conditional use request::

- Bridgeport is a high quality industrial park and we are opposed to this.
- What about all the visual blight this business will bring?
- Another previous conditional use request was denied by MAPD due to the 21st street revitalization and the City's investment in the Bridgeport area. I oppose.
- I have spent a lot of money on my business to improve the area. The other recycling location has explosions and they scare us. They say one thing at these meetings and do another once they have been approved to operate.
- There has to be another location to put recycling in this city. This is detrimental to our area.
- I would feel a violation of trust by the City if this non-like business is put in Bridgeport.
- An 8-ft. fence doesn't hide anything. This is not good for our neighborhood.
- I'm concerned about retaining our property value due to visual blight. I'm opposed.
- When the Glickman recycling has explosions it shakes our building and what about airborne bits of steel that will get into my equipment and increased traffic in front of my building. I'm opposed.

- The business these owners operate in Kansas City has recycled piles over 50ft high-they can do that here as an 8ft-fence will not cover anything. Another problem is gas tanks and tires strewn throughout K.C. because the recycling plants wouldn't take them. I'm opposed.
- If we get another recycling plant we will have bidding wars between them to recycle which in turn causes an influx of robbery of materials. Who is going to protect our community when this happens. I oppose.

****Action: The District VI Advisory Board members made a motion to recommend to City Council to deny (**5-0**) the conditional use request based upon previous background information of prior applicants and the Bridgeport Association members comments.

Please review this information when **CON2010-00008** is considered.

mtd

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: MAPC Members

FROM: Terri Dozal, Neighborhood Assistant, District VI

SUBJECT: **CON2010-00008** City Conditional Use to permit wrecking and salvage. At the southwest corner of 29th Street North and North Mead Avenue (2901 N. Mead Avenue).

DATE: August 19, 2010

On Wednesday, August 18, 2010 the District VI Advisory Board (DAB) considered a City Conditional Use to permit wrecking and salvage. At the southwest corner of 29th Street North and North Mead Avenue

The members were provided the MAPD staff report for review prior to the meeting. *Dale Miller,* Planner presented the case background, reviewed the staff recommendation and answered questions of members and the public.

The Board asked the following questions/comments:

- What type of drainage would be used inside the facility?
- The height limit of the scrap piles would be at 35ft.?
- What is the daily number of trucks that would be coming into the area?
- Was access to the railroad tracks essential?
- What would be the environmental impact and would the material attract birds and rodents?
- What is the total height of the berms and fencing together?
- Bridgeport has developed a high-end industrial area and invested millions of dollars into it.
- This applicant has done a lot to make this an appealing location site. I've never seen that before.
- Nice landscaping.
- I have a concern with compatibility of the area.

Seven members of the public spoke in opposition of the request stating:

- Where the business would be getting their scrap from.
- The applicant hasn't met with the surrounding businesses to discuss their plans.
- Ground pollution.
- This business doesn't fit into our area and feel they are misleading about what they are going to do. First they said it would be 20-30 trucks daily and now we are hearing it will be 60 trucks coming in daily.
- Our area is a high-end industrial area and if we let this business in it is a step backwards to what we are trying to accomplish. This doesn't fit the character of the neighborhood.
- I have a concern for drivers as Mead Street isn't safe due to projectiles from the shredder.
- De-valuation of our properties and they will drive away other businesses for our area.
- What will this do to the 21st street revitalization plan? We don't want 29th street to turn into a dump site.

Three members of the public spoke in favor of the request stating:

- This is an essential business for Wichita
- The conversion of scrap to another product is an essential industry.
- This business is in the right location for its needs.

****Action:** The District VI Advisory Board members made a motion to recommend to City Council Approval **(4-3)** of the conditional use request based on staff recommendations.

Please review this information when **CON2010-00008** is considered.

mtd

John Wadsworth

From: Miller, Dale [DMiller@wichita.gov]
Sent: Monday, March 29, 2010 3:00 PM
To: John Wadsworth
Subject: RE: CON2010-00008 Protest - Piping & Equipment

The Law Department has advised us that we cannot count e-mailed protests unless there is a signature. One easy solution would be for you to print this e-mail, sign it and fax it to me at 268-4390.

From: John Wadsworth [mailto:john.wadsworth@pipingequ.com]
Sent: Monday, March 29, 2010 2:35 PM
To: Miller, Dale
Subject: Fwd: CON2010-00008 Protest - Piping & Equipment

John C Wadsworth
316.619.5944

Begin forwarded message:

From: "John Wadsworth" <john.wadsworth@pipingequ.com>
To: "JLMiller@wichita.gov" <JLMiller@wichita.gov>, "cbrewer@wichita.gov" <cbrewer@wichita.gov>, "JLongwell@wichita.gov" <JLongwell@wichita.gov>, "pgray@wichita.gov" <pgray@wichita.gov>, "JSkelton@wichita.gov" <JSkelton@wichita.gov>, "sschlapp@wichiita.gov" <sschlapp@wichiita.gov>, "LKWilliams@wichita.gov" <LKWilliams@wichita.gov>, "RLayton@wichita.gov" <RLayton@wichita.gov>
Cc: "john.wadsworth@pipingequ.com" <john.wadsworth@pipingequ.com>
Subject: CON2010-00008 Protest - Piping & Equipment

Ms. Miller
Attached is my opposition to the MAPC decision to allow a conditional use at 2901 N Mead. This conditional use would allow Midwest Scrap Management to develop a scrap yard with 35 foot tall stacks of scrap cars at 2901 N Mead. I look forward to hearing more facts about this company and their proposed operations as I do not believe the MAPC, MAPC Staff or DAB IV has been provided accurate information by the company or their agent, Robert Kaplan.

"We make a living by what we get, we make a life by what we give"
Sir Winston Churchill
[cid:image003.jpg@01CACEA4.7341A200]
John C. Wadsworth
john.wadsworth@pipingequ.com<mailto:john.wadsworth@pipingequ.com>
316.295.2911 (O)
316.619.5944 (C)
316.838.2014 (F)

This communication, including attachments, is for the exclusive use of addressee and may contain proprietary, confidential or privileged information. If you are not the intended recipient,

PIPING & EQUIPMENT CO., INC.
P.O. BOX 1065 WICHITA, KANSAS 67201

COPY

March 28, 2010

ATTN: MS. Janet L. Miller
City of Wichita
455 N.Main Mail Stop 1-13
Wichita, KS 67202-1688

Reference: CON2010-00008 – City Conditional Use to permit wrecking and salvage at 2901 N. Mead

Dear Ms. Miller:

As president and owner of Piping & Equipment Company, Inc. located at 1111 East 37th St North, I am **opposed** to the MAPC decision on March 18, 2010 to approve the conditional use permit for Midwest Scrap and Management, Inc. I believe Robert Kaplan the agent for Midwest Scrap and Management and Mr. Nick Hayes the proposed site manager for Midwest Scrap purposely and willfully mislead the MAPC and the MAPC staff. I do not believe the following items have been addressed by the MAPC in their 6-5 voted to approve the conditional use for 2901 N. Mead

1. The attached map presented by Mr. Kaplan indicates there are 12 approved and operating scrap facilities in the area zoned GI between 21st Street North and 32nd Street North between Broadway and approximately I-135.
   a. Item 2 of Mr. Kaplans ledgend shows C&W Auto Salvage which in fact is a residential area,
   b. Item 5 is not a permitted wrecking and salvage yard – the business is permitted as a recycling facility of household waste,
   c. Items 8 and 11 are the same facility and business,
   d. Items 2 and 6 are the same business and not two separate salvage yards.

This map presented to the MAPC during Mr. Kaplan's rebuttal is very mis-leading.

2. Mr. Kaplan stated during his rebuttal that he had attempted to contact the eight business representatives who spoke against this conditional use request when in fact he had not tried to contact any of the eight business representative present at the MAPC or others who were present at the DAB VI meeting.
3. Midwest Scrap and Management, Inc. have indicated to the MAPC staff, "It is estimated that incoming truck trips will be fewer than 20 on an average day and up to 30 on a busier day". During the MAPC Midwest Scrap management stated there could be 60 trucks per day using the facility. 60 trucks per day is significantly differ than 30. What is the honest answer?
4. The MAPC Staff Report indicates the Applicant / Agent is Cargill Meat Solutions Corporation (property owner), Midwest Scrap Management. (prospective purchaser) / Robert Kaplan (agent). It is unclear to DAB and MAPC who the applicant is and who has title to the property.

No one in the MAPC hearing or the staff report is addressing the rail car issue. I believe when rail cars are switched into or from the facility, 29th Street North will be blocked. 29th Street north is one of the main arterial East – West street in this area.

Midwest Scrap management indicates all vehicles will not contain oils, liquids, and gas tanks. I question how this is possible as vehicles have oils, liquids, lubricants throughout the vehicle. It is well know that old propane bottles which cannot be recycled are disposed of in vehicles which are scraped. When the vehicle is crushed and shredded these propane bottles explode creating an unsafe environment. No one can address where the gas tanks from these vehicles will be

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disposed of properly. Any inspection of wrecking and salvage yards currently operating can identify environmentally unsafe liquids on the ground. There are no positive environmental impacts that approval of this conditional use permit will provide the City of Wichita. Traffic volume from 20, 30, 60, or whatever the real number of trucks using the facility is will create traffic issues; noise, dust, odors, and blast from the operation of the facility are all negative issues.

The approval of a conditional use permit for this site are not consistent with the 2030 Wichita Functional Land use. The functional land use category for this site is "Employment/Industry Center" which states this category encompasses areas with uses that constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices.

Limited research of Midwest Scrap Management's current operations in St. Joseph, MO should lead to questions on corporate compliance with local, state, and federal regulations. The DOT Federal Motor Carrier Safety Agency indicated Midwest Scrap Management, Inc. USDOT Number 474469 had 80 DOT inspections in the last 24 months which resulted in 40 out of service citations (55.6% whne the national average is 22.27%). Midwest Scrap Managements Vehicle Inspection Indicator is 98.9% which indicates that 98.9% of the time a vehicle operated by Midwest is inspected by DOT a violation is determined. On February 20, 2004 Midwest Scrap Management had a three alarm fire at their St Joseph facility, the seventh fire in a four year period. To quote the St Joseph Fire Chief Jack Brown, "This time, Mr. Brown said he is fed up with the continuous fire calls to Midwest Scrap. This last one really sent a message to them, he said. "I told them no more, that's it. We've spent our last 24 hours at that scene"".

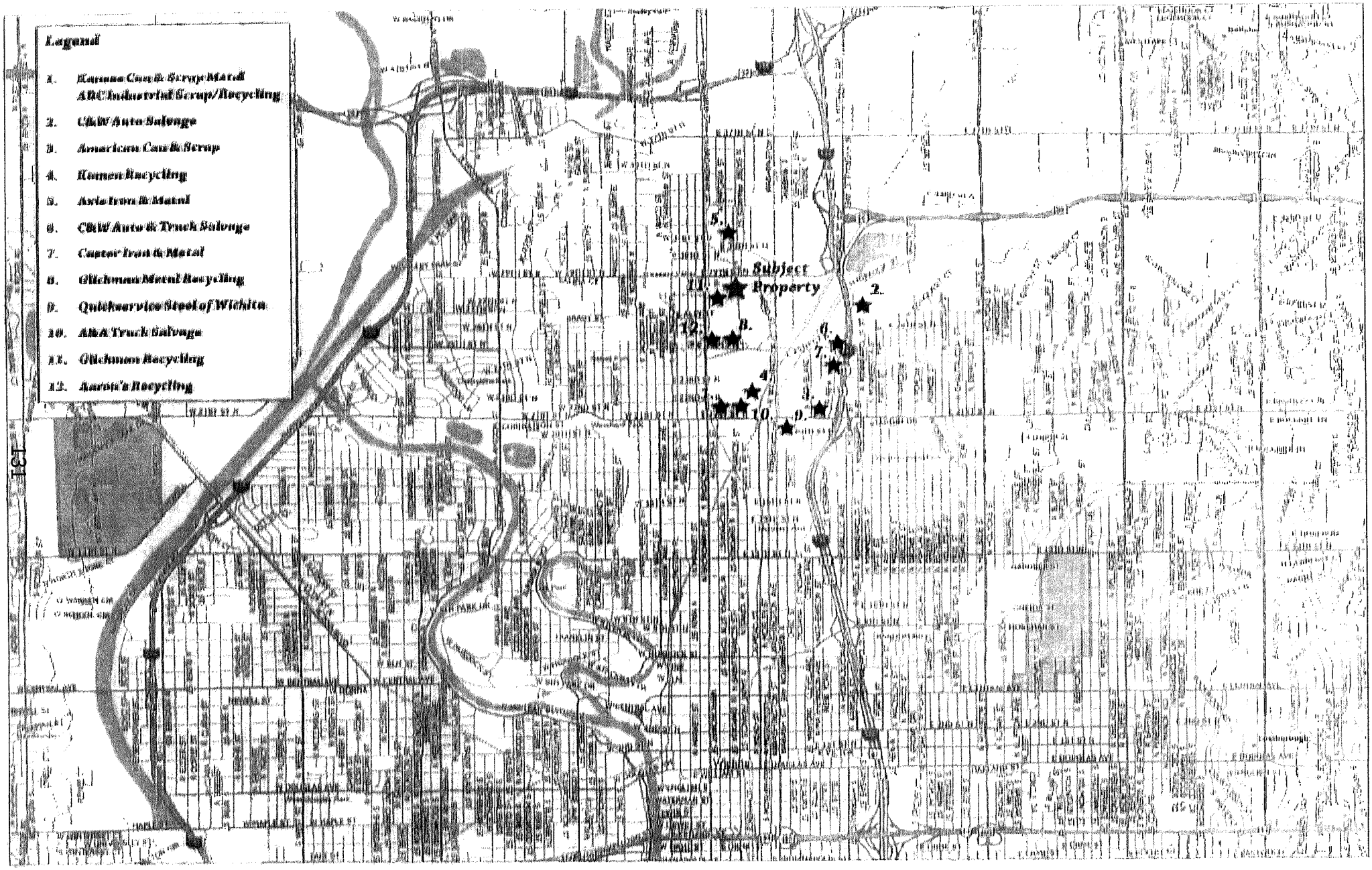
The Bridgeport Area Business Association has been working with the City of Wichita Planning department for over one year to develop a protective overlay for the Bridgeport Area. This protective overlay would support the 2030 Wichita Functional Land Use Guide. When the City of Wichita created the Bridgeport Industrial Park, it was the City vision to have a manufacturing area and transportation area to support economic development. This City vision is BABA's vision: Dedicated to maintaining and improving the appearance and safety of the area as well as establishing a vehicle for collaboration of business expertise that would help business grow and benefit employees, owners, and the community. Approval of this conditional use permit for Midwest Scrap Management, Inc. is a major step backwards.

Sincerely,

John C. Wadsworth
President

CC:City of Wichita Council members: Williams, Schlapp, Skelton, Gray, Longwell
City of Wichita Mayor Brewer
City of Wichita Manager Robert Layton
MAPC Plans Manager Dale Miller

Encl: Kaplan Map
Bridgeport Photos


Legend
1. Kansas Can & Scrap Metal
ABC Industrial Scrap/Recycling
2. C&W Auto Salvage
3. American Can & Scrap
4. Kamen Recycling
5. Axis Iron & Metal
6. C&W Auto & Truck Salvage
7. Caster Iron & Metal
8. Glickman Metal Recycling
9. Quickservice Steel of Wichita
10. A&A Truck Salvage
11. Glickman Recycling
12. Aaron's Recycling
Subject Property

Agenda Item No. V-2

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: ZON2011-00002 – City zone change from SF-5 Single-Family Residential to NO Neighborhood Office, subject to Protective Overlay #250, generally located northeast of Central Avenue and 159th Street East. (District II)

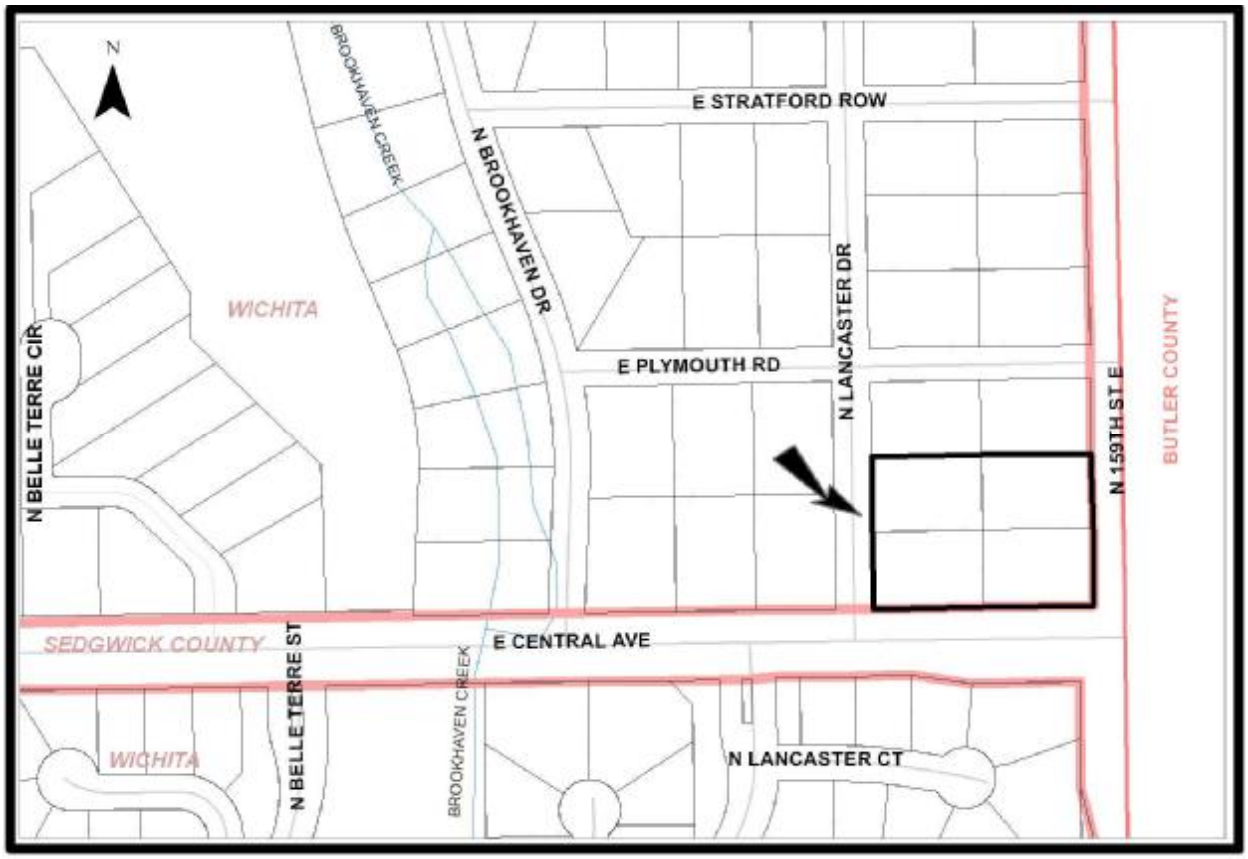
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

DAB II Recommendation: Approve, vote (9-0).

MAPC Recommendation: Approve, vote (13-0).

MAPD Staff Recommendation: Approve.



Background: The applicant was originally seeking GO General Office ("GO") zoning for 2.04 acres, zoned SF-5 Single-family Residential ("SF-5"), that are located at the northwest corner of Central Avenue and 159th Street East. At the District Advisory Board (DAB) II meeting held on March 7, 2011, a number of neighboring property owners spoke in opposition. District Advisory Board II voted to defer action and asked the applicant to meet with concerned neighbors. The applicant met with neighboring property owners on March 16, 2011, at which time the neighbors presented a list of thirteen requests, detailed below. Two key requests from the neighbors were for the applicant to change the application from the GO zoning district to the NO Neighborhood Office ("NO"), subject to Protective Overlay #250 that limits the permitted NO uses to Office, General and Medical Service and to install a masonry wall along the north property line. Other concessions requested by the neighbors are also discussed below.

The subject property is platted as Lots 1, 2, 3 and 4, Block 3, Brookhaven Estates. Lots 1, 2 and 3 are vacant. Lot 4, the northwest corner of the application area, is developed with a single-family home that is owned by the applicant. The plat depicts forty-foot building setbacks along Lancaster and 159th Street East. The application area has 360 feet of frontage along Central Avenue and 246.66 feet along 159th Street East and Lancaster Street.

Two single-family homes, zoned SF-5, are located immediately north of the application area. East, across 159th Street, is the Terradyne office building and southeast is an animal care clinic, both of which are in the City of Andover and zoned B-1 Office Business district. The land east of the application area (159th Street and east) is located in the City of Andover. Land located south of the application area is developed with a single-family residential subdivision (Belle Terre Addition), zoned SF-5, as is the land located to the west (part of Brookhaven Estates Addition).

Examples of uses permitted by right in the NO district include: Single-family Residential, Duplex, Group Home, Church, Library, Parks and Recreation, Automated Teller Machine, Medical Service and Office, General. No individual commercial use permitted in the NO district can exceed 8,000 square feet of gross floor area. The NO district permits building heights up to 35 feet.

If this request is approved, the Unified Zoning Code (UZC) requires non-residentially zoned lots that are adjacent to SF-5 or TF-3 Two-family Residential ("TF-3") zoned lots to provide screening along the common rear and interior lot lines. The required screening can be fencing, evergreen vegetation, berm or a combination of the three. If fencing alone is used for screening, the landscape ordinance will also require one tree every forty feet along the common property line. Additionally, the landscape ordinance will require landscape street yard plantings along the south and west property lines and parking lot screening.

The UZC requires outdoor loading or work areas and dumpsters located within 150 feet of the property line to be screened. Dumpsters may not be located within twenty feet of any property zoned TF-3 or SF-5. Rooftop mechanical equipment must be screened from ground view. Compatibility setbacks of at least fifteen feet are required where side and rear lot lines of MF-18 Multi-family Residential ("MF-18") or more intense zoning are adjacent to property zoned SF-5 or TF-3. Compatibility building height standards limit buildings to thirty-five feet in height unless additional setback is provided. UZC lighting standards require outdoor lighting sources, including base or pedestal, pole and fixture to employ cut-off luminaries to minimize light trespass and glare, and shall be mounted at a height not exceeding one-half the distance from the neighboring lot, unless evidence is provided to the satisfaction of the Zoning Administrator that the light source will be aimed or shielded such that the light source is not visible from the neighboring lot. Lighting sources shall be limited to 15 feet in height within 200 feet of residential zoning districts.

The NO district permits one ground or pole sign up to thirty-two square feet in size on a single-tenant zoning lot. Multi-tenant lots sharing the same sign may have up to twenty-four square feet each, up to a maximum sign size of ninety-six square feet. If more than one business is located on a zoning lot,

additional pole or ground signs may be permitted when the signs are separated by 150 feet. Ground or pole signs are prohibited from being located within fifteen feet of an adjacent property line. Sign height is limited to twenty-two feet. Maximum pole or ground signage on a zoning lot shall not exceed one-half square foot per linear foot of street frontage. Lighting of signs is limited to indirect or internal illumination of white light only. Flashing or moving images are prohibited. Institutional uses may be permitted for portable signs in certain circumstances. Building signage not exceeding thirty-two square feet in area or thirty feet in height, and limited to one per building elevation for each major use in the building, provided the total amount of building signage for each major use in the building does not exceed thirty-two square feet; and provided that the building elevation to which any sign is to be attached shall have one of the following: street frontage, be adjacent to a nonresidential zoning district or if adjacent to a residential district, there must be parking, loading or open space area with a depth of 150 feet or more as measured from the face of the sign to the property line which adjoins the residential district.

At the March 16, 2011, meeting between the applicant and neighbors, the neighbors presented a list of concerns. The neighbor's concerns and the applicant's position regarding each issue is presented below:

1. Change the zone request to NO (Neighborhood Office). The applicant has accepted this request.
2. Screening to the North and West will be some sort of a concrete or brick wall. The applicant initially declined to accept this request but at the Metropolitan Area Planning Commission (MAPC) meeting agreed to install the wall after the two adjoining property owners agreed to contribute to the cost of the wall. In this instance, the code does not require a masonry or concrete screening wall. Staff was asked to obtain an estimate of the linear foot cost to install a six-foot tall masonry wall. Staff was provided an estimated $45.00 per liner-foot cost or $16,200 for the 360-foot length across the northern property line.
3. Architecture, style, materials or colors similar to those in neighboring communities, such as a gable or hip roof and brick / stone façade facing towards the street. The applicant has accepted this request.
4. Signage to be monument style with no moving or LED signage allowed. The applicant has accepted this request. See item 12 below for additional sign limitations.
5. Single story structures only. The applicant agreed to limit building height to 25 feet.
6. Lighting (building & parking lot) designed to prevent light pollution. The applicant agreed to comply with Unified Zoning Code Sec. IV-B.4 standards regarding outdoor lot lighting standards.
7. Noise - no outdoor speakers or PA systems to prevent noise pollution. The applicant agreed to this request.
8. Landscaping. In addition to the screening wall noted in item 2 above, the applicant agreed to install materials consistent with Landscape Ordinance minimums. The MAPC recommended that the applicant plant one and one-half times the minimum requirement along Lancaster, and the applicant agreed.
9. Prevent rezoning of the property once approved for a period of 30 years. The neighbors are concerned that the applicant will be back in a year or so to request commercial zoning if the NO district fails to develop. The applicant has declined to accept this recommendation, and the MAPC did not include it in its recommendation.
10. No residential street access. The applicant has agreed to complete access control along Lancaster.
11. In addition to SF-5 uses, only allow Office, General and Medical Facility uses; remove Assisted Living and Nursing Facility as permitted uses. This request was agreed to when the applicant amended the application to NO instead of GO zoning, per item 1 above.
12. No temporary signage. The applicant also agreed to eliminate: electronic message signs, animated signs, advertising decorations (streamer, string pennant, pinwheel type signs), banner signs, commercial balloon signs, moving, flashing or rotating signs.
13. Drainage plan; don't want this development to force the neighborhood to pay for sewer system, etc. The applicant has agreed to dedicate right-of-way along Central and 159th Street sufficient to meet code minimums, limit access to access management standards and provide guarantees for their proportional share of improvements. The establishment of assessment districts and those properties included in any

given district are established following procedures defined in state law that is outside the ability of the zoning process to address.

Analysis: District Advisory Board II heard this case on March 7, 2011, and they recommended by a vote of 6-1 to defer the case until April 4, 2011, to allow the applicant and neighbors to work out their differences. The MAPC first reviewed the case on March 10, 2011, and they recommended by a vote of 11-0 to defer action until DAB II made a recommendation. On March 16, 2011, planning staff, the applicant and approximately fifteen neighbors met and discussed the thirteen items of concern discussed above. As noted above, agreement was made on all but three of the neighbor's concerns: the masonry wall along the north property line, increased screening along Lancaster and a prohibition against requests for a zone change for thirty years. District Advisory Board II reheard the request on April 4, 2011. At the second DAB II meeting, the main discussion point was the neighbor's request for the masonry wall. On a 9-0 vote, DAB II recommended the request be approved subject to staff's recommendation plus a requirement that an agreement be reached to split the cost of a masonry wall between the applicant and the two affected homeowner located to the north; otherwise, the recommendation was to deny the request. The second MAPC meeting took place April 7, 2011. At that meeting, the applicant agreed to all of the neighbors' requests except the thirty year ban on additional zone changes. The MAPC approved (13-0) NO Neighborhood Office zoning, subject to Protective Overlay #250, described below:

A. In addition to those uses permitted by right in the SF-5 district, only the following NO uses are permitted: Office, General and Medical Service.
B. Signage shall be per the sign code except ground or pole signage shall be monument style; building signage shall not face to the north or west and there shall not be any ground or pole signage located along Lancaster. Also prohibited are: portable signs, temporary signs, electronic message signs, animated signs, advertising decorations (streamer, string pennant and pinwheel type signs), banner signs, commercial balloon signs and moving, flashing or rotating signs.
C. Complete access control along Lancaster shall be dedicated prior to the issuance of occupancy permits except that single-family uses can have access to Lancaster. Prior to the issuance of occupancy permits, access control as requested by the appropriate engineer shall be dedicated along 159th Street and Central Avenue. Prior to the issuance of building permits, additional right-of-way along Central and 159th Street shall be dedicated that is sufficient to meet adopted intersection standards.
D. Buildings constructed on the site shall share similar architectural features, such as exterior color, exterior façade materials and roof styles. Exterior building facades facing a street shall be of materials and colors similar to those found in the adjoining neighborhood, such brick or stone. Roof styles shall be hip or gable (no flat or parapet roofs are permitted).
E. Uniform parking lot lighting standards and fixtures shall be installed. Light sources located on the application area shall comply with UZC standards such as Sec. IV-B.4.
F. Maximum building height shall be twenty-five feet.
G. No exterior speaker or amplified voice systems are permitted.
H. Landscaping that is one and one-half times required by the Landscape Ordinance shall be installed along Lancaster.
I. At the time Office, General or Medical Service uses are developed, a masonry wall at least six feet tall shall be installed along the northern property line of the application area.

The two abutting northern property owners and the applicant reached agreement, dated April 19, 2011, regarding the construction of a masonry wall along their common property line, fulfilling the DAB II requirement needed to maintain a positive recommendation.

Protests totaling 13.51 percent have been filed. All of the protests involve land located in the Belle Terre subdivision located south of East Central Avenue.

Financial Considerations: There are no financial considerations in regards to the zoning request.

Goal Impact: Approval of the request will promote Economic Vitality.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions: 1) Adopt the findings of the MAPC, approve the zone change subject to the provisions of Protective Overlay #250, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority vote required); OR 2) Deny the zone change request by making alternative findings, and override the MAPCs recommendation (two-thirds majority vote required) OR 3) Return the application to the MAPC for further consideration (simple majority vote required).

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

Attachments:

- MAPC Minutes of March 10, 2011 and April 7, 2011
- DAB Memos, meetings of March 7, 2011 and April 4, 2011
- Ordinance
- Protest map
- Letters/emails: Zellers, Stovak; McGill, Zwiener and Zellers; French, Lanie, Noah, McGill, Adamson, Park, Handyside, Kirby, Noah

ORDINANCE NO. 49-005

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

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

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2010-00002

Zone change request from SF-5 Single-Family Residential ("SF-5") to NO Neighborhood Office ("NO"), with a PO Protective Overlay on properties described as:

Lots 1, 2, 3 and 4, Block 3, Brookhaven Estates Addition

SUBJECT TO THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #250:

A. In addition to those uses permitted by right in the SF-5 district, only the following NO uses are permitted: Office, General and Medical Service.
B. Signage shall be per the sign code except ground or pole signage shall be monument style; building signage shall not face to the north or west and there shall not be any ground or pole signage located along Lancaster. Also prohibited are: portable signs, temporary signs, electronic message signs, animated signs, advertising decorations (streamer, string pennant and pinwheel type signs), banner signs, commercial balloon signs and moving, flashing or rotating signs.
C. Complete access control along Lancaster shall be dedicated prior to the issuance of occupancy permits except that single-family uses can have access to Lancaster. Prior to the issuance of occupancy permits, access control as requested by the appropriate engineer shall be dedicated along 159th Street and Central Avenue. Prior to the issuance of building permits, additional right-of-way along Central and 159th Street shall be dedicated that is sufficient to meet adopted intersection standards.
D. Buildings constructed on the site shall share similar architectural features, such as exterior color, exterior façade materials and roof styles. Exterior building facades facing a street shall be of materials and colors similar to those found in the adjoining neighborhood, such brick or stone. Roof styles shall be hip or gable (no flat or parapet roofs are permitted).
E. Uniform parking lot lighting standards and fixtures shall be installed. Light sources located on the application area shall comply with UZC standards such as Sec. IV-B.4.
F. Maximum building height shall be twenty-five feet.
G. No exterior speaker or amplified voice systems are permitted.
H. Landscaping that is one and one-half times required by the Landscape Ordinance shall be installed along Lancaster.
I. At the time Office, General or Medical Service uses are developed, a masonry wall at least six feet tall shall be installed along the northern property line of the application area.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 17th day of May, 2011.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

EXCERPT MINUTES OF THE MARCH 10, 2011 METROPOLITAN AREA PLANNING COMMISSION

Case No.: ZON2011-02 - Alfred G. Ponte (applicant/owner) / Robert W. Kaplan (agent) request City zone change from SF-5 Single-Family Residential to GO General Office on property described as:

Lots 1, 2, 3 and 4, Block 3, Brookhaven Estates Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is seeking GO General Office ("GO") zoning for 2.04 acres, zoned SF-5 Single-family Residential ("SF-5"), that are located at the northwest corner of East Central Avenue and North 159th Street East. The subject property is platted as Lots 1, 2, 3 and 4, Block 3, Brookhaven Estates. Lots 1, 2 and 3 are vacant. Lot 4, the northwest corner of the application area, is developed with a single-family home that is owned by the applicant. The plat depicts forty-foot building setbacks along Lancaster and 159th Street. The application area has 360 feet of frontage along Central Avenue and 246.66 feet along 159th Street and Lancaster Street.

Two single-family homes, zoned SF-5, are located immediately north of the application area. East, across 159th Street, is the Terradyne office building and southeast is an animal care clinic, both of which are in the City of Andover and zoned B-1 Office Business district. The land east of the application area (159th Street and east) is located in the City of Andover. Land located south of the application area is developed with a single-family residential subdivision (Belle Terre Addition), zoned SF-5, as is the land located to the west (part of Brookhaven Estates Addition).

Examples of uses permitted by right in the GO district include: single-family residential, duplex, multi-family, assisted living, group home, group residence, church, community assembly, hospital, nursing facility, elementary or middle school, automated teller machine, bed and breakfast inn, funeral home, medical service and general office. The GO district permits building heights of 60 feet.

If this request is approved, the Unified Zoning Code (UZC) requires non-residentially zoned lots that are adjacent to SF-5 or TF-3 Two-family Residential ("TF-3") zoned lots to provide screening along the common rear and interior lot lines. The required screening can be fencing, evergreen vegetation, berm or a combination of the three. If fencing alone is used for screening, the landscape ordinance will also require one tree every forty feet along the common property line. Additionally, the landscape ordinance will require landscape street yard plantings and parking lot screening. Outdoor loading or work areas and dumpsters located within 150 feet of the property line are required to be screened. Dumpsters may not be located within twenty feet of any property zoned TF-3 or SF-5. Rooftop mechanical equipment must be screened from ground view. Compatibility setbacks of at least fifteen feet are required where side and rear lot lines of MF-18 Multi-family Residential ("MF-18") or more intense zoning are adjacent to property zoned SF-5 or TF-3. Compatibility building height standards limit buildings to thirty-five feet in height unless additional setback is provided.

The GO district permits one ground or pole sign up to thirty-two square feet in size on a single-tenant zoning lot. Multi-tenant lots sharing the same sign may have up to twenty-four square feet each, up to a maximum sign size of ninety-six square feet. If more than one business is located on a zoning lot, additional pole or ground signs may be permitted when the signs are separated by 150 feet. Ground or pole signs are prohibited from being located within fifteen feet of an adjacent property line. Sign height is limited to twenty-two feet. Maximum pole or ground signage on a zoning lot shall not exceed one-half square foot per linear foot of street frontage. Lighting of signs is limited to indirect or internal illumination of white light only. Flashing or moving images are prohibited. Institutional uses may be

permitted portable signs in certain circumstances. Building signage not exceeding thirty-two square feet in area or thirty feet in height, and limited to one per building elevation for each major use in the building, provided the total amount of building signage for each major use in the building does not exceed thirty-two square feet; and provided that the building elevation to which any sign is to be attached shall have one of the following: street frontage, be adjacent to a nonresidential zoning district or if adjacent to a residential district, there must be parking, loading or open space area with a depth of 150 feet or more as measured from the face of the sign to the property line which adjoins the residential district.

CASE HISTORY: The application area is Lots 1, 2, 3 and 4, Block 3, Brookhaven Estates Addition. Brookhaven Estates Addition was recorded on June 2, 1954.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5; single-family residences
SOUTH:	SF-5; single-family residences
EAST:	B-1 Business Office (Andover); office, golf course, animal care
WEST:	SF-5; single-family residences

PUBLIC SERVICES: At this location, East Central Avenue is a five lane arterial with four-through lanes and a center left-turn lane. East Central Avenue has sixty feet of half-street right-of-way on the northern half of the avenue while it has seventy-five feet on the southern half. The northern sixty-foot width of half-street right-of-way is not consistent with the current standard of seventy-five feet at the intersection of arterial streets. There are not any access controls along the Central Avenue frontage adjacent to the application area. Sedgwick County provides the maintenance for this segment of Central Avenue.

Along the 159th Street frontage of the application area, 159th Street has one southbound through-lane, one right-turn and one left-turn in fifty feet of half-street right-of-way. Fifty feet of half-street right-of-way at the intersection of arterial streets is substandard; seventy-five feet is the current standard. All of 159th Street is located in the City of Andover, and Andover provides the maintenance for this segment of 159th Street. There are not any access controls shown on the plat for 159th Street. A Sedgwick County Capital Improvement Program ("CIP") project for 159th Street is scheduled for construction in 2013. The County's CIP project will reconstruct 159th to a three-lane urban standard with storm sewer and turn lanes where appropriate from a point located 1,500 feet north of the Central to 750 feet south of 21st Street.

Lancaster Street contains a total of sixty feet of right-of-way with a pavement width of twenty-four feet. Lancaster Street does not have curb or gutter or access controls. Drainage along Lancaster Street is carried in open ditches. Lancaster Street is three blocks long and serves only residentially developed lots.

In 2006, at the intersection of Central and 159th, there was a combined (east and west) average daily traffic (ADT) count of 20,565 vehicles on Central and 9,735 ADT count on 159th Street (combined north-south count).

On the Brookhaven Estates Addition plat there is shown a 16-foot wide utility easement that runs north-south through the middle of the application area. The easement contains a manhole and a sanitary sewer line. The easement and improvements would have to be relocated if a building or structure were to be built over the existing easement.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide map depicts this site as being appropriate for "urban residential" uses. The urban residential category includes the full range of residential development densities and types typically found in a large urban municipality:

single-family detached, semi-detached, zero lot line, patio, duplexes, townhouses, apartments, multi-family and special residential accommodations for the elderly, including assisted living, congregate care and nursing homes. Residential serving uses such as elementary and middle schools, churches, playgrounds, parks may also be appropriate in this category.

The Wichita-Sedgwick County Comprehensive Plan's office location guidelines state: 1) office uses should be generally located adjacent to arterial streets; 2) large-scale office development should be encouraged to locate within the central business district; 3) local, service-oriented offices should be incorporated within or adjacent to neighborhood and community scale, commercial development and 4) low-density office use can serve as a transitional land use between residential uses and higher intensity uses.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following provisions of Protective Overlay #250:

A. In addition to those uses permitted by right in the SF-5 district, only the following GO uses are permitted: Office, General; Medical Service; Assisted Living and Nursing Facility.
B. Signage shall be per the sign code except ground or pole signage shall be monument style; building signage shall not face to the north or west and portable signs are prohibited.
C. Complete access control along Lancaster shall be dedicated prior to the issuance of occupancy permits. Prior to the issuance of occupancy permits, access control as requested by the appropriate engineer shall be dedicated along 159th Street and Central Avenue. Prior to the issuance of building permits, additional right-of-way along Central and 159th Street shall be dedicated that is sufficient to meet adopted intersection standards.
D. Buildings constructed on the site shall share similar architectural features, such as exterior color, exterior façade materials, roof styles, materials and color.
E. Uniform parking lot lighting standards and fixtures shall be installed.
F. Maximum building height shall be thirty-five feet.
G. If the property is not re-platted, then an updated drainage plan shall be submitted prior to the issuance of building permits.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Neighboring properties are zoned either SF-5 or B-1 Business Office District (Andover). The SF-5 zoned properties (City of Wichita) are developed with single-family residences. The B-1 zoned properties (City of Andover) are developed with office, golf course and animal care uses. All properties in the immediate area surrounding the application area appear to have been developed except for the three vacant lots that are part of this application. Central Avenue is a significant arterial carrying over 20,000 trips on an average day. 159th Street is not as heavily used, carrying just under 10,000 average daily trips, but is projected to ultimately become a four-lane arterial.

2. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned SF-5. The SF-5 district is the most restrictive zoning district commonly found within the City of Wichita. The purpose of the SF-5 district is to accommodate moderate-density, single-family residential development and complementary land uses such as churches, parks or schools. Initially, it appears that the SF-5 zoning is appropriate because of the near uniform single-family development located north and south of the application area. Nearby homes are well maintained and appear to be well maintained. One would have expected residential development to have taken place on the three undeveloped lots; however, the property has been

platted since 1954 and the property has not developed as currently zoned. The lack of development on these three lots possibly can be traced to the fact they have significant frontage on arterial streets, which tends to reduce the chance they will be developed with single-family residences. The community's standard development pattern is for lots at the corners of arterial intersections, such as Central and 159th, or lots with significant arterials street frontage, to be developed with more intensive uses than single-family residential. Based upon the lack of development activity for at least three of the application area's lots, SF-5 zoning is probably not the most suitable zoning.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request will permit uses that are not currently permitted on the west side of 159th Street. The provisions of the recommended Protective Overlay and standard code requirements, such as setbacks, landscaping and screening, should minimize foreseeable impacts.

4. Length of time the property has remained vacant as currently zoned: The property was platted into four residential lots in 1954. As far as staff can ascertain, the property has remained vacant except for the single residence constructed on Lot 4 (the northwest corner of the application area) since the time of platting.

5. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval will provide the potential for additional office or medical services to the nearby neighborhoods. Denial would presumably represent a loss in economic opportunity.

6. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts this site as being appropriate for "urban residential" uses. The urban residential category includes the full range of residential development densities and types typically found in a large urban municipality: single-family detached, semi-detached, zero lot line, patio, duplexes, townhouses, apartments, multi-family and special residential accommodations for the elderly, including assisted living, congregate care and nursing homes. Residential serving uses such as elementary and middle schools, churches, playgrounds, parks may also be appropriate in this category. However, the Wichita-Sedgwick County Comprehensive Plan's office location guidelines state: 1) office uses should be generally located adjacent to arterial streets; 2) large-scale office development should be encouraged to locate within the central business district; 3) local, service-oriented offices should be incorporated within or adjacent to neighborhood and community scale, commercial development and 4) low-density office use can serve as a transitional land use between residential uses and higher intensity uses. The proposed zoning is not consistent with the mapped recommended land uses; however, the proposed GO zoning complies with the plan's applicable office location guidelines.

7. Impact of the proposed development on community facilities: Offices can generate eleven average daily trips per day per 1,000 square feet of development. If this site were developed with all office uses at thirty percent, the site could generate 287 average daily trips. Traffic would increase; however, existing or planning facilities can accommodate the expected increases.

DALE MILLER, Planning Staff presented the staff report.

MITCHELL asked who decides if replatting will be required and what conditions could be placed on the application if platting isn't required.

MILLER said typically staff does not require replatting if a parcel is already platted. However, if the Planning Commission feels it is appropriate, they can make it a condition of approval.

MITCHELL said if the area is not replatted, who pays for improvements and additional right-of-way along the north side of Central Avenue to bring it up to arterial standards.

MILLER said absent platting, improvements would be paid for at-large with the next project. He said the Commission could ask the applicant to dedicate additional right-of-way.

CHAIR MILLER STEVENS referred to Mr. Miller's remarks concerning working with several engineers and asked if there were any issues relative to Butler County.

MILLER said Butler County will probably be asking the applicant to dedicate whatever right-of-way and access control is needed. He said he is presuming they will work with the City and/or County to establish appropriate access controls.

JOHNSON noted the DAB II deferred the case on Monday, March 7. He asked if a meeting has occurred since then to work out potential disagreements.

MILLER responded that there has been no meeting with staff. He said he would let the applicant or agent answer that question.

ROBERT KAPLAN, 301 NORTH MAIN, AGENT FOR THE APPLICANT said he walked in thinking this was not a very complicated case. He said he has had numerous discussions with the neighbors on the telephone and after the DAB meeting where he told them he would be willing to meet with them at 3:30 the following afternoon; however, he said he never got a call and no one appeared so there was no meeting. He said when people in the Brookhaven Subdivision purchased their homes there were protective covenants, restrictions and title commitments that they either did not read or did not understand. He said Brookhaven Estates was platted in 1954. He said that many of the neighbors have told him that this area was platted as single-family residential; however, he referred to provisions 1 and 9 which were placed on block 3 by the developer as follows: *Provision 1. All lots of said tract shall be for residential purposes except block three (3) and Provision 9. No commercial buildings shall be constructed on any portion of the subdivision except Block 3 thereof. Block three may be used for commercial as defined in the City of Wichita Zoning Ordinance.* He said in 1954 the developer recognized that the corner of two arterial streets, Central Avenue and 159th Street East, was for commercial use and was not likely to develop as residential. He said saying that this was all reserved for residential was not a fact or true. He said J.P. Weigand & Sons, Inc. has been aggressively marketing the lots as SF-5 Single-Family Residential, but have been unable to sell the lots as single-family. He said they would like to have some flexibility. He said his client has the right to develop his property at the same time being cognizant of neighbors. He said the general office they are looking at utilizing would be for insurance or medical offices or an assisted living facility. He said because each lot is less than 2 acres they don't envision a development that would cover all 3 lots, but instead would develop smaller offices such as medical, insurance agency and accounting. He said if the area gets replatted, another developer may come in with a much larger development. He said they are not talking about a convenience store or service station. He said his client likes and respects his neighbors and does not want to do anything to disrupt the neighborhood. He said with the GO General Office zoning they can add additional restrictions with the PO protective overlay. He said he understands the neighbor's concerns but he feels they are overreacting. He mentioned questioning the impartiality of the Staff Report and writing their own report when they don't understand the criteria. He said this is the highest and best use of the property. He said he has agreed with everything that he has been asked to do and is willing to be reasonable with all requests. He said part of the problem is people don't want to discuss "land use" they want to discuss the

"land user" and identify the land user. He gave as an example the difference between having a Bricks versus a Goodwill clothing store.

ISTVAN TAMAS, J.P. WEIGAND & SONS, INC. COMMERCIAL DIVISION said he received the assignment to market this property on this "hard corner" in January, 2010. He said the Residential Division of J.P. Weigand & Sons, Inc. informed him that residential lots in the neighborhood haven't sold in 20 years and that this would be an extremely tough deal.

MOTION: To give the individual 2 additional minutes.

MCKAY moved, **JOHNSON** seconded the motion, and it carried (11-0).

He said it would be hard to build residential on this corner and wanted it rezoned immediately as commercial to put it on the market. He said they were never approached and had no buyers for residential. He said they even approached residential developers who declined to purchase the lots. He said they have two interested parties; however, if the land is not zoned, developers generally don't want to mess with it because it involves attorneys and coming to the Planning Commission. He said developers want to buy a piece of property that is ready to go and build on it. He said they can't get anywhere without having the property rezoned on this "hard corner."

LAURA ZELLERS, 428 N. LANCASTER COURT said they live at the southwest corner of Central Avenue and 159th Street East. She said she and her husband are adamantly opposed to this zoning. She said they have invested time, effort and resources into bettering their home and overall neighborhood. She said their property is a mirror image of the "unsellable residentially zoned land in question." She said in 1996 the developers of the Belle Terre neighborhood made a decision to build homes on this land. She said they built aesthetically pleasing concrete walls and signs to protect property from road noise. She said when they purchased their home in January of 2005, they were aware that they were purchasing a lovely home on a sub-par lot. She said they were also aware that the vacant land across the street was zoned residential. She said that knowledge affected their decision to purchase the property and their home has an appraised value that reflects its location within the neighborhood. She said there is some disagreement on if the land in question has been marketed for the last 50 years. She said the neighborhood and their street serves as an example that residential housing can be placed on these types of lots. She said they are in a lovely part of Sedgwick County, in a very family friendly area with high rated schools. She said if the land is rezoned, all homes in the immediate area are likely to see a reduction in their property values. She said they find this unacceptable. She referenced a letter from Linda Lanie, Lanie & Associates, broker associate with J.P. Weigand & Sons, Inc. She said if those neighbors in the immediate radius of the rezoning experience a decline in property values it will also affect the neighborhood as a whole. She said Belle Terre has 180 homes with a median home price of well over $300,000. She said when neighbors attempt to sell or refinance their homes the "comp" value approach is widely used and will negate neighbors that are much further away from the land than they are. She said the affect of this rezone is much more widespread than many are willing to admit. She said that is the reason that the Belle Terre Home Owners Association is against the rezoning. She said they believe there is no need for office space at this intersection and mentioned the Kanza Office Park in Butler County, which is not leased to capacity, as well as other nearby office locations further south on 159th Street. She said adding more empty space hardly seems prudent. She concluded by saying that it appears marketing efforts have been underway for some time with Weigand Commercial and commented that the website description says: "The property is currently being rezoned commercial." She said when she read that she felt that the "deal has been done" and the parties involved are already considering the land as a commercial property. She asked if that was ethical. She said although they empathize with the applicant trying to sell his land, she mentioned that the reason he owns the land is because he himself feared offices or retail and that is why he purchased the lots. She said if they lose this battle NO Neighborhood Office

zoning would be the only acceptable alternative. In addition, she said the neighbors would like an addendum that no further rezoning of this property could occur for a fixed number of years if possible. She asked the Commission to think long and hard about the ramifications such a rezoning would have on the overall residential community.

HENTZEN asked by what authority does this person Ms. Zeller's referred to say what impact zoning changes will have on property values. He asked what were her qualifications and credentials to make such a claim.

KEITH TRUMBO, 15930 PLYMOUTH, PASTOR CORNERSTONE CHURCH said they are happy to be part of the community. He said they did not believe the property could be rezoned commercial unless there is some type of meeting such as this. He said he questioned that there was a contract authorizing zoning this 2.5 acre property as commercial. He said when they purchased their property; they did so in good faith and knew that there may be the possibility of development at Central Avenue and 159th Street. He said he does not feel the neighborhood objections are unreasonable and added that there are many vacant commercial properties available in the community. He said if this property is rezoned to GO it will mean increases in traffic, noise and a negative impact on property values. He said he recognizes the owner's ability to sell the property, and apparently, he has not been able to sell it as residential. He said a building 35 feet in height would equal a 3-story structure. He asked about the possibility of a much smaller structure. He also mentioned the Kanza Office Park surrounded by the golf course and set way back from the street. He said the neighbors consider it a reasonable request that this piece of property remain a residential district. He concluded by asking the Commission not to infringe GO zoning on the neighborhood.

CHRISTOPHER McGILL, 424 N. LANCASTER COURT said he is a neighbor of the Zellers. He said he understands that the current owner of this property purchased it 15 years ago in order to keep this type of development from coming into the area. He also understands that the owner is not intending to stay in the area. He mentioned that he was willing to meet with Mr. Kaplan; but when he told Mr. Kaplan that he could not speak for all the neighbors in the area, Mr. Kaplan inferred then it was probably was not worth meeting. He said the neighbors believed this area was zoned and platted residential. He said it will be hard to use the corner lot unless there is cross access. He said the original covenant written in 1954 has not been followed and questioned how accurate it is. He said the area was not platted for 2-story homes; however, there are multiple 2-story homes in the neighborhood. He commented that the City of Wichita annexed the area in 1999. He said the neighbors are concerned what office property will do to home values. He said if the current owner didn't think commercial would have a negative impact on quality of life in the area, he wouldn't have purchased that land 15 years ago. He said he realizes the Commission faces these tough decisions all the time and he asked that they deny this request and leave the area residential. He said if the Commission decides to approve the application; the neighbors would like to add provisions to the PO as well as request NO zoning instead of GO zoning. He said they have concerns about lighting, traffic, noise, screening, and general architecture of the proposed development in order to maintain the integrity of the neighborhood and would like to meet with Mr. Kaplan regarding those issues.

MARNELL asked if Mr. McGill had read the PO protective overlay that was part of the staff report.

McGILL commented that they would like the structure of the buildings to fit into the architecture of the neighborhood; that LED signs not be allowed and a number of other items.

MARNELL commented that the PO speaks to architectural design and signage.

McGILL said the neighbors would agree to office and medical but would not care to have an assisted living facility at the site. He said they would like similar screening materials to those already being used in the neighborhood. He said they are against big wooden fences and would like landscaping consistent with what is already established in the neighborhood. He commented that there are commercial lots to the east of the area that haven't sold for 10 years. He said they would also like to freeze the PO for 30 years.

KASSIE ZWIENER, 432 N. LANCASTER COURT said she lived directly south of the property. She said that she and her husband are adamantly opposed to the proposed rezoning. She said the MAPC's opinion about "hard corners" being commercial might differ from the neighborhood's opinion. She mentioned that there is residential at 2 of the 4 corners hard corners within 1 mile of Belle Terre at 143rd Street and Central Avenue and 1 mile north at 143rd Street and 13th Street 3 of the hard corners are residential. She said she understands that the owner has the right to be able to change the zoning, but the neighbors are very concerned because the current owner bought these lots for the exact reason why the neighborhood is opposing the request, to prevent commercial development from going in there. She said she stayed at the DAB meeting to talk to several of the board members and that she was not aware of and never heard anything about a meeting. She said the Weigand WEB site states this property is being marketed as commercial. She said there are only 11 neighbors within 200 feet of the proposed site and 9 are adamantly opposed to the request but want to be reasonable.

ROBERT ADAMSON, 15931 PLYMOUTH said he lived just north of the subject property in a location most affected by this proposed zoning change. He said he has known Mr. Ponte for several years and they have had discussions over that time where Mr. Ponte told him don't worry family residences will go on the lots so he was shocked to find they were going to be rezoned GO. He briefly reviewed the criteria in the recommendation regarding the 35 foot building height, which would accommodate a 3-story building, screening, and 6-8 foot concrete barrier walls like what is installed at 21st Street and Greenwich Road. He mentioned the right-of-way restrictions along Plymouth which forced him to position his house slightly further south closer to the south property line due to the 1200 foot requirement for the septic system. He said the potential for a 35-foot building 15 feet from his property line would not be aesthetically pleasing; therefore, he would like to recommend single story homes. He also mentioned installing appropriate screening whether it is fencing, berming or vegetation. He said he was not able to attend the DAB meeting. He implored the Commission to consider the aesthetics of the proposal. In addition, he said the neighbors would like to know specifically what is going in there. He said once this is zoned to GO what is to stop another down grade from GO to some more lucrative retail application, which the neighbors don't think they want in the area. He concluded by saying that he recently retired; that he has been living at this location several years and has made significant improvements to his property including professional landscaping and a water feature. He said this proposed rezoning will significantly affect the neighbor's quality of life as well as the value of their properties. He asked the Commission to please consider saying no to this request, and if not, could the stipulations he mentioned be made. He thanked the Commission for their time and the opportunity to voice his concerns.

WILLIAM DOUGLAS PHILLIPS, 501 N. LANCASTER presented a Power Point presentation which was several aerial photographs of Brookhaven and ground level pictures from his house. He said he purchased his home 22 years ago because he thought this was in a protected area that would not be allowed to become zoned commercial. He said that is why there is such an uproar with all of the residents. He said the fact is 100% of the area residents are against the rezoning; residents feel this zoning is trying to be pushed through without their input; the PO was never discussed with area residents; and all residents have signed a protest petition. He said they are not interested in a wood fence. He said the east part of the city limits all have concrete barriers. He said the best thing for the Planning Commission to do is deny the application and make the applicant come back with a real plan that some of the residents may agree with.

JOHNSON said he would like to make a motion to recess the public hearing until after DAB II makes a recommendation at their April 4, 2011 meeting. He also suggested that staff and the residents meet and try to work out their differences.

DIRECTOR SCHLEGEL said the Commission can do what it wants; however, he added that in the past when people have come to the Planning Hearing to give testimony, the Commission has given them the opportunity to speak on the record. He said if the item is deferred, some of the people present today may not be able to come back.

CHAIR MILLER STEVENS said this meeting was advertised as the public hearing for the application.

JOHNSON said he would withdraw his motion.

ROSE WALLER, 15801 E. LIMERICK said she is opposed to any change in zoning across the street. She said this is a beautiful, lovely area and she is opposed to anything that would change that. She said they have a Wichita address but their children go to Andover schools. She said homes in the subdivision are selling, it is just taking longer. She said this rezoning could negatively impact the value of their homes if they decide to sell. She also said she is against solid fencing in the subdivision because right now most of the fence is wrought iron. She said this is a lovely subdivision that is well maintained and well cared for. She asked the Planning Commission to reconsider and rethink this and not change zoning in the area from single-family.

LINDA PARKS, 536 N. LANCASTER said she lived directly north of Mr. Ponte. She said they met once with Mr. Ponte before the DAB meeting about the monument signage and concrete barrier. She said Monday before the DAB meeting Mr. Ponte told them to "get off of the concrete barrier" because it was going to be too expensive. She said they do not want a wooden fence. They want any noise to stay on the other side of the barrier. She said she would also like to know the restrictions on NO zoning. She said they are not going to get off of the concrete barrier because some of the requirements they can't live with. She said if the applicant is not going to support the neighbors there is no need for a meeting. She said she can't see a compromise at this point in time.

KAPLAN said he hated to be misquoted. He said the Commission knows him because he has been doing this an awful long time. He said he challenges anyone to prove that he ever refused a meeting or to discuss an application. He admitted that he can't meet individually with each neighbor and get each individual's criteria. He said if the neighborhood would appoint a representative, he would be happy to get with them. He said meeting with 20 different people was not practical or possible. He said he would be willing to meet between now and the City Council meeting to discuss landscaping and fencing. He referenced Commissioner Hentzen's comment that the Planning Commission has yet to see documentation that reductions in property values occur when GO is located next to residential. He said office zoning is usually used as a buffer between residential and commercial uses. He said the neighbors do not know about marketing Mr. Ponte's property that is up to Mr. Ponte and the realtor. He referenced a comment made that the Terradyne development enhances the neighborhood and added that there are restaurants and facilities that serve alcohol included in that development.

MOTION: To give the agent/applicant an additional minute to speak.

JOHNSON moved, **MCKAY** seconded the motion, and it carried (11-0).

ALFRED PONTE, 518 N. LANCASTER, APPLICANT said he has lived at that address for 47 years and raised 6 kids. He said he bought the lots 15 years ago when they became available when he heard rumors that a QuikTrip might be built at the location. He referenced Ms. Parks comment about the wall

and said while he is living in his house, he is not going to build a $30,000 concrete wall between him and his neighbors. He mentioned that taxes and mowing of the property to make it look good is becoming a problem since he is 83 years old. He said he may move, but right now he is living there -- give him a break.

JOHNSON said he would like to hear from DAB II on the application and see if staff can negotiate with the applicant and agent and bring the matter back to the Planning Commission.

> **MOTION:** To close the public hearing and defer the application until after DAB II meets on April 4, 2011.
>
> **JOHNSON** moved, **HILLMAN** seconded the motion.

DIRECTOR SCHLEGEL said if this application is deferred and the applicant, agent, staff and neighbors meet, there could be quite a different proposal developed between now and the next meeting so the Commission may want to take public comment at the next meeting also.

JOHNSON said if the applicant comes back with a new proposal, the Commission can allow public comment at that time.

KLAUSMEYER commented that he would like to see the two-sides work this out.

MITCHELL asked to append the Staff Report and add condition H that if the parcel is not replatted that a "no protest petition" be required from the applicant.

DIRECTOR SHCLEGEL said he thought it was Commissioner Mitchell's preference to have the area replatted.

MTICHELL said if the motion to defer is approved he would like to make it a requirement.

SHARON DICKGRAFE, ASSISTANT CITY ATTORNEY said once the application is deferred, the Commission cannot take further action on it.

JOHNSON moved to suspend his previous motion to defer, **HILLMAN** agreed to the suspension of the motion.

> **MOTION:** That if the zoning change is approved that the property be replatted as part of the approval.
>
> **MITCHELL** moved, **KLAUSMEYER** seconded the motion.

MARNELL said the motion pertains to what staff is recommending in the Staff Report, the Commission still hasn't dealt with the application.

There was considerable discussion concerning the motion to defer and amending the Staff Report.

DIRECTOR SCHELGEL said he believed Commissioner Mitchell's intent was to go along with the motion to defer but provide direction to staff when they bring the item back to the Commission for consideration. He said staff can accept that direction without formal action.

> **MOTION:** To defer the application until the first meeting after the DAB II April 4, 2011, meeting (April 7, 2011, Planning Commission meeting) and that in the interim staff

look at modifications to the Staff Report suggested by Planning Commissioners at this meeting and that the public hearing on the application be closed.

MARNELL moved, **FARNEY** seconded the motion.

JOHSNON clarified that Commissioner Marnell was not requesting any meeting take place.

MARNELL said a meeting was not part of his motion.

DICKGRAFE asked if the Commission was closing the public hearing.

SUBSTITUTE MOTION: To defer until after the April 4, 2011, DAB II meeting (April 7, 2011, Planning Commission meeting); that the applicant/agent, residents and City staff meet to work out differences; that requests and discussion made by Planning Commission members be taken into consideration; and that the public hearing on the applicant remain open.

JOHNSON moved, **FARNEY** seconded the motion.

DOWNING said he was going to oppose the motion not because of the requested delay to see if some of the problems can be worked out but he does not believe the Planning Commission needs to get into the business of directing that a meeting be held. He said if the opponents and the people who own the land want to get together to discuss the issues that is up to them, and he hopes they would do that.

JOHNSON amended the motion to "recommend" that the applicant/agent, residents and City staff meet to work out differences, with permission of the second **FARNEY.**

MILLER reminded the Commissioners that since the DAB II meeting was to be April 4, 2011, and the Planning Commission meeting was April 7, 2011, staff would not be able to provide a Staff Report to the Commission for their review prior to the Planning Commission meeting.

The question was called and the motion passed (11-0).

It was noted that the original motion was moot.

( )

townhouses, apartments, multi-family and special residential accommodations for the elderly, including assisted living, congregate care and nursing homes. Residential serving uses such as elementary and middle schools, churches, playgrounds, parks may also be appropriate in this category.

The Wichita-Sedgwick County Comprehensive Plan's office location guidelines state: 1) office uses should be generally located adjacent to arterial streets; 2) large-scale office development should be encouraged to locate within the central business district; 3) local, service-oriented offices should be incorporated within or adjacent to neighborhood and community scale, commercial development and 4) low-density office use can serve as a transitional land use between residential uses and higher intensity uses.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following provisions of Protective Overlay #250:

A. In addition to those uses permitted by right in the SF-5 district, only the following NO uses are permitted: Office, General and Medical Service.
B. Signage shall be per the sign code except ground or pole signage shall be monument style; building signage shall not face to the north or west and there shall not be any ground or pole signage located along Lancaster. Also prohibited are: portable signs, temporary signs, electronic message signs, animated signs, advertising decorations (streamer, string pennant and pinwheel type signs), banner signs, commercial balloon signs and moving, flashing or rotating signs.
C. Approval of the zoning is subject to replatting within one year. Complete access control along Lancaster shall be dedicated prior to the issuance of occupancy permits. Prior to the issuance of occupancy permits, access control as requested by the appropriate engineer shall be dedicated along 159th Street and Central Avenue. Prior to the issuance of building permits, additional right-of-way along Central and 159th Street shall be dedicated that is sufficient to meet adopted intersection standards.
D. Buildings constructed on the site shall share similar architectural features, such as exterior color, exterior façade materials and roof styles. Exterior building facades facing a street shall be of materials and colors similar to those found in the adjoining neighborhood, such brick or stone. Roof styles shall be hip or gable (no flat or parapet roofs are permitted).
E. Uniform parking lot lighting standards and fixtures shall be installed. Light sources located on the application area shall comply with UZC standards such as Sec. IV-B.4.
F. Maximum building height shall be twenty-five feet.
G. No exterior speaker or amplified voice systems are permitted.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Neighboring properties are zoned either SF-5 or B-1 Business Office District (Andover). The SF-5 zoned properties (City of Wichita) are developed with single-family residences. The B-1 zoned properties (City of Andover) are developed with office, golf course and animal care uses. All properties in the immediate area surrounding the application area appear to have been developed

except for the three vacant lots that are part of this application. Central Avenue is a significant arterial carrying over 20,000 trips on an average day. 159th Street is not as heavily used, carrying just under 10,000 average daily trips, but is projected to ultimately become a four-lane arterial.

2. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned SF-5. The SF-5 district is the most restrictive zoning district commonly found within the City of Wichita. The purpose of the SF-5 district is to accommodate moderate-density, single-family residential development and complementary land uses such as churches, parks or schools. Initially, it appears that the SF-5 zoning is appropriate because of the near uniform single-family development located north and south of the application area. Nearby homes are well maintained and appear to be well maintained. One would have expected residential development to have taken place on the three undeveloped lots; however, the property has been platted since 1954 and the property has not developed as currently zoned. The lack of development on these three lots possibly can be traced to the fact they have significant frontage on arterial streets, which tends to reduce the chance they will be developed with single-family residences. The community's standard development pattern is for lots at the corners of arterial intersections, such as Central and 159th, or lots with significant arterials street frontage, to be developed with more intensive uses than single-family residential. Based upon the lack of development activity for at least three of the application area's lots, SF-5 zoning is probably not the most suitable zoning.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request will permit uses that are not currently permitted on the west side of 159th Street. The provisions of the recommended Protective Overlay and standard code requirements, such as setbacks, landscaping and screening, should minimize foreseeable impacts.

4. Length of time the property has remained vacant as currently zoned: The property was platted into four residential lots in 1954. As far as staff can ascertain, the property has remained vacant except for the single residence constructed on Lot 4 (the northwest corner of the application area) since the time of platting.

5. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval will provide the potential for additional office or medical services to the nearby neighborhoods. Denial would presumably represent a loss in economic opportunity.

6. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts this site as being appropriate for "urban residential" uses. The urban residential category includes the full range of residential development densities and types typically found in a large urban municipality: single-family detached, semi-detached, zero lot line, patio, duplexes, townhouses, apartments, multi-family and special residential accommodations for the elderly, including assisted living, congregate care and nursing homes. Residential

serving uses such as elementary and middle schools, churches, playgrounds, parks may also be appropriate in this category. However, the Wichita-Sedgwick County Comprehensive Plan's office location guidelines state: 1) office uses should be generally located adjacent to arterial streets; 2) large-scale office development should be encouraged to locate within the central business district; 3) local, service-oriented offices should be incorporated within or adjacent to neighborhood and community scale, commercial development and 4) low-density office use can serve as a transitional land use between residential uses and higher intensity uses. The proposed zoning is not consistent with the mapped recommended land uses; however, the proposed NO zoning complies with the plan's applicable office location guidelines.

7. Impact of the proposed development on community facilities: Offices can generate eleven average daily trips per day per 1,000 square feet of development. If this site were developed with all office uses at thirty percent, the site could generate 287 average daily trips. Traffic would increase; however, existing or planning facilities can accommodate the expected increases.

DALE MILLER, Planning Staff presented the Staff Report. He mentioned condition 9 which was the request to prevent further rezoning of the property for 30 years, which the applicant was not willing to agree with. In addition, he clarified that condition 10 concerning access control along Lancaster would not prohibit access by the resident to his single-family home. He said there was further discussion concerning the concrete wall at the District Advisory Board (DAB) II meeting, and referred Commissioners to the handout which was a memo dated April 6, 2011, outlining the DAB motion which addressed how the applicant and concerned neighbors to the north would agree to divide the cost of the masonry wall. He said if an agreement on the wall could not be reached, then DAB was recommending denial of the request. He mentioned Commissioner Mitchell's request to require replatting of the property and said he made that part of the conditions of approval.

MITCHELL said after discussion with the Traffic Engineer regarding public improvements along Central Avenue, he would like to withdraw his request that this parcel be replatted.

HILLMAN asked how the fencing tied in with the landscaping requirements.

MILLER said the Unified Zoning Code (UZC) requires only wooden fencing along property lines where non-residential uses exist next to residential uses. He asked staff to review provisions of the Landscape Ordinance.

GOLTRY said the Landscape Ordinance would require 1 tree every 30 feet with shrubs in between for screening along Lancaster. She said screening on the north would be 1 tree every 40 feet with shrubs in between if there wasn't a fence or wall.

MILLER indicated that was typical office type buffering. He added that parking lots also have to be screened; however, since the parcel is not over 6 acres, a masonry screening wall is not required by code.

JOHNSON asked if there had been additional discussion about the wall following the DAB meeting.

MILLER said he would let the agent address that question.

BOB KAPLAN, AGENT FOR THE APPLICANT, 1600 EPIC CENTER said the applicant and area residents got things worked out since the last Planning Commission Meeting. He said an evening meeting was held with the surrounding neighbors, which was chaired by Chris McGill and very well attended. He said they agreed with all the neighbors' requests with the exception of item 9, which was the request not to rezone the property for the next 30 years. He said the neighbors withdrew that request at the meeting. He said discussion at the second DAB II meeting focused on the masonry wall and cost sharing with the 2 neighbors. He said they got that worked out and he will be drawing up a separate/private agreement indicating that the neighbors will contribute $2,000 a piece towards wall construction. He mentioned that although the ordinance only requires cedar fencing, they will construct the masonry wall instead.

LARRY TOOMEY, 229 EAST WILLIAM said he was representing Doug and Terry Phillips who live directly west of the application on Lancaster. He said they believe the proposed screening of bushes and trees along Lancaster is inadequate to screen the property. He said they would like the Commission to consider imposing a more restrictive requirement than is required by the zoning ordinance to address those concerns. He concluded by saying that there were 2 mature trees along Central and asked if the applicant would consider moving the trees from Central to Lancaster. He said they received information that the cost would be between $250-350 per tree.

HENTZEN asked if the request to move the trees was presented at the neighborhood meeting or DAB meeting.

TOOMEY said no, they just got the information regarding the cost to move the trees today.

BOB ADAMSON, 1531 PLYMOUTH ROAD said he lived just north of the site. He said the applicant, agent and neighbors had 2 very productive meetings. He said he and Charles Parks have agreed to provide $2,000 toward construction of a masonry wall. He said this has been a very laborious and personal process and he apologized for that. He concluded by saying that Mr. Kaplan will work up a contract when wall is developed.

KAPLAN said there has been successful negotiation and he will draw up a private contract between the parties involved. He added that the City has no way to enforcing something like that anyway. He said as far as screening along Lancaster is concerned they would like to provide what is required by the ordinance.

DENNIS asked who will provide maintenance for the wall.

KAPLAN said ultimately the developer and owner of the property will be responsible for wall maintenance.

MARNELL reiterated that the Landscape Ordinance covers screening along Lancaster; however, if the party living across the street on agrees to move the mature trees along Central at their own expense, would his client be agreeable to that.

KAPLAN said he would do what he was told to do, but he said they are very large, mature trees and he can't see them surviving being moved. He said the trees will be lost and not do anyone any good. He said they will bring in fresh landscaping as required per code.

MCKAY asked about condition 9.

KAPLAN said that was the one item they declined. He said who knows what the zoning code will be like in 30 years. In addition, he said Mr. McGill withdrew that request at the meeting because they realized the implausibility of it.

FOSTER referred to previous cases where buffering was an issue. He asked if Mr. Kaplan's client would be agreeable to installing 1 ½ times the screening required by the Landscape Ordinance along Lancaster.

KAPLAN said they would be willing to concede the issue if it makes a difference. He added that his client would agree to that.

> **MOTION:** To approve subject to staff recommendation including the items in the Staff Report with the exception of items 9 and 13 and the addition of 1 ½ times the landscaping required by the Landscape Ordinance along Lancaster.
>
> **MCKAY** moved, **FOSTER** seconded the motion, and it carried (13-0).

MILLER asked about the requirement for an updated drainage plan.

MITCHELL responded he believed the developer will have to have that to get a building permit.

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: MAPC Members

FROM: Antione Sherfield, Neighborhood Assistant, District II

SUBJECT: **ZON2011-00002: General Office Request (GO)**

DATE: March 9, 2011

On Monday, March 7, 2011, the District II Advisory Board considered the request to change Zoning from SF-5 Single-family Residential ("SF-5") to General Office (GO) located on the Northwest corner of East Central Avenue and North 159th Street East.

The applicant is seeking GO General Office ("GO") zoning for 2.04 acres, zoned SF-5 Single-family Residential ("SF-5"), that are located at the northwest corner of East Central Avenue and North 159th Street East. The subject property is platted as Lots 1, 2, 3 and 4, Block 3, Brookhaven Estates. Lots 1, 2 and 3 are vacant. Lot 4, the northwest corner of the application area, is developed with a single-family home that is owned by the applicant. The plat depicts forty-foot building setbacks along Lancaster and 159th Street. The application area has 360 feet of frontage along Central Avenue and 246.66 feet along 159th Street and Lancaster Street.

Two single-family homes, zoned SF-5, are located immediately north of the application area. East, across 159th Street, is the Terradyne office building and southeast is an animal care clinic, both of which are in the City of Andover and zoned B-1 Office Business district. The land east of the application area (159th Street and east) is located in the City of Andover. Land located south of the application area is developed with a single-family residential subdivision (Belle Terre Addition), zoned SF-5, as is the land located to the west (part of Brookhaven Estates Addition).

Examples of uses permitted by right in the GO district include: single-family residential, duplex, multi-family, assisted living, group home, group residence, church, community assembly, hospital, nursing facility, elementary or middle school, automated teller machine, bed and breakfast inn, funeral home, medical service and general office. The GO district permits building heights of 60 feet.

If this request is approved, the Unified Zoning Code (UZC) requires non-residentially zoned lots that are adjacent to SF-5 or TF-3 Two-family Residential ("TF-3") zoned lots to provide screening along the common rear and interior lot lines. The required screening can be fencing, evergreen vegetation, berm or a combination of the three. If fencing alone is used for screening, the landscape ordinance will also require one tree every forty feet along the common property

4. Signage to be monument style with no moving or LED signage allowed. The applicant has accepted this request. See item 12 below for additional sign limitations.
5. Single story structures only. The applicant agreed to limit building height to 25 feet.
6. Lighting (building & parking lot) designed to prevent light pollution. The applicant agreed to comply with Unified Zoning Code Sec. IV-B.4 standards regarding outdoor lot lighting standards.
7. Noise - no outdoor speakers or PA systems to prevent noise pollution.
8. Landscaping. In addition to the screening fence noted in item 2 above, the applicant agreed to install the equivalent of one tree per 40 linear feet along the north property line, and to comply with Landscape Ordinance standards for parking lot and landscape street yard requirements. In addition to parking lot screening, landscape street yard requirements would apply along Lancaster, Central and 159th.
9. Prevent rezoning of the property once approved for a period of 30 years (concerns that they will go back in a year to zone commercial when it doesn't sell). The applicant has declined to accept this recommendation.
10. No residential street access. The applicant has agreed to complete access control along Lancaster.
11. Only allow general office and medical facility - remove assisted living and nursing facility a permitted uses. This request was agreed to when the applicant amended the application to NO instead of GO zoning per item 1 above.
12. No temporary signage. The applicant also agreed to eliminate: electronic message signs, animated signs, advertising decorations (streamer, string pennant, pinwheel type signs), banner signs, commercial balloon signs, moving, flashing or rotating signs.
13. Drainage plan; don't want this development to force the neighborhood to pay for sewer system, etc. If the application is not approved subject to replatting, the applicant has agreed to provide an updated drainage plan; dedicate right-of-way sufficient to meet code minimums and provide guarantees for their proportional share of improvements. Assessment districts and those properties included in any given district are established following procedures defined in state law that is outside the ability of the zoning process to address.

CASE HISTORY: The application area is Lots 1, 2, 3 and 4, Block 3, Brookhaven Estates Addition. Brookhaven Estates Addition was recorded on June 2, 1954.

The application was presented to District Advisory Board ("DAB") II on March 7, 2011. At the DAB II meeting there were neighbors who were opposed to the request. Neighbors expressed concerns ranging from: the GO district is incompatible with surrounding zoning and uses; intrusion of signage, lighting, noise, traffic associated with office uses; incompatible building architecture and structure heights. District Advisory Board II approved a motion to defer action so the applicant and neighbors could meet to seek agreement.

The Metropolitan Area Planning Commission (MAPC) heard this request on March 10, 2011. Concerned neighbors expressed concerns similar to those presented at the DAB II meeting. The MAPC recommended the case be deferred to April 7, 2011, to allow the two sides to meet and work out solutions.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5; single-family residences
SOUTH:	SF-5; single-family residences
EAST:	B-1 Business Office (Andover); office, golf course, animal care
WEST:	SF-5; single-family residences

Citizens had the following questions and concerns:

- The residents were adamant regarding item Prevent rezoning of the property once approved for a period of 30 years (concerns that they will go back in a year to zone commercial when it doesn't sell).

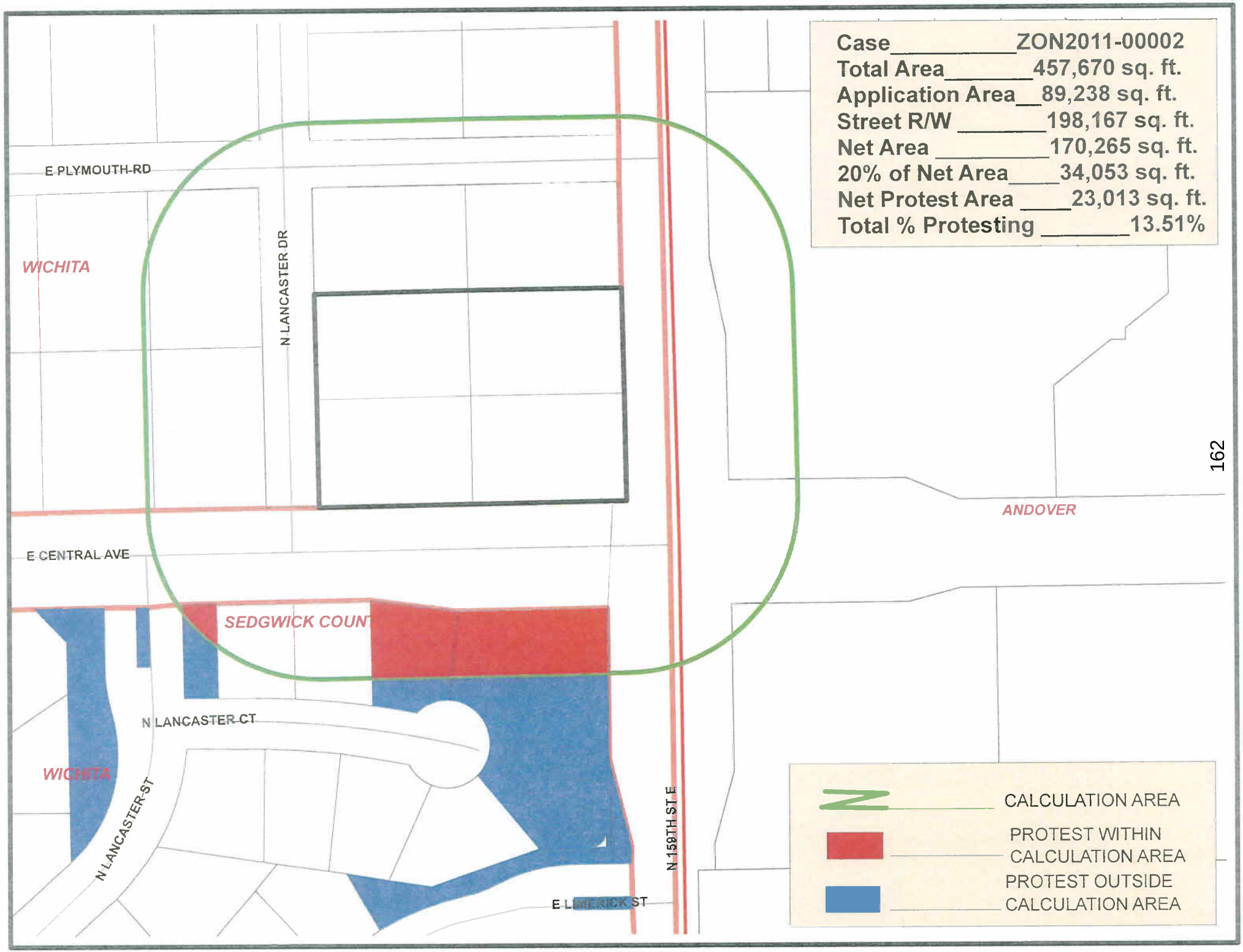
- Screening to the North and West will be some sort of a concrete or brick wall. The applicant has declined to accept this request. In this instance, the code does not require a masonry or concrete screening wall. Staff was asked to obtain an estimate of the linear foot cost to install a six-foot tall masonry wall. Staff was provided an estimated $45.00 per liner-foot cost or $16,200 for the 360-foot length across the northern property line.

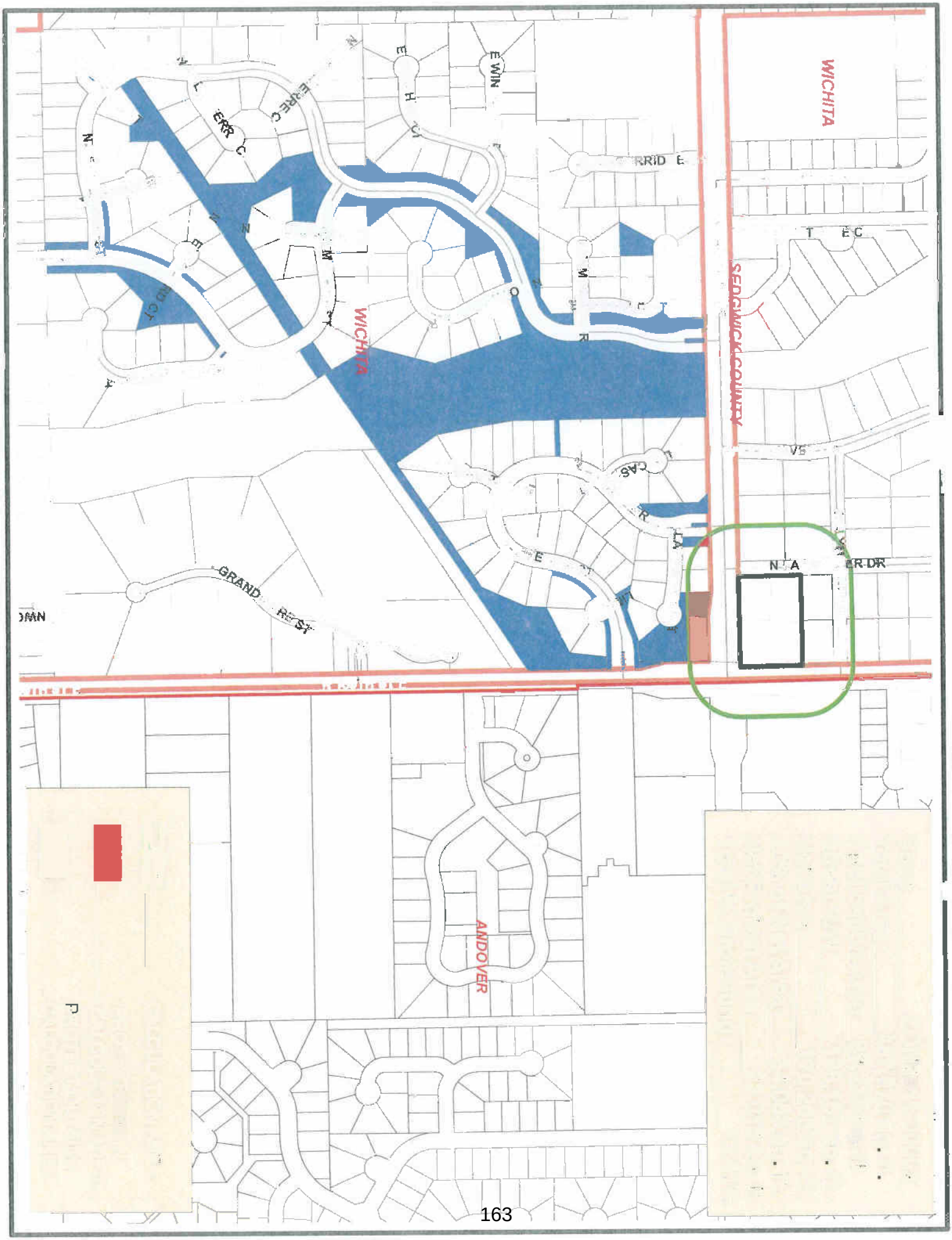
- A resident that resides on Lancaster stated that she felt she should be provided appropriate screening. She requested that a six foot wooden fence be constructed so she doesn't have to look at a potential parking lot out of her front door.

Recommended Action: The DAB voted (9-0) that the zoning request, as proposed, with staff's recommendations, be approved subject to an agreement between the applicant and the two affected homeowners for the upgraded separation concrete or masonry fence. The agreement would regard sharing costs of the construction, although not proportionally. Otherwise the recommendation would be to deny the request. It is also understood that the wall would not need to be constructed unless or until there was a sale of the properties in question.

Explanation: (It was suggested and tentatively agreed to by the homeowners that they would contribute $2,000 to $2,500 each toward the cost of construction of that fence with the remainder to be the sole cost of the applicant. He had already volunteered to a wooden fence with additional landscaping including trees. The cost of the "upgrade" (difference is cost) therefore would be the subject of some shared cost.)

Antione Sherfield
Neighborhood Assistant – District II


Case ZON2011-00002
Total Area 457,670 sq. ft.
Application Area 89,238 sq. ft.
Street R/W 198,167 sq. ft.
Net Area 170,265 sq. ft.
20% of Net Area 34,053 sq. ft.
Net Protest Area 23,013 sq. ft.
Total % Protesting 13.51%
E PLYMOUTH RD
WICHITA
N LANCASTER DR
E CENTRAL AVE
SEDGWICK COUNT
N LANCASTER CT
WICHITA
N LANCASTER ST
E LIMERICK ST
N 159TH ST E
ANDOVER
CALCULATION AREA
PROTEST WITHIN CALCULATION AREA
PROTEST OUTSIDE CALCULATION AREA


WICHITA
WICHITA
SEDGWICK COUNTY
ANDOVER
GRAND
RD ST

3-10-11 MAPC HAND OUT ITEM 4

Crockett, Maryann

From: Diane Z Park [diane@dianezpark.com]
Sent: Wednesday, March 09, 2011 1:14 PM
To: Crockett, Maryann
Subject: rezoning at central and 159th corner

This area should not be considered for businesses. The change will negatively impact the adjacent homeowners. We already have plenty of business land and offices available that are sitting empty. Please do not change this zoning.
Thank you, Diane and Bill Park 15304 Windham Ct Wichita, 67230 733-7388

3-10-11 MAPC HAND OUT ITEM 4

Crockett, Maryann

From: Sanua Handyside [SHandyside@Hynesmemorial.org]
Sent: Wednesday, March 09, 2011 11:42 AM
To: Crockett, Maryann
Subject: Rezoning

This e-mail is to let you know that my husband and I are against the rezoning of the NW corner of 159th Street East and Central Avenue. We feel this would have a negative impact on our community and the value of our home. We live in the Belle Terre subdivision which is directly south of that corner. Please do not rezone this area.

Thank you
Sanua & Bruce Handyside
305 N. Lancaster Dr.
Wichita, KS 67230

Confidentiality Notice:
This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is strictly prohibited. If you are not the intended recipient, please notify the sender by reply e-mail and destroy all copies of the original message.

Harry Hynes Memorial Hospice
313 S Market
Wichita KS 67202

Phone 316-265-9441
Fax 316-265-6066

Click to visit our Website

3-10-11 MAPC HAND OUT ITEM 4

Crockett, Maryann

From: jay kirby [jkirby9@cox.net]
Sent: Tuesday, March 08, 2011 8:20 AM
To: Crockett, Maryann
Cc: craig.noah@cox.net
Subject: Opposition to Proposed Zoning Change

As residents of Belle Terre, we oppose rezoning at the Northwest corner of the intersection of East Central and 159th Street.

Our address is shown below. One of the reasons we moved into the Belle Terre Community was because of it being situated in a quiet neighborhood with little traffic in the neighborhood itself and relatively light business traffic on Central Avenue near 159th Street East.

I would propose to any business proprietor who may be considering occupying this part of Sedgwick County to look at the various vacancies in the vicinity, particularly those at the intersection of East Central and Greenwich Road, which no doubt would meet his/her zoning requirements.

J. W. Kirby Marilyn Kirby

159 North Belle Terre Court

Wichita, KS 67230

Jkirby9@cox.net
316-744-1579

Belle Terre Master Association
P.O. Box 574
Andover, KS 67002

Sent Via Facsimile to: 316.268.4390

March 6, 2011

RECEIVED
MAR 11 '11
CITY CLERK OFFICE

Mr. Dale Miller
Metropolitan Area Planning Department
10th Floor, 455 North Main
Wichita, KS 67202-1688

Re: Case No. ZON2011-02

Dear Mr. Miller:

On behalf of the 180+ homes in the Belle Terre Master Association (BTMA), located on the southwest corner of 159th Street East and Central, we appreciate the opportunity to comment on the zoning change request for the parcels located on the northwest corner of the same intersection. With a good portion of our community impacted by direct sight lines to the property in question, as well as the effects of any change in the noise or light pollution emitting from that property, we believe BTMA and its members have a vested interest in the outcome of these proceedings.

After careful consideration of the information available to us, please be informed the BTMA is opposed to the zoning change request. With all due respect to the rights of the current property owner, the potential for negative impact, both in value and marketability, to the existing developments in the area should be an overriding concern for the MAPC. Further, we suggest the current zoning is correct when considering the balance of the surrounding area.

I believe you will find our position consistent with the comments provided by Mr. Chris McGill on Thursday, March 3rd.

Please formally lodge our position on this matter with the appropriate officials and let us know if further action is necessary to communicate our concerns. Given the timeline for this activity, do not hesitate to contact me on my cell phone at 316.841.0543.

Respectfully,

Craig Noah, President,
Belle Terre Master Association

RECEIVED
MAR 11 2011
METROPOLITAN PLANNING
ROUTE ☐ _____
☐ _____

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL MAY 10, 2011

a. 119th Street, Pawnee to Kellogg (472-84694/706988/633820/208453/750859) See Special Provisions. (District IV) - $4,757,000.00

b. SWS Repair at Lincoln Street between South Minneapolis Avenue and South Ash Street (east of Hydraulic Avenue, north of Lincoln Street) (468-84574/133117/) Local traffic shall be maintained. (District I) - $28,500.00

c. Stormwater Pump Station No. 11 Phase 2: Fencing & Railing (south of West 37th Street N, east of North Meridian Avenue) (468-84477a/660809/868003) Traffic to be maintained during construction using flagpersons and barridades. (District VI) - $116,908.00

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: Janitorial Services for Various City Facilities (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve new custodial services contracts.

Background: Since 1994, the City of Wichita has maintained contracts for custodial services. The current contracts provide for custodial services to the Main Library, Environmental Health, Animal Shelter, and outside parks and athletic field restrooms. In response to the expiration of the current contracts, staff advertised and solicited new proposals (FP030069).

Analysis: Formal proposals were submitted and reviewed by the Staff Screening & Selection Committee. The Committee recommended entering into contracts with Wilson Building Maintenance Inc. to provide custodial services for the Main Library and outside park restrooms. EH Technical Solutions is recommended to provide custodial services for the Environmental Health building and the athletic field restrooms. AAA Commercial Janitorial is recommended to provide custodial services for the Animal Shelter. The committee's recommendations are based on an evaluation of the vendors' adequacy of staffing and equipment, experience with similar work, and references.

Financial Considerations: Proposed custodial services contracts for 2011 total $435,913, a slight increase over 2010. The contract costs are broken down as follows: Central Library at $122,659, Environmental Health at $84,510, outside parks restrooms at $177,097, athletic field restrooms at $17,325, and Animal Shelter at $34,320. These are annual costs, and the contracts are for one year with an option to renew under the same terms for up to two successive one-year periods. The contracts will be funded through the Department of Public Works & Utilities/Fleet & Facilities Division operating budget.

Goal Impact: These contracts address the Efficient Infrastructure goal by maintaining and optimizing public facilities and assets.

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

Recommendations/Actions: It is recommended that the City Council approve the custodial services contracts and authorize all necessary signatures.

Attachments: Contracts.

CONTRACT
for
JANITORIAL SERVICES
FOR
JANITORIAL SERVICES FOR CENTRAL PUBLIC LIBRARY – GROUP 1 AND OUTSIDE PARK RESTROOMS – GROUP 3

BLANKET PURCHASE ORDER NUMBER BP130034

THIS CONTRACT entered into this 10th day of May, 2011, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **WILSON BUILDING MAINTENANCE, INC.** (Vendor Code Number 809007-001), whose principal office is at 624 E. 1st, Wichita, Kansas, 67202-7202, and whose telephone Number (316) 264-0699, hereinafter called **"VENDOR"**.

WITNESSETH:

WHEREAS, the **CITY** has solicited bids for **Janitorial Services for Public Library – Group 1 and Outside Park Restrooms – Group 3** (Formal Proposal – FP030069) [Commodity Code Number 91039]; and

WHEREAS, VENDOR has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY.**

NOW, THEREFORE, the parties hereto agree as follows:

1. **Scope of Services. VENDOR** shall provide to the **CITY** all those commodities and/or services specified in its response to Formal Proposal Number – FP030069 [Commodity Code Number 91039], which is incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications, plans and addenda, provided by the City of Wichita as part of the proposal letting process for Formal Proposal Number – FP030069, shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation. CITY** agrees to pay to **VENDOR** the following **unit price** for **Janitorial Services for Janitorial Services for Public Library – Group 1 and Outside Park Restrooms – Group 3** for Formal Proposal – FP030069 [Commodity Code Number 91039] for the Public Works & Utilities Department as shown below as compensation as per the proposal, plans, specifications, addenda and **VENDOR's** proposal of November 15, 2010, and as approved by the City Council on May 10, 2011.

Item Number	Description	Unit Cost
	Group 1:	
1	**Central Public Library, 233 S. Main – 7 days a week, 52 weeks a year**	**$122,659.16 Annual Cost, $2,358.83 Per Week**
	Group 3:	
2	**Outside Parks Restrooms (Various Locations, Wichita, Kansas), 7 days a week, for 33 weeks**	**$177,097.80 Annual Cost, $5,366.60 Per Week**

3. **Term.** The term of this contract shall be from **June 1, 2011 through May 31, 2012** with options to renew the contract under the same terms and conditions for two (2) successive one (1) year terms by mutual agreement of the parties. This contract is subject to cancellation by the **CITY** at its discretion at any time within the original contract term, or within any successive renewal, upon thirty (30) days written notice to **VENDOR.**

4. **VENDOR** shall furnish the **CITY** within ten (10) days of contract execution with a good and sufficient Business Service Bond (Janitorial Honesty Bond) in the amount of **Ten Thousand Dollars ($10,000.00)** conditioned upon provision of janitorial service without claim arising from misappropriation, theft or fraud relating to City property.

5. **Indemnification and Insurance.**

a. **VENDOR** shall save and hold the **CITY** harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of **VENDOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

b. **CONTRACTOR** will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability

Covering premises---operations, xcu hazards when applicable, Product/Completed Operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	$500,000 Each Occurrence $500,000 Each Aggregate
Property Damage Liability	$500,000 Each Occurrence $500,000 Each Aggregate
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$500,000 Each Occurrence $500,000 Each Aggregate

2. Comprehensive Automobile Liability

All Owned, Non-Owned, and Hired vehicles with minimum limits as follows:

Bodily Injury Liability Property Damage Liability	$500,000 Each Accident $500,000 Each Accident
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$500,000 Each Accident

3. Workers' Compensation	Statutory
Employers Liability	$100,000 Each Accident $500,000 Aggregate $100,000 Occupational Disease

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

7. Compliance with Laws. VENDOR shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.

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

9. Non-Discrimination. VENDOR shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Exhibit A.

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

11. No Arbitration. The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

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

13. Representative's Authority to Contract. By signing this contract, the representative of the contractor or vendor represents that he or she is duly authorized by the contractor or vendor to execute this contract, and that the contractor or vendor has agreed to be bound by all its provisions.

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

ATTEST:

Janis Edwards
Deputy City Clerk

CITY OF WICHITA, KANSAS

Carl G. Brewer
Mayor

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law

WILSON BUILDING MAINTENANCE, INC.

Anita L. Oberwortmann
Signature

Anita L. Oberwortmann
Print Signature Name

President
Title *(President or Corporate Officer)*

EXHIBIT A

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall

be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

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

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

CONTRACT
for
JANITORIAL SERVICES
FOR
ENVIRONMENTAL SERVICES – GROUP 2
AND ATHLETIC FIELD RESTROOMS – GROUP 4
BLANKET PURCHASE ORDER NUMBER BP130035

THIS CONTRACT entered into this 10th day of May, 2011, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **EH TECHNICAL SOLUTIONS, INC.** (Vendor Code Number 824846-001), whose principal office is at 10010 E. Clark, PO Box 781560, Wichita, Kansas, 67278, and whose telephone Number (316) 682-7966, hereinafter called **"VENDOR"**.

WITNESSETH:

WHEREAS, the **CITY** has solicited bids for **Janitorial Services for Environmental Services – Group 2 and Athletic Field Restrooms – Group 4** (Formal Proposal – FP030069) [Commodity Code Number 91039]; and

WHEREAS, VENDOR has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY.**

NOW, THEREFORE, the parties hereto agree as follows:

1. **Scope of Services. VENDOR** shall provide to the **CITY** all those commodities and/or services specified in its response to Formal Proposal Number – FP030069 [Commodity Code Number 91039], which is incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications, plans and addenda, provided by the City of Wichita as part of the proposal letting process for Formal Proposal Number – FP030069, shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation. CITY** agrees to pay to **VENDOR** the following **unit price** for **Janitorial Services for Environmental Services (1900 E. 9th) - Group 2 and Athletic Field Restrooms (Various Locations) – Group 4** for Formal Proposal – FP030069 [Commodity Code Number 91039] for the Public Works & Utilities Department as shown below as compensation as per the proposal, plans, specifications, addenda and **VENDOR's** proposal of November 15, 2010, and as approved by the City Council on May 10, 2011.

Item Number	Description	Weekly Unit Cost
	Group 2:	
1	**Environmental Services, 1900 E. 9th, Wichita, KS Annual cost for 5 days a week to include a day time porter and night time intensive cleaning**	**$1,625.21**
	Group 4:	
2	**Athletic Field Restrooms (Various Locations, Wichita, Kansas), 7 days a week**	**$525.00**

3. **Term.** The term of this contract shall be from **June 1, 2011 through May 31, 2012** with options to renew the contract under the same terms and conditions for two (2) successive one (1) year terms by mutual agreement of the parties. This contract is subject to cancellation by the **CITY** at its discretion at any time within the original contract term, or within any successive renewal, upon thirty (30) days written notice to **VENDOR.**

4. **VENDOR** shall furnish the **CITY** within ten (10) days of contract execution with a good and sufficient Business Service Bond (Janitorial Honesty Bond) in the amount of **Ten Thousand Dollars ($10,000.00)** conditioned upon provision of janitorial service without claim arising from misappropriation, theft or fraud relating to City property.

5. **Indemnification and Insurance.**

a. **VENDOR** shall save and hold the **CITY** harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of **VENDOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

b. **CONTRACTOR** will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability

Covering premises---operations, xcu hazards when applicable, Product/Completed Operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	$500,000 Each Occurrence $500,000 Each Aggregate
Property Damage Liability	$500,000 Each Occurrence $500,000 Each Aggregate
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$500,000 Each Occurrence $500,000 Each Aggregate

2. Comprehensive Automobile Liability

All Owned, Non-Owned, and Hired vehicles with minimum limits as follows:

Bodily Injury Liability	$500,000 Each Accident
Property Damage Liability	$500,000 Each Accident
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$500,000 Each Accident

3. Workers' Compensation	Statutory
Employers Liability	$100,000 Each Accident $500,000 Aggregate $100,000 Occupational Disease

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

7. Compliance with Laws. **VENDOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.

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

9. Non-Discrimination. **VENDOR** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Exhibit A.

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

11. No Arbitration. The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

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

13. Representative's Authority to Contract. By signing this contract, the representative of the contractor or vendor represents that he or she is duly authorized by the contractor or vendor to execute this contract, and that the contractor or vendor has agreed to be bound by all its provisions.

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

ATTEST:

Janis Edwards
Deputy City Clerk

CITY OF WICHITA, KANSAS

Carl G. Brewer
Mayor

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law

EH TECHNICAL SOLUTIONS, INC.

Signature

ERIC HENDRICK
Print Signature Name

PRESIDENT
Title *(President or Corporate Officer)*

EXHIBIT A

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall

be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

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

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

CONTRACT
for
JANITORIAL SERVICES
FOR
ANIMAL CONTROL FACILITY – GROUP 5
BLANKET PURCHASE ORDER NUMBER BP130036

THIS CONTRACT entered into this 10th day of May, 2011, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY**", and **AAA COMMERCIAL JANITORIAL** (Vendor Code Number 820482-002), whose principal office is at 2542 N. Crestline Ct., PO Box 12766, Wichita, Kansas, 67277, and whose telephone Number (316) 554-7019, hereinafter called **"VENDOR"**.

WITNESSETH:

WHEREAS, the **CITY** has solicited bids for **Janitorial Services for Animal Control Facility – Group 5** (Formal Proposal – FP030069) [Commodity Code Number 91039]; and

WHEREAS, VENDOR has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY.**

NOW, THEREFORE, the parties hereto agree as follows:

1. **Scope of Services. VENDOR** shall provide to the **CITY** all those commodities and/or services specified in its response to Formal Proposal Number – FP030069 [Commodity Code Number 91039], which is incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications, plans and addenda, provided by the City of Wichita as part of the proposal letting process for Formal Proposal Number – FP030069, shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation. CITY** agrees to pay to **VENDOR** the following **unit price** for **Janitorial Services for Animal Control Facility, 3303 N. Hillside – Group 5** for Formal Proposal – FP030069 [Commodity Code Number 91039] for the Public Works & Utilities Department as shown below as compensation as per the proposal, plans, specifications, addenda and **VENDOR's** proposal of November 15, 2010, and as approved by the City Council on May 10, 2011.

Item Number	Description	Unit Cost
	Group 5:	
1	**Animal Control Facility, 3303 N. Hillside, Wichita, KS. Annual cost 5 days a week service, 52 weeks a year**	**$660.00 Weekly, $132.00 Daily**

3. **Term.** The term of this contract shall be from **June 1, 2011 through May 31, 2012** with options to renew the contract under the same terms and conditions for two (2) successive one (1) year terms by mutual agreement of the parties. This contract is subject to cancellation by the **CITY** at its discretion at any time within the original contract term, or within any successive renewal, upon thirty (30) days written notice to **VENDOR.**

4. **VENDOR** shall furnish the **CITY** within ten (10) days of contract execution with a good and sufficient Business Service Bond (Janitorial Honesty Bond) in the amount of **Ten Thousand Dollars ($10,000.00)** conditioned upon provision of janitorial service without claim arising from misappropriation, theft or fraud relating to City property.

5. **Indemnification and Insurance.**

a. **VENDOR** shall save and hold the **CITY** harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of **VENDOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

b. **CONTRACTOR** will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability

Covering premises—operations, xcu hazards when applicable, Product/Completed Operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	$500,000 Each Occurrence $500,000 Each Aggregate
Property Damage Liability	$500,000 Each Occurrence $500,000 Each Aggregate
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$500,000 Each Occurrence $500,000 Each Aggregate

2. Comprehensive Automobile Liability
All Owned, Non-Owned, and Hired vehicles with minimum limits as follows:

Bodily Injury Liability	$500,000 Each Accident
Property Damage Liability	$500,000 Each Accident
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$500,000 Each Accident

3. Workers' Compensation — Statutory

Employers Liability	$100,000 Each Accident $500,000 Aggregate $100,000 Occupational Disease

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

7. Compliance with Laws. **VENDOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.

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

9. Non-Discrimination. **VENDOR** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Exhibit A.

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

11. No Arbitration. The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

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

13. Representative's Authority to Contract. By signing this contract, the representative of the contractor or vendor represents that he or she is duly authorized by the contractor or vendor to execute this contract, and that the contractor or vendor has agreed to be bound by all its provisions.

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

ATTEST:

Janis Edwards
Deputy City Clerk

CITY OF WICHITA, KANSAS

Carl G. Brewer
Mayor

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law

AAA COMMERCIAL JANITORIAL

Sharon Duncan
Signature

SHARON DUNCAN
Print Signature Name

Owner
Title *(Owner or Sole Proprietor)*

EXHIBIT A

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall

be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

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

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

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: Change Order No. 3 - Harry Street Improvement, between Greenwich and 127th Street East (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the change order.

Background: On April 20, 2010, the City Council approved a contract with Cornejo & Sons, Inc. for improvements to Harry, between Greenwich and 127th Street East. Part of the improvements is landscaped medians with left turn lanes. In order to respond to neighborhood concerns regarding the medians and the potential for restricting traffic flow, the medians need to be modified.

Analysis: The additional work consists of removing portions of the existing medians, replacing with asphalt pavement, and additional mill and overlay at the tie-ins. Also, additional work will be needed to extend a storm sewer pipe to reduce erosion along 127th Street. An itemized list of the work is contained in the attached change order document.

Financial Considerations: The total cost of the additional work is not to exceed $60,000 with the total paid by General Obligation Bonds. The original contract amount is $2,406,014. This change order plus previous change orders represents 3.42% of the original contract amount. Funding is available within the existing project budget.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow through an important transportation corridor.

Legal Considerations: The Law Department has approved the Change Order No. 3 as to form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve Change Order No. 3 and authorize the necessary signatures.

Attachments: Change Order No. 3.

May 5, 2011

PUBLIC WORKS-ENGINEERING

CHANGE ORDER

To: Cornejo & Sons, Inc.
Change Order No.: 3
Purchase Order No.: 030445
CHARGE TO OCA No.: 991309

Project: Harry – Greenwich to 127th St. E.
Project No.: 87N-0514-01/472-84884
OCA No.: 991309/636231/620554
PPN: xxxxx/770619/660671

Please perform the following extra work at a cost not to exceed $60,000.00

Additional Work: Due to neighborhood concerns regarding the medians and the potential for restricting traffic flow, remove portions of the medians and replace with asphalt pavement. Additional temporary traffic control is needed as well as additional permanent pavement markings when completed. Additional mill and overlay is needed to make tie-ins. In addition, provide drainage work to reduce erosion along 127th. Final payment will be based on actual quantities.

Reason for Additional Work:

Item #1 – Four of the five medians will be shortened and one will be removed. The median between stations 27+56 to 29+55.66 will have 105.87' removed off the east end. The median between stations 34+81 to 37+69 will be completely removed. The median between stations 42+86 to 45+44 will have 75' removed off of the west and east end. The median between stations 57+56 to 60+09 will have 48.13' removed off the east end. The East median will be reduced by approximately 27'. Medians will have Curb and Gutter removed, 8" reinforced rock base added, then 7" asphalt added. Additional striping and traffic control will also be needed. Final payment for this work will be based on actual quantities removed and replaced.

Item	Negot'd/Bid	Qty			Unit Price	Extension
Charge to OCA (991309) - ADD						
Median Removal	Negot'd	1	LS	@	$45,628.93	$45,628.93

Item #2 – On 127th St East and Harry, provide additional mill and overlay along with pavement markings to the south.

Item	Negot'd/Bid	Qty			Unit Price	Extension
Charge to OCA (991309) - ADD						
127th Pavement Overlay	Negot'd	1	LS	@	5,928.48 =	$5,928.48

Item #3 – On 127th St. E., install additional RCP , inlet, and Rip-rap to properly drain area and provide erosion control in the drainage canal.

Item	Negot'd/Bid	Qty			Unit Price	Extension
Charge to OCA (991309) - ADD						
Lynn Street Drainage Impr.	Negot'd	1	LS	@	8,442.590 =	$8,442.59
					Total =	**$60,000.00**

CIP Budget Amount: $ 4,025,878.00 (991309)

Consultant: Baughman & Comp.
Total Exp. & Encum. To Date: $2,593,166.15
CO Amount: $60,000.00
Unencum. Bal. After CO: $1,372,711.85

Original Contract Amt.: $2,406,014.20

Current CO Amt.: $60,000.00
Amt. of Previous CO's: $22,330.00
Total of All CO's: $82,330.00
% of Orig. Contract / 25% Max.: 3.42%

Adjusted Contract Amt.: $2,488,344.20

Recommended By:

_____ _____
Greg Baalman, P.E. Date
Construction Engineer

Approved:

_____ _____
Jim Armour, P.E. Date
City Engineer
Co-Director of Public Works & Utilities

Approved:

_____ _____
Contractor Date

Approved as to Form:

_____ _____
Gary Rebenstorf Date
Director of Law

By Order of the City Council:

_____ _____
Carl Brewer Date
Mayor

Attest:_____
City Clerk

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: Change Order No.2 – Mid-Continent Water Quality Reclamation Facility (District IV)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve Change Order No. 2.

Background: On August 5, 2008, Grimm Construction was awarded the contract for the construction of the new sewage treatment plant to serve southwest Wichita. The contract was to include all general construction services for a 3 million gallon-per-day wastewater treatment facility. The original contract amount for this project was $22,898,000. On August 18, 2009, the City Council approved Change Order No. 1, which represented a net increase of $261,037.

Analysis: Change Order No. 2 is a combination of 14 proposed contract modifications which reflects an added value to the City. A summary of the proposed contract modifications is attached. Also included is a justification for the individual changes.

Financial Considerations: This Change Order is part of Capital Improvement Project – Mid Continent Sewage Treatment Plant (S-546). The proposed modifications result in an increase of $93,764. The sum of Change Order No. 1 and Change Order No. 2 is $354,801, representing a 1.5% increase to the original contract. A third change order is forthcoming and covers the costs for process modifications required to effectively meet permit limits.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing reliable, compliant and secure utilities.

Legal Considerations: The Law Department has approved the change order as to form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendations/Actions: It is recommended that City Council approve Change Order No. 2 and authorize the necessary signatures.

Attachments: Change Order No. 2.

Change Order

No. 2

Date of Issuance: _____ Effective Date: _____

Project: Mid-Continent Water Quality Reclamation Facility	Owner: City of Wichita, Kansas	City Project No.: FB-655546-2
Contract: Mid Continent Water Quality Reclamation Facility		Date of Contract::
Contractor: Grimm Construction		Engineer's Project No.: 2395-46935

The Contract Documents are modified as follows upon execution of this Change Order:

Description: Refer to Attachment A

Attachments: (List documents supporting change):
Refer to Attachment B

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: $ 22,898,000.00	Original Contract Times: ☐ Working days ☐ Calendar days Substantial completion (date): April 15, 2010 Ready for final payment (date): June 14, 2010
Increase from previously approved Change Orders No. No. 1 : $ 261,037,00	Increase from previously approved Change Orders No. 0 : Substantial completion (days): 0 Ready for final payment (days): 0
Contract Price prior to this Change Order: $ 23,159,037.00	Contract Times prior to this Change Order: Substantial completion (date): April 15, 2010 Ready for final payment (date): June 14, 2010
Increase of this Change Order: $ 93,764.00	Increase of this Change Order: Substantial completion (days): 139 Ready for final payment (days or date): 139
Contract Price incorporating this Change Order: $ 23,252,801.00	Contract Times with all approved Change Orders: Substantial completion (date): September 15, 2010 Ready for final payment (date): October 15, 2010

Contractor agrees that the time and financial compensation contained in this Change Order is the entire and complete amount to which the Contractor is entitled for the work described herein.

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: _____	By: _____	By: _____
Engineer (Authorized Signature)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Date: 1/5/2011	Date: _____	Date: 1-14-11

Approved:

4-25-17

Joe Major Date
Co-Director of Public Works & Utilities

Approved as to Form:

Gary Rebenstorf Date
Director of Law

By Order of the City Council:

Carl Brewer Date
Mayor

Attest: _____
City Clerk

ATTACHMENT A

CITY OF WICHITA, KANSAS
MID-CONTINENT WATER QUALITY RECLAMATION FACILITY
CITY PROJECT NO. FB-655546-2

CHANGE ORDER NO. 2

CHANGE ORDER ITEM NO.	DESCRIPTION	COST
1	Additional work, pipe and fittings For the 16-inch water line *Add the sum of $6,767.00*	
	Item No. 1 Total	***$6,767.00***
2	Add Neutral to MC51-20P and Gen-P *Add the sum of $1,652.00*	
	Item No. 2 Total	***$1,652.00***
3	Construct a Fire Service Line into the Building *Add the sum of $27,0105.00*	
	Item No. 3 Total	***$27,015.00***
4	Additional Bar Joist for Electrical Room *Add the sum of $6,404.00*	
	Item No. 4 Total	***$6,404.00***
5	Crane Permit Delay, Weather Delay Startup Delay *Add 139 Calendar Days*	
	Item No. 5 Total	***$0.00***
6	Limitorque Power Supply SLG 53470-1 & 2 *Add the sum of $4,753.00*	
	Item No. 6 Total	***$4,753.00***

ATTACHMENT A

CITY OF WICHITA, KANSAS
MID-CONTINENT WATER QUALITY RECLAMATION FACILITY
CITY PROJECT NO. FB-655546-2

CHANGE ORDER NO. 2

CHANGE ORDER ITEM NO.	DESCRIPTION	COST
7	Natural Gas Re-routing *Add the sum of $4,240.00*	
	Item No. 7 Total	***$4,240.00***
8	Wire size change per D-16105-003A Submittal Review *Add the sum of $2,057.00*	
	Item No. 8 Total	***$2,057.00***
9	Replace Glycol in HVAC System due to operation of 3-way valves on the fan coil units *Add the sum of $14,486.00*	
	Item No. 9 Total	***$14,486.00***
10	Clamp on Flowmeter Relocation and Doppler Conversion *Add the sum of $7,589.00*	
	Item No. 10 Total	***$7,589.00***
11	Provide Safety Handrail at Monorail Doors *Add the sum of $2,088.00*	
	Item No. 11 Total	***$2,088.00***
12	Additional Main Power Service Duct Bank *Add the sum of $8,882.00*	
	Item No. 12 Total	***$8,882.00***
13	Additional Programming for Cowskin Creek to allow better control at Mid Continent *Add the sum of $1,297.00*	
	Item No. 13 Total	***$1,297.00***
14	Modify WAS Piping at Mid Continent *Add the sum of $6,534.00*	
	Item No. 14 Total	***$6,534.00***

ATTACHMENT A

CITY OF WICHITA KANSAS
MID-CONTINENT WATER QUALITY RECLAMATION FACILITY
CITY PROJECT NO. FB-655546-2

CHANGE ORDER NO. 2

REASONS AND JUSTIFICATION FOR CHANGES

CHANGE ORDER ITEM NO.	*REASON/JUSTIFICATION*
1	*Change order no. 1 approved the installation of a 16" water line that provides potable water service to the plant. This change reflects the addition of hydrants and valves to the 16" line. It also encompasses a water line to the Airport Maintenance Shop.*
2	*The original drawings for the plant's back-up generator excluded the neutral wire from MCC 51 to the Genset. This change reflects the installation of the neutral wire.*
3	*In the future, when the plant is expanded, a second generator will be added. The addition of a second generator requires the installation of a fire/sprinkler system. This change covers the construction of a Fire Service Line and avoids the cutting of the driveway and foundation when the plant is upgraded.*
4	*Due to the weight of the HVAC equipment above the Electrical Room, additional joists were required to adequately support the structure.*
5	*There was no charge for the delays that were experienced during the project. Startup, weather, and crane permit delays had different responsible parties and balanced out over the course of the project.*
6	*Although the control wiring for the slide gates, which controls the flow to the membrane channels, was present in the drawings, the power supply for the Limitorque controllers was absent. This change reflects the installation of the power supply to the Limitorque controllers.*
7	*The engineering drawings reflected the gas service entering the West side of the building. When the gas utility brought service to the facility, it was on the East side. This change covers the additional piping required to reroute the natural gas line.*
8	*Because of the load demands for Panel H51, the electrical feeders for this panel had to be upsized. This change reflects the wire size change.*

ATTACHMENT A

CITY OF WICHITA KANSAS
MID-CONTINENT WATER QUALITY RECLAMATION FACILITY
CITY PROJECT NO. FB-655546-2

CHANGE ORDER NO. 2

REASONS AND JUSTIFICATION FOR CHANGES

CHANGE ORDER ITEM NO.	REASON/JUSTIFICATION
9	The plant uses effluent to provide seal water for pumps and cooling water for the HVAC system. Before reaching the outfall, the effluent passes through a storage tank, which feeds the HVAC and seal water systems. During a plant shutdown, the effluent in the storage tank can be consumed. When the tank reserve is used up, the HVAC system is designed to switch to City Water, evacuating the glycol in the system. This change reflects the replacement of the glycol and the programming changes to eliminate the automatic switch over to City Water.
10	The hydraulic design of the RAS line produces a good deal of turbulence and introduces air into the flow. The original location and style of the flowmeter had to be modified. This change represents the relocation and style change of the flowmeter.
11	The original drawings did not include handrails in front of the doors for the monorails in the Headworks Area. The monorails are used to move equipment in and out of the second level at the Headworks Area. The doors for the monorails are 15' above ground level. This change increases the safety for personnel working in the area when the doors are open.
12	The electrical utility did not bring their service line to the area expected by the original plans. This change covers the additional duct bank required to connect the service line to the planned service entry location.
13	In the event that the plant went into shutdown mode or experienced a failure, flooding could occur at the plant if the Cowskin Creek Pump Station feeding the plant did not divert flow to Plant 2. Additional programming increased the reliability of communication between the plant and the pump station. The programming changes lower the possibility of flooding at the plant.
14	The WAS line is fed from the RAS line. With the original piping configuration, if RAS flow was low, the WAS line starved and the plant could not waste properly. This change reflects a change in the piping configuration between the WAS and RAS lines. The modification ensures the WAS line stays full, regardless of the RAS flow.

ATTACHMENT B

CITY OF WICHITA, KANSAS
MID-CONTINENT WATER QUALITY RECLAMATION FACILITY
CITY PROJECT NO. FB-655546-2

CHANGE ORDER NO. 2

SUPPORTING DOCUMENTATION

CHANGE ORDER ITEM NO.	DOCUMENTATION
1	Cost proposal from Grimm Construction for additional 16" Water Line after April 20, 2009..
2	Cost proposal from Grimm Construction, add neutrals to MCC51 circuits per RFI 147 Rev 1, dated May 30, 2010.
3	Cost proposal from Grimm Construction, add future fire sprinklers line into bldg. Rev 1, dated May 30, 2010.
4	Cost proposal from Grimm Construction, extra bar joist electrical room 2 and odor control room Rev 1, dated May 30, 2010.
5	Time extension for Crane Delay, Crane Permit delays August 6, 2009 through September 23, 2009, dated May 30, 2010.
6	Cost proposal from Grimm Construction, add power to SLG 53470 1 & 2 operators Rev 1, dated May 30, 2010.
7	Cost proposal from Grimm Construction, natural gas piping re-route Rev 1, dated May 30, 2010.
8	Cost proposal from Grimm Construction, wire size changes MCC-51 & generator Rev 1, dated May 30, 2010,
9	Cost proposal from Grimm Construction, replace glycol in HVAC system due to operation of 3 way valves on fan coil units, dated September 10, 2010.
10	Cost proposal from Grimm Construction, clamp on flowmeter transducer relocation Rev September 27, 2010, dated September 27, 2010.
11	Cost proposal from Grimm Construction, add handrail at monorail doors, dated June 1, 2010.
12	Cost proposal from Grimm Construction, 200 LF additional main power service duct bank, dated June 1, 2010.
13	Cost proposal from Maverick to modify Cowskin Controls for Better Control at Mid Continent, dated August 26, 2010.
14	Cost proposal from Grimm Construction to modify WAS Piping at Mid Continent, dated November 10, 2010.

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: Change Order No. 2-Cowskin Creek Sanitary Sewer Pump Station Modifications (District IV)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve Change Order No. 2.

Background: Garney Construction was awarded the contract for the construction of a new pipeline and electrical equipment and the rehabilitation of the old structures and equipment at the Cowskin Creek Pump Station. The original contract amount for this project was $3,932,086. On March 24, 2009, the City Council approved Change Order No. 1, which represented a net increase of $129,000.

Analysis: Change Order No. 2 represents one proposed contract modification which reflects an added value to the City. Prior to the upgrades at the Cowskin Creek Pump Station (Tyler lift station), it was not hydraulically possible to run all four pumps at the same time. The original electrical service reflected this capacity. The project included a parallel force main to feed the Mid-Continent Water Quality Reclamation Facility, improving the lift station's hydraulic profile. The change to the electrical service now provides adequate power to operate all four pumps simultaneously.

Financial Considerations: Change Order No. 2 is part of the Capital Improvement Program-Mid Continent Sewage Treat Plant (S-546). The proposed modifications result in an increase of $61,176. The sum of Change Order No. 1 and Change Order No.2 is $190,476, representing a 4.9% increase to the original contract. The project is complete and no further changes will be required.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing reliable, compliant and secure utilities.

Legal Considerations: The Law Department has approved the change order as to form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendations/Actions: It is recommended that the City Council approve Change Order No. 2 and authorize the necessary signatures.

Attachments: Change Order No. 2.

Change Order

No. 2

Date of Issuance: _____ Effective Date: _____

Project: Cowskin Creek Pump Station and Force Main	Owner: City of Wichita, Kansas	City Project No.: FB-655546-1
Contract: Cowskin Creek Pump Station and Force Main		Date of Contract::
Contractor: Garney Construction		Engineer's Project No.: 2395-46935

The Contract Documents are modified as follows upon execution of this Change Order:

Description: Refer to Attachment A

Attachments: (List documents supporting change):

Refer to Attachment B

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: $ 3,932,086.00	Original Contract Times: ☐ Working days ✕ Calendar days Substantial completion (date): June 3, 2009 Ready for final payment (date): July 3, 2009
Increase from previously approved Change Orders No No. 1 : $ 129,330.00	Increase from previously approved Change Orders No. 1: Substantial completion (days): 60 Ready for final payment (days): 60
Contract Price prior to this Change Order: $ 4,061,416.00	Contract Times prior to this Change Order: Substantial completion (date): August 2, 2009 Ready for final payment (date): September 1, 2009
Increase of this Change Order: $ 61,416	Increase of this Change Order: Contract time to match Mid Continent Contract Time.
Contract Price incorporating this Change Order: $ 4,122,832.00	Contract Times with all approved Change Orders: Substantial completion (date): September 15, 2010 Ready for final payment (date): November 15, 2010

Contractor agrees that the time and financial compensation contained in this Change Order is the entire and complete amount to which the Contractor is entitled for the work described herein.

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: _____	By: _____	By: _____
Engineer (Authorized Signature)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Date: 11/22/10	Date: _____	Date: 12-13-10

Approved:

4-25-1

Joe Pajor Date
Co-Director of Public Works & Utilities

Approved as to Form:

Gary Rebenstorf Date
Director of Law

By Order of the City Council:

Carl Brewer Date
Mayor

Attest: _____
City Clerk

ATTACHMENT A

CITY OF WICHITA, KANSAS
COWSKIN CREEK PUMP STATION AND FORCE MAIN
CITY PROJECT NO. FB-655546-1

CHANGE ORDER NO. 2

CHANGE ORDER ITEM NO.	*DESCRIPTION*	*COST*
1	City's Requested Replacement of the Electrical Service *Add the sum of $61,416.00*	
	Item No. 1 Total	***$61,416.00***

ATTACHMENT A

CITY OF WICHITA KANSAS
MID-CONTINENT WATER QUALITY RECLAMATION FACILITY
CITY PROJECT NO. FB-655546-1

CHANGE ORDER NO. 2

REASONS AND JUSTIFICATION FOR CHANGES

CHANGE ORDER ITEM NO.	*REASON/JUSTIFICATION*
1	*Prior to the upgrades at the Cowskin Creek Pump Station (Tyler lift station), it was not hydraulically possible to run all four pumps at the same time. The original electrical service reflected this capacity. The project included a parallel force main to feed the Mid-Continent Water Quality Reclamation Facility, improving the lift station's hydraulic profile. The change to the electrical service now provides adequate power to operate all four pumps simultaneously.*

ATTACHMENT B

CITY OF WICHITA, KANSAS
COWSKIN CREEK PUMP STATION AND FORCE MAIN
CITY PROJECT NO. FB-655546-1

CHANGE ORDER NO. 2

SUPPORTING DOCUMENTATION

CHANGE ORDER ITEM NO.	DOCUMENTATION
1	Cost proposal from Grimm Construction, estimated for replacement to larger electrical services at Cowskin pump station Rev 1, dated July 23, 2009.

Agenda Item No. II-6a

CITY OF WICHITA
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: Acquisition of 1358 North Terrace for the East 13th Street, Hydraulic to Oliver Road Improvement Project (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On November 6, 2007, the City Council approved the design concept and proposed project to widen East 13th Street North between Hydraulic to Oliver. The project will require the acquisition of all or part of 79 tracts. The improvements include adding a center turn lane, relocating the sidewalks away from the back of the curb, improving the storm sewer system and landscaping. As a result of the proposed alignment, the property at 1358 North Terrace is required as a full acquisition. The property at 1358 North Terrace is a single family residence built in 1948. Per the county records, the house has 720 square feet of living space and a detached, two-car garage. The improvements will be razed and the remnant site will be maintained as green space.

Analysis: The seller has agreed to accept the county appraised value of $56,500, or $78 per square foot. There is some personal property at the subject property which will have to be relocated however; the property is unoccupied and therefore, there is not a replacement housing payment. The estimated cost of the demolition is $10,000.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $70,500 is requested. This includes $56,500 for the acquisition, $10,000 for demolition, $3,000 for the relocation of personal property, and $1,000 for title work and other administrative fees.

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

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

Recommendation/Action: It is recommended that the City Council 1) Approve the agreement; 2) Approve the budget and; 3) Authorize the necessary signatures.

Attachments: Real estate purchase agreement, tract map and aerial map.

PROJECT: 13th Street North **DATE:** March 29, 2011

COUNTY: Sedgwick **TRACT NO.:** 166

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

Said Miremadi and Kathy L. Miremadi, husband and wife AND

Syed M. Bakhtiar and Jinnat Ara Begum, husband and wife

PO BOX 161081

Wichita, KS 67216

(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount after the warranty deed conveying said property free of encumbrance has been delivered.

Real property to be acquired as right of way:
6,813 (Sq. Ft.) $ 56,500.00

Temporary Easement for construction:
N/A (Sq. Ft.) $ N/A

Improvement & Buildings acquired with right of way:
Residence, Detached Garage, Fencing and All Other Site Improvements

TOTAL: $ 56,500.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out. It is understood and agreed that the above stated consideration for said real estate is contingent upon approval by the Wichita City Council.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: _____
Said Miremadi

By: _____
Kathy L. Miremadi

By: _____
Syed M. Bakhtiar

By: _____
Jinnat Ara Begum

THE CITY OF WICHITA

By: _____
Carl Brewer, Mayor

ATTEST:

By: _____
Karen Sublett, City Clerk

MEMORANDA

Exact and full name of owner, as name appears of record:

Said Miremadi and Kathy L. Miremadi, h&w AND Syed M. Bakhtiar and Jinnat Ara Begum, h&w

If mortgage or other liens, show names of holders:

Security Savings Bank, F.S.B. and
Deutsche Bank f/k/a Bankers Trust Company of California

REMARKS:

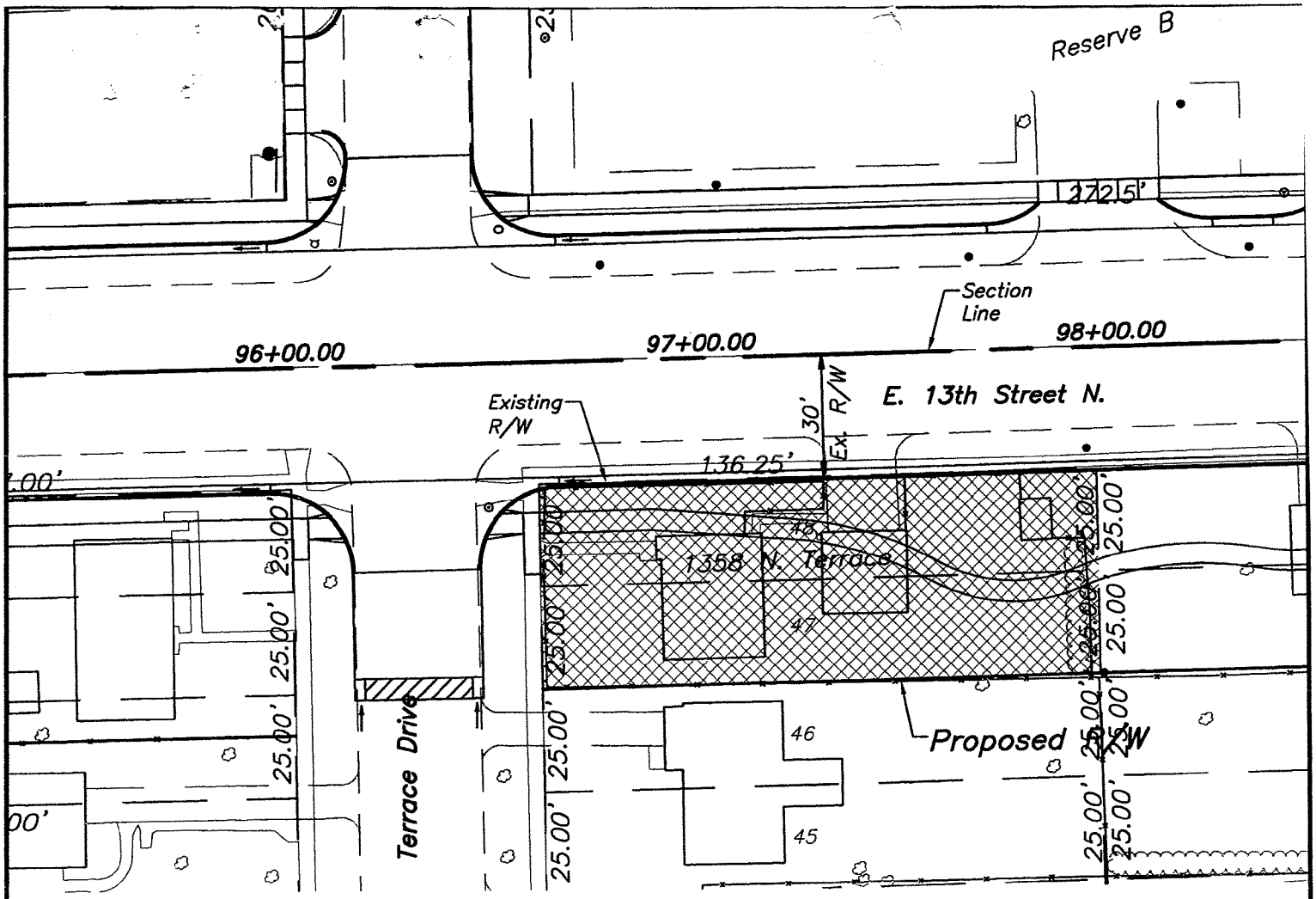
PIN/APN 126140110300200
Security Title File Number 2001314

APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Joe Vorstenbosch, Project Manager



PROPOSED R/W ACQ. LEGAL:

All of Lots 47 & 48, Block 3, Country Club Heights Addition, an addition to Wichita, Sedgwick County, Kansas.

TAX KEY #: C14336

R/W ACQUISITION SIZE: 6,813 sq. ft.

PROPOSED R/W ACQUISITION

13th STREET
HYDRAULIC AVENUE TO OLIVER

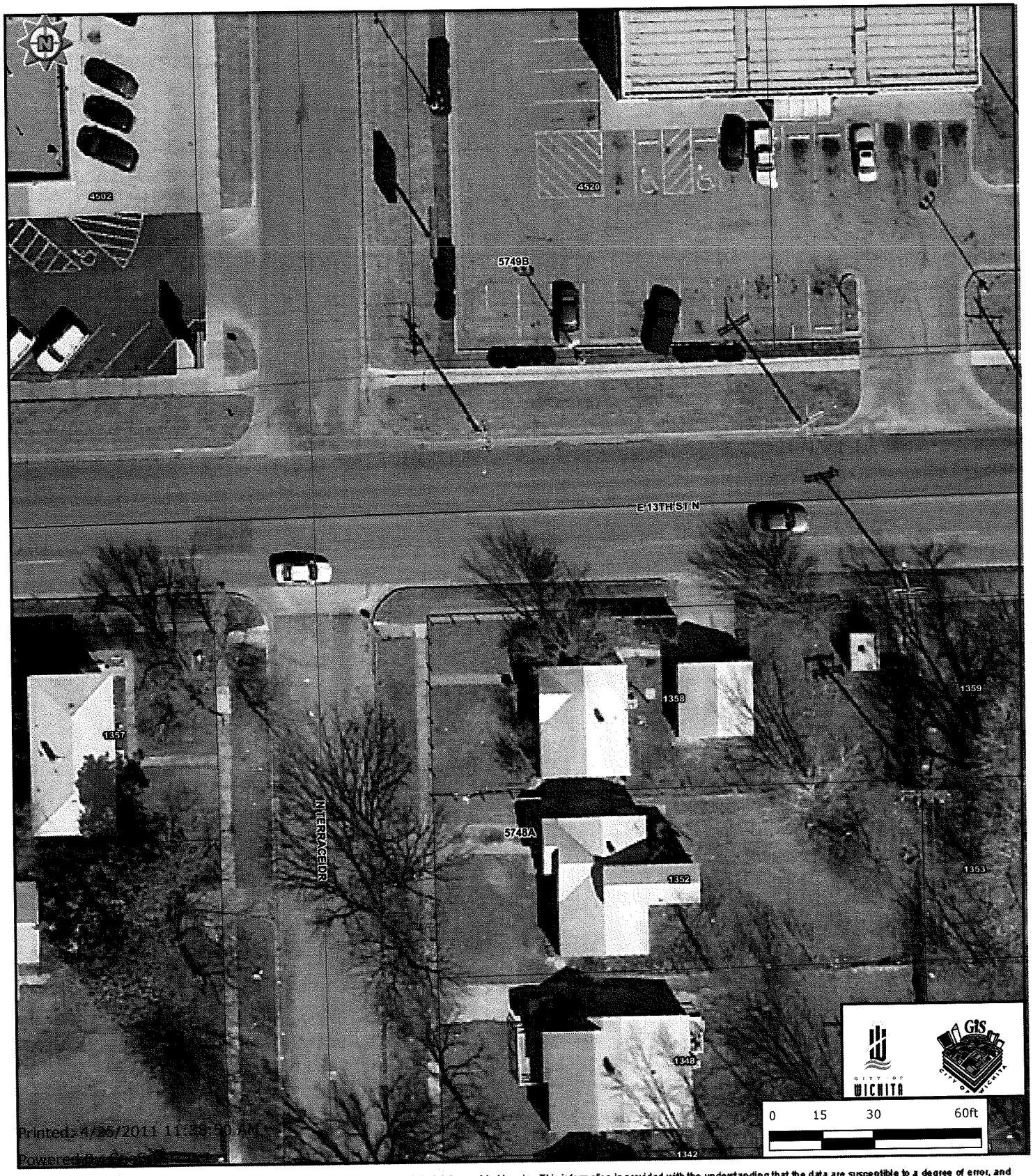
TRACT MAP

MIREMADI, SAID & KATHY L. ETAL
SEC 14–T27–R1E

SCALE: 1" = 40'

Tract No. 166

1358 N Terrace



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
May 10, 2011

TO: Mayor and City Council

SUBJECT: Sale of City-owned Building at 610 East Douglas (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the sale.

Background: In September 1994, the City acquired Victoria Park Apartments at 610 East Douglas from the Department of Housing and Urban Development (HUD). The property is a 3-story brick structure with 20 apartments on the upper floors and two retail units on the first floor. The apartments are subject to a contract with HUD whereby the City is contractually required to lease the apartment units to very low income individuals in exchange for a guaranteed lease amount. This contract is currently renewed on an annual basis with the next renewal on October 1, 2011.

Analysis: A request for proposals to acquire and redevelop the property was sent to all local real estate offices, Certified Commercial Investment Member**s** (CCIM) and brokers as well as potential buyers identified by HUD. As a result of this request, four proposals were received. These were reviewed by a staff review committee. The recommendation of the committee was that the property be sold to Eyster Properties, LLC for $210,000. The buyer agrees to accept and abide by the existing contract with HUD through its current term. The apartments will be modernized and converted into market rent units. The first floor will be renovated into retail and office space.

Financial Considerations: Per the terms of the purchase contract with HUD, the City will receive 25% of the net cash proceeds from the sale of the property. In addition, the sale of this property to a private party will relieve the City of any maintenance costs and facilitate the private renovation of the property.

Goal Impact: The sale and redevelopment of this property will support Economic Vitality by promoting the redevelopment of the Old Town West and Arena areas as identified by the Goody Clancy Downtown Plan.

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

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

Attachments: Real Estate Purchase Agreement, proposed floor plans

REAL ESTATE SALE CONTRACT

THIS AGREEMENT, Made and entered into this____ day of _____, 2011 by and between the City of Wichita, a municipal corporation, party of the First Part, hereinafter referred to as "Seller," whether one or more, and Eyster Properties, LLC, a Kansas limited liability corporation and/or its assigns, 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:

   Lots 74 and 76, on Douglas Avenue, J. R. Meads Addition to Wichita, Sedgwick County Kansas.

2. 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 Two Hundred Ten Thousand Dollars and Zero Cents ($210,000.00) in the manner following to-wit:_cash at closing

3. Seller and Buyer agree to convey title in and to the above-described real property, subject to easements, restrictions and special assessments of record, if any, acceptable to the other party. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid by Buyer.

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

5. It is further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Buyer), and interest, if any shall be adjusted and prorated as of the closing date. Taxes and specials shall be pro-rated for calendar year on the basis of 100% of taxes levied for the prior year. All prior years specials and taxes shall be current at time of closing.

6. The Seller further agrees to convey the above-described premises and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.

7. 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.

8. 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 June 31, 2011.

9. Possession to be given to Buyer at closing

10. Closing costs shall be paid 50% by Buyer and 50% by Seller.

11. The parties covenant and agree that except for closing, title insurance and commissions referenced elsewhere herein, each is solely responsible for the payment of any fee for brokerage, technical or other professional services relating to the execution and performance of this Contract incurred by such party.

12. Seller makes no warranty or guarantee as to the suitability of the real property proposed for trade for the intended use of Buyer. Therefore, Buyer covenants and agrees that Buyer at Buyer's own expense, shall examine the real property in order to determine such suitability including but not limited to:
    A. Soils data and geology, drainage, hydrology and topographical features that would affect any present or future intended use;
    B. The presence or absence of any contamination by any hazardous substance;
    C. The quality and quantity of water available by on-site water wells, and the availability of a permit or permits therefore;
    D. The nature, extent, and cost of public utilities needed to serve all or a portion of such real property;
    E. The extent and cost of compliance with subdivision regulations, building codes and other applicable rules and regulations involving public improvements, private improvements, access, building setbacks, public dedications, platting and replatting requirements of such real property;
    F. The nature and extent of zoning and subdivision statutes, laws, ordinances and regulations affecting the present use, and the ease or difficulty involved in the zone-change and subdivision approval procedures necessary or desirable to allow for the Buyer's intended use or uses.

13. Buyer also covenants and agrees that Buyer, his agents, successors and assigns any future use of the property as described above for the following uses shall be prohibited:

    A. Adult Book and Video Stores
    B. Community Correctional Facilities
    C. Half-way Houses
    D. Drug or Alcohol Rehabilitation Facilities
    E. Multi-game, Casino-style Gambling Facilities
    F. New or Used Car Sales
    G. Commercial Billboards

14. Buyer agrees to accept the existing Project Based Section 8 Housing Assistance Payments Contract (HAP) for the subject property and must agree to abide by all terms of the HAP. The current contract is attached hereto as Exhibit 1.

15. Buyer agrees to abide by the applicable deed restrictions attached hereto as Exhibit 2 and made a part hereof.

16. The covenants and agreements contained in Paragraphs 12, 13, 14 and 15 shall survive the closing of the sale intended hereby, and they shall bind the buyer as fully after the sale as they do before.

17. Buyer hereby agrees; a) Buyer is accepting the subject property on an "AS IS" basis and in "AS IS" condition; and that Buyer's decision to enter into this contract and any future decisions he may make with regard to the property have been and will be made based on his own inspections. Buyer acknowledges that no representations or warranties as to character, quality, value, or condition have been made by any of the brokers or agents involved, and also agrees not to make any claim against the Seller or the brokers involved.

18. HUD approval of the Buyer as to operation experience, financial ability, etc. prior to closing on this contract.

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

BUYER
Eyster Properties, LLC

_____
Michael Ramsey, Managing Member

SELLER
By Direction of the City Council

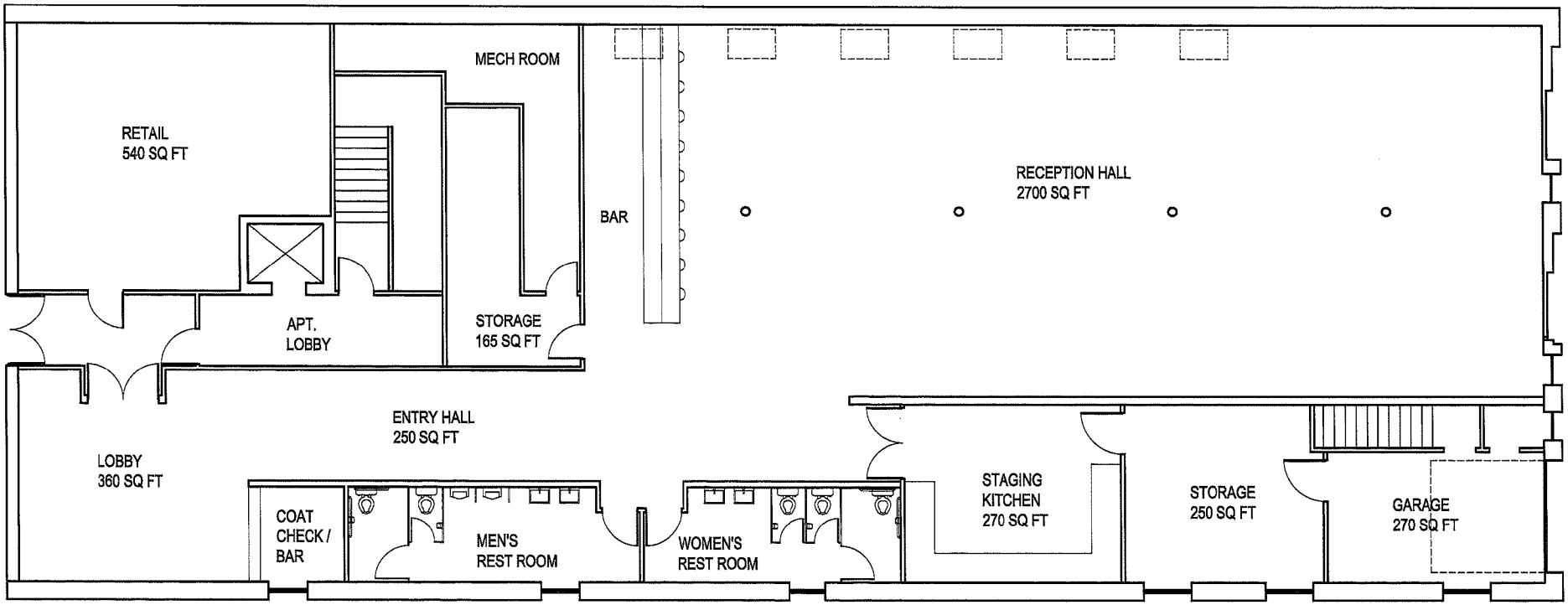
_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

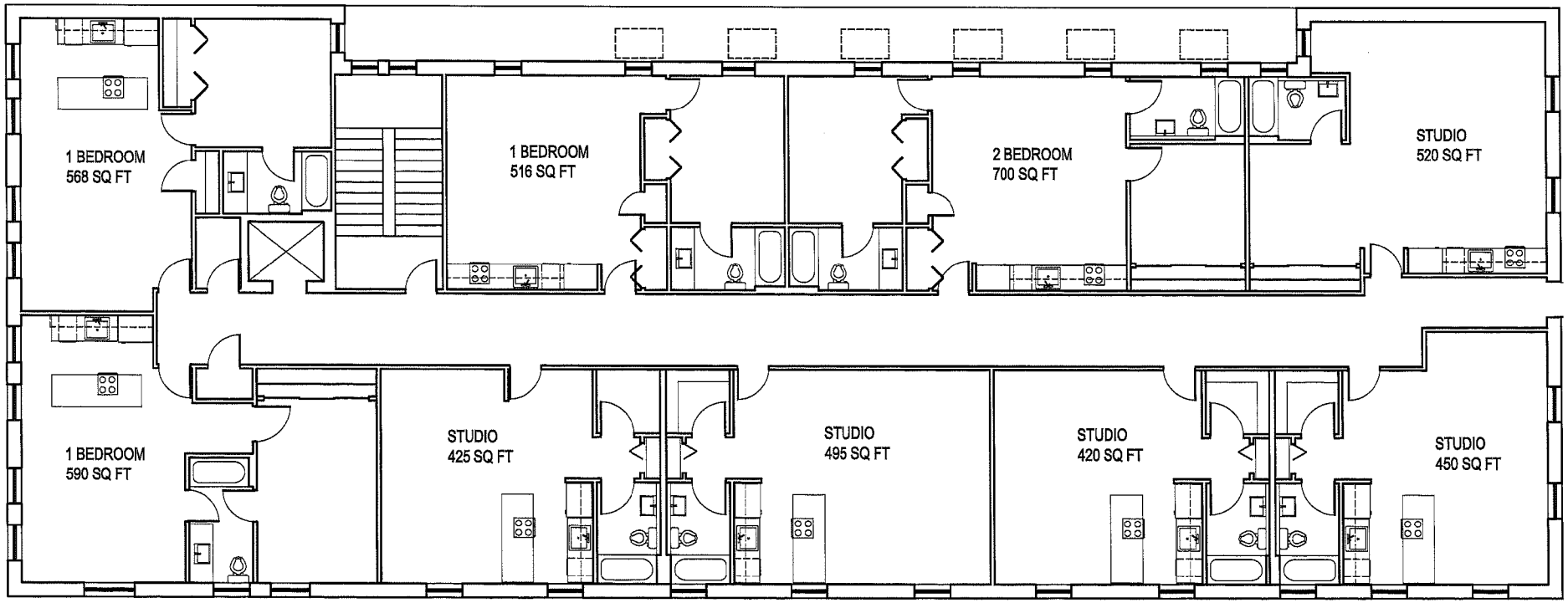


FIRST LEVEL : **FLOOR PLAN** [6,525 SQ FT]

SCALE = 1/8″ = 1′-0″

www.rawagoner.com | 1003 e douglas 310 | wichita, ks 67211 | 620.245.7421

[RAW]



SECOND LEVEL : **FLOOR PLAN** [5 STUDIOS - 3 ONE-BEDROOMS - 1 TWO-BEDROOM]

SCALE = 1/8" = 1'-0"

www.rawagoner.com | 1003 e douglas 310 | wichita, ks 67211 | 620.245.7421

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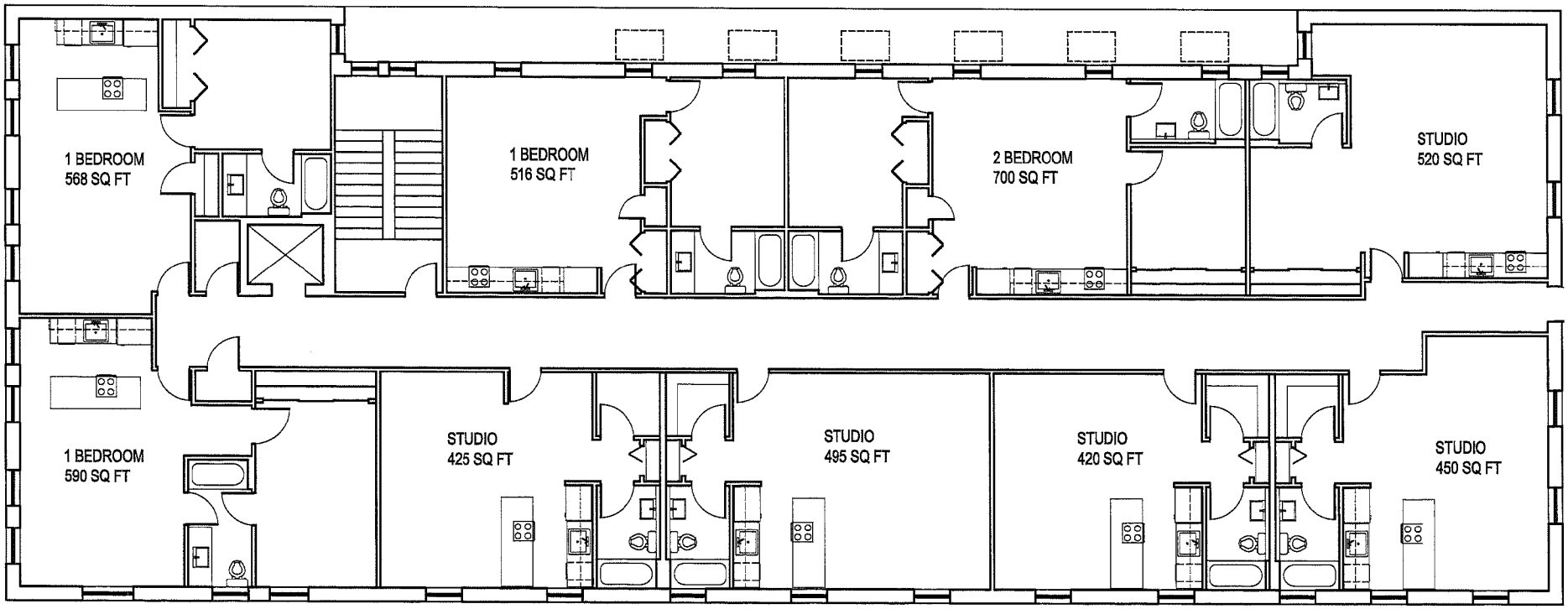

THIRD LEVEL : **FLOOR PLAN** [5 STUDIOS - 3 ONE-BEDROOMS - 1 TWO-BEDROOM]

SCALE = 1/8″ = 1′-0″

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[RAW]

CONTRACTS & AGREEMENTS
BLANKET PURCHASE ORDERS RENEWAL OPTIONS
APRIL 2011

COMMODITY TITLE	EXPIRATION DATE	VENDOR NAME	DEPARTMENT	ORIGINAL CONTRACT DATES	RENEWAL OPTIONS REMAINING
Automatic Teller Machines - Century II	4/30/2011	Intrust Bank NA	Century II	5/1/2007 - 4/30/2010	2 - 1 year options
Bicycle Services: Parts & Repairs	4/30/2012	MJS Enterprises Inc DBA Bicycle Xchange Shops	Police	5/1/1998 - 4/30/1999	Annual basis
Drug Testing Services	4/30/2012	Comcare Addiction Treatment Services	Municipal Court	5/1/2009 - 4/30/2010	2 - 1 year options
Elevator Maintenance	4/30/2011	Kone, Inc.	Various	5/1/2010 - 4/30/2011	4 - 1 year options
Filter Fly Control Chemicals	4/30/2012	Precision Control Technology, Inc. dba Adapco Environmental Solutions	Public Works & Utilities	5/13/2003 - 4/30/2004	Annual basis
Glass Beads for Traffic Line Paint	4/30/2012	Weissker Manufacturing, LLC	Public Works & Utilities	5/1/2010 - 4/30/2011	1 - 1 year option
Glass, Window and Plate	4/30/2011	Wickham Industries Inc.	Various	4/1/2009 - 3/31/2010	1 - 1 year option
Liquid Chlorine - Bulk Delivery	4/30/2011	Brenntag Southwest, Inc.	Public Works & Utilities	5/1/2010 - 4/30/2011	2 - 1 year options
Meter Boxes - Custom Setters 2"- Group 1 and Meter Boxes 21" & 30" - Group 3	4/30/2012	H. D. Supply Waterworks, Inc.	Public Works & Utilities	5/1/2010 - 4/30/2011	1 - 1 year option
Monitor Covers 20" - Group 2 (filed under Meters)	4/30/2011	Water Products, Inc.	Public Works & Utilities	5/1/2010 - 4/30/2011	2 - 1 year options
Mow, Edge, Trim & Maint. at Cowtown Museum	4/30/2012	Green Tree Services, LLC	City Manager	5/1/2010 - 4/30/2011	1 - 1 year option
Mowing & Landscape Maintenance for Brooks and Chapin Landfills	4/30/2012	D & R Mowing Services, LLC	Public Works & Utilities	5/1/2010 - 4/30/2011	1 - 1 year option
Mowing, Trimming & Mainenance of Cemeteries	4/30/2012	Michael's Complete Lawn Care, Inc.	Parks & Recreation	4/20/2010 - 4/30/2011	1 - 1 year option
Police Cycling Helmets and Gloves	4/30/2012	Bicycle Xchange Shops	Police	5/1/2003 - 4/30/2004	Annual basis
Special Liquor Tax Funds Administration (of)	4/4/2012	Comcare-Sedgwick County Kansas	City Manager	4/5/2010 - 4/4/2011	1 - 1 year option
Trash Containers and Collection Services - Various	4/30/2012	Waste Connections, Inc. DBA Waste Connections of Kansas, Inc.	Various	5/1/2010 - 4/30/2011	1 - 1 year option
Water Utility Service Lines Installation	4/30/2012	CK Contracting, LLC	Public Works & Utilities	5/1/2010 - 4/30/2011	1 - 1 year option
Window Cleaning Services - Airport	4/30/2012	EH Technical Solutions, Inc.	Airport Authority	5/1/2010 - 4/30/2011	1 - 1 year option

PROFESSIONAL CONTRACTS UNDER $25,000
APRIL 2011

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT

ANNUAL MAINTENANCE CONTRACTS OVER $25,000
DIRECT PURCHASE ORDERS FOR APRIL 2011

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT

SENIOR MANAGEMENT EXPENSES
For the period of January 1 through March 31, 2011

Employee by Department	Purpose	Amount
City Manager Staff		
Robert Layton, City Manager	Task Force on the Profession, Chicago, IL	$ 635.90
Robert Layton, City Manager	Large Cities Executive Forum, Oklahoma, City, OK	480.63
Robert Layton, City Manager	National League of Cities, Washington, DC	2,230.91
Police		
Nelson Mosley, Deputy Chief	Museum of Tolerances Leadership Initiatives, Command Staff Training, Los Angeles, CA	293.30
Housing & Community Services		
Brad Snapp, Assistant Director of Housing & Community Services	Federal Labor Standards Training,Kansas City, MO	437.78
Public Works & Water Utililities		
Jim Armour, Assistant Director of Public Works	Salina Professional Development Series, Salina, KS	501.74
Cheryl Busada, Interim Customer Service Manager	Customer Service, Information Management & Technology Conference, Dallas, TX	1,091.39
Elizabeth Owens, Superintendent Water Distribution	Customer Service, Information Management & Technology Conference, Dallas, TX	1,087.59
Transit		
Steve Ainslie, Assistant Director of Transit	SW Transit Association Annual Conference, Austin, TX	1,503.65
Airport		
Brad Christopher, Assistant Director of Airports	South Central Chapter American Association of Airport Executives Conference, Corpus Christi, TX	1,214.60
Total		**$ 9,477.49**

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: North Iva Avenue and 27th Street Stormwater Sewer Environmental Protection Agency Grant Application (District I)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendations: Approve submitting the Environmental Protection Agency (EPA) grant application.

Background: During heavy rain events, water collects at the intersection of North Iva Avenue and East 26th Street. The stormwater runoff has difficulty draining out of the neighborhood via the grass-lined portion of 26th Street and the alley just east of North Iva Avenue.

On October 4, 2010, the City Manager approved a design contract with Certified Engineering Design PA (CED) for $23,658 to develop plans to address the drainage issue.

On January 27, 2011, City staff met with area residents to present a preliminary design concept to address the drainage problems. A majority of residents in attendance supported the project, and many citizens also expressed their desires for the alley between Iva Avenue and Bluff Avenue, from 26th to 27th Streets, to be cleared of excess vegetation, debris, and uneven ground surfaces.

Analysis: The proposed solution is a new storm sewer system that starts near the intersection of 26th Street and North Iva Avenue and discharges into the east fork of Chisholm Creek. The proposed storm sewer system will have curb inlets at street intersections, area inlets in the alley, and will benefit the neighborhood by substantially reducing the standing water issues in the alley. Bluff Avenue, from 27th Street to the creek, will also benefit as the areas and length of time for ice to stand in the street in front of Brooks Middle School will be reduced.

In order to avoid potential traffic conflicts with Buckner and Brooks magnet schools, the proposed schedule for construction of the project is the summer of 2011, but said schedule is dependent on receiving the EPA grant. Without the grant, the project must be postponed until 2012.

Financial Considerations: The EPA grant is a matching grant with a maximum payout of $123,000. The grant requires a minimum funding split of 55/45 with the City covering at least 45% of the direct (construction) costs for the project. Since the estimated direct cost is $391,000, the City will exceed the EPA's funding split with an estimated 69% share. Each year the City budgets for projects to address localized drainage issues that are identified during the year, these are referred to as "Hot Spots". In 2011 the City budgeted $600,000 for hot spots. After the completion of North Iva Avenue and 27th all hot spot dollars will be expended for the year.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing stormwater improvements needed for an existing neighborhood with known drainage problems.

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

Recommendation/Action: It is recommended that the City Council approves submitting the grant application and authorizes the necessary signatures.

Attachments: Application and associated forms.

Table of Contents

For

EPA Grant Application for
Storm Sewer Improvements to Serve North Iva & 27th Street
City of Wichita

4/18/2011

Project Manager: Scott Lindebak, P.E.

Tabs

(Highlighted, *italic* items require a signature from the Mayor.)

i. **Letter from EPA**
ii. **Code of Federal Regulations; Title 40; Chapter I; Part 31**

A. EPA Application Form Checklist

1. *SF-424 & 424A (Federal Assistance Application)*
2. DUNS (Numbering System)
3. *SF-424B (Assurances – Non-Construction Programs)*
4. 5700-4 (Key Contacts)

5&6. Narrative Budget & Workplan

7. Biography, Project Manager
8. *4700-4 (Pre-Award Compliance)*
9. *QA Form*
10. *Lobbying Certification*
11. (NA) Indirect Costs Agreement
12. Planning Agency Approval (South Central KS Economic Development District)
13. *Non-Profit Organizations ONLY, Internal Revenue Code of 1986*
14. (NA) Superfund Applicants ONLY
15. Method of Payment Form

B. EPA Specifications Checklist

1. EPA Specification Locator Table
2. Project Special Provisions
3. City Standard Specifications

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

February 22, 2011

Mr. Scott C. Lindebak
Storm Water Engineer
City of Wichita
455 N. Main, 8th Floor
Wichita, KS 67202

Dear Mr. Lindebak:

RE: Authorization for EPA Special Infrastructure Grant

This letter is to confirm the information we discussed in our meeting on this date regarding a grant authorized for the city of Wichita. The authorization was included in the fiscal year 2008 appropriations act for the Environmental Protection Agency (EPA) for another city which could not use the funds. Congress amended the authorization in the EPA appropriations act for 2010 to redirect the funds to Wichita. That act authorized a $123,000 grant for a storm water technology pilot project.

Grant funding for your project is limited to $123,000, with no possibility of a grant increase for cost overruns unless Congress authorizes additional funds for your project in a subsequent EPA appropriations act. EPA will require by grant condition that any contract partially funded by the EPA grant will be completed with local funds. As per language in the appropriations act, your grant will require a minimum 45 percent local match. (See the guidelines concerning a local match waiver based on financial hardship.) To fully utilize the grant, the total project costs should be at least $223,637 ($123,000 grant + $100,637 local match). The EPA-funded project can exceed that amount if you have funds available for 100 percent of the project costs exceeding $223,637.

Each year, our national headquarters office issues guidelines for the special infrastructure grants. I have enclosed a copy for your information. Only the guideline attachments applicable to you have been included. Please note that your grant will also be subject to EPA grant regulations found in the Code of Federal Regulations (CFR) at Part 31 of Title 40. I have enclosed a copy of the EPA grant regulations for your use. These regulations include requirements for procurement actions. You should pay special attention to those requirements. Any procurement action which is not done in accordance with EPA regulations and grant conditions may be determined to be an unallowable project cost.

Planning, design, and construction costs are eligible, but as per our previous telephone conversation, since the City has already procured engineering services and design is approximately 80% complete, the grant project costs should be limited to the construction

contract. Multiple construction contracts are acceptable, and construction projects may be phased over several years. Construction contracts should not be advertised for bids until EPA has reviewed and approved the contract documents prepared for the sealed-bid procurement process.

Costs related to your grant project which are incurred prior to the date of the grant award are not eligible for grant participation unless those costs relate directly to the eligible project, and EPA approves the inclusion of the work in the scope of the project work plan. I would like to get the grant awarded prior to the award of the construction contract, but costs incurred within 90 days of award can be included with no justification as long as I have reviewed and approved the plans and specifications prior to advertising for bids.

EPA is required by the National Environmental Policy Act (NEPA) to conduct a review of the potential environmental impacts of your project. The regulations which implement NEPA for EPA are found at 40 CFR Part 6. These regulations require the environmental review to be completed before your grant is awarded. Certain defined categories of projects which are believed to have limited potential for environmental impacts can be handled with the issuance of a Categorical Exclusion (CE). That type of document does not require a comment period. One of the categories in the EPA regulations which is appropriate for a CE is a minor system expansion (not greater than 30%). I intend to issue a CE for your project based on that provision. Your application will include sufficient information for EPA to satisfy the NEPA requirements.

With a 55 percent EPA grant, all eligible project costs will be shared, with EPA paying for 55 percent of the costs and local funds paying for the other 45 percent, up to the full amount of the grant. This means that matches for EPA grants cannot be provided by separate City funded contracts. EPA will not pay 100 percent of project costs until the grant is fully utilized, with the City then paying the rest of the project costs with 100 percent local funds. Payments will be made to you by electronic funds transfer to an account you will specify. As costs are incurred, you will request payment for the EPA share of incurred costs through an EPA automated clearinghouse process (electronic funds transfers). The payment will be made within a few days. When the payment is requested, you will be required by grant condition to submit payment documentation for review to ensure you are not requesting payment for ineligible or unallowable costs.

The local match can include funding received from another local or state entity or from private parties. Grants or loans from other Federal agencies may be used for the local match only if the enabling legislation allows such use of those funds. You should check on this matter with the other Federal funding agency. The EPA grant cannot be used to match another Federal grant because Congress did not designate that use of the funds when it authorized your grant. A loan from the state revolving fund (SRF) loan program can be used for the local match if your project qualifies to receive such a loan, and if the State is able to provide you funds from sources other than the EPA capitalization grant or the required State match. Please discuss this with your State SRF program. Previous audits on this same type of grant have questioned SRF funds used as match to the EPA grant when those funds were not from allowable sources.

All procurement partially funded with EPA grant funds will be subject to procurement requirements included in the EPA regulations mentioned in a preceding paragraph. This includes construction contracts. Plans and specifications should be submitted for review and approval prior to advertising for bids. I have provided by an e-mail dated February 14, 2011 a review checklist and standard review comments for procurement of sealed-bid construction services, to help you understand the EPA procurement requirements for each. Those electronic documents should be forwarded to your engineering consultant so that the EPA requirements can be included before the plans and specifications are submitted to me for review.

I have also enclosed an EPA Region 7 grant application kit with this letter, and marked up copies of some of the forms to help you complete the application. The work plan which you submit with your application should fully describe the project to be constructed with the EPA grant funding, and the types of cost to be included (i.e., construction). If you will have contracts in your overall project that will not be partially funded with the EPA grant (including engineering), those contracts should not be included in either the budget figures or the work plan discussion. The work plan should include an itemized breakdown of the estimated project costs (such as would be included in a preliminary engineering report), the source of local funding, a project location map if available, and a discussion of the environmental benefits of your project. It should also include a project schedule with applicable milestones such as completion of planning, design, and construction for each proposed construction contract, and closeout of the grant (90 days after acceptance of the final construction contract). Instructions are included in the application kit which provide further guidance on these matters, and you should pay particular attention to the Grant Work Plan Requirements portion of the instructions for required information about environmental benefits. You should submit your grant application as soon as possible since you are planning to advertise for bids soon. The last page of the application kit includes the address for our Grants Management Office which you should use to submit your completed grant application package with one copy.

Please refer to Item 19 on the second page of the Supplemental Information, Application for Federal Assistance, which is included in the Application Kit. Your project is not subject to the requirements of Executive Order 12372, which requires contacting a state's Single Point of Contact for review of the application, because your grant is not part of a program covered by the executive order. Your project is subject to the requirements of Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966. This requires you to give your area-wide planning agency an opportunity to comment on your project. The agency which covers your county is the South Central Kansas Economic development District at 200 W. Douglas, Suite 710, Wichita, KS 67202. Their telephone number is 316-262-7035. We are required to wait for their comments before we proceed with a grant award for up to sixty days from the time you request a review from them. You are able to ask them to provide an expedited review to limit the delay this might cause. You should submit with your application a copy of your letter to the agency requesting review comments, or the actual response if available at that time. If you receive a response after you have submitted your application, you should mail or fax a copy to me.

Grantees are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number. The Office of Management and Budget policy which established this

requirement was published in Vol. 68, No. 124 of the Federal Register dated June 27, 2003. The application the City submitted for a previous EPA grant lists "046694092" as your DUNS number.) The DUNS number is inserted in Item 8.c of the Application for Federal Assistance.

The Federal Funding Accountability and Transparency Act (FFATA), Public Law 109-282 as amended, and associated Office of Management and Budget directives, established a new requirement which was effective on October 1, 2010. Applicants for Federal funding must register in the Central Contractor Registration (CCR) database before applying for a grant. The registration is good for one year, so you will need to renew your registration on an annual basis. The registration should remain active until your EPA grant is closed out. You can obtain additional information about the CCR requirement and also register at https://www.bpn.gov/ccr/, and you can contact your EPA grant specialist, Christine Schmaltz, for additional assistance at Schmaltz.Christine@epa.gov or (913) 551-7116. When your grant application package is received, Ms. Schmaltz will check the CCR database. If your City is not registered, your grant will not be awarded until your registration has been completed.

EPA Region 7 has developed a website that has all of the documents included in the application kit. The website address is as follows: http://epa.gov/region07/economics/. The application forms are found by clicking on the "Application Forms" link, and instructions are found by clicking on the "Grant Application Assistance" and "Work Plan Requirements & Checklist" links. You will also find useful information to better understand the EPA grant requirements by clicking on the "Managing Your Grant" link, and forms you will use after your grant is awarded are available by clicking on the "Reporting Forms" link. All of the forms are in Adobe Acrobat (pdf) document format, and they can be opened, filled out, and printed with the free Abode Acrobat Reader software. Access to that software is discussed at our website.

I will be the Project Officer for your grant and will be responsible for ensuring that the project is successfully completed in compliance with Federal requirements. I look forward to working with the City on this grant. Please do not hesitate to contact me at (913) 551-7417 or gibbins.don@epa.gov if you have any questions or need additional information. My number for facsimile transmissions is (913) 551-9417.

Sincerely,

Donald E. Gibbins
Environmental Engineer
Wastewater & Infrastructure Management Branch
Water, Wetlands & Pesticides Division

Enclosures

Title 40--Protection of Environment

CHAPTER I--ENVIRONMENTAL PROTECTION AGENCY

PART 31--UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A -- General

31.1 Purpose and scope of this part 2
31.2 Scope of subpart 2
31.3 Definitions 2
31.4 Applicability 4
31.5 Effect on other issuances 5
31.6 Additions and exceptions 5

Subpart B -- Pre-Award Requirements

31.10 Forms for applying for grants 5
31.11 State plans 5
31.12 Special grant or subgrant conditions for "high-risk" grantees 6
31.13 Principal environmental statutory provisions applicable to EPA assistance awards 6

Subpart C -- Post-Award Requirements

FINANCIAL ADMINISTRATION

31.20 Standards for financial management systems 6
31.21 Payment 7
31.22 Allowable costs 8
31.23 Period of availability of funds 8
31.24 Matching or cost sharing 8
31.25 Program income 10
31.26 Non-Federal audit 10

CHANGES, PROPERTY, AND SUBAWARDS

31.30 Changes 11
31.31 Real property 11
31.32 Equipment 12
31.33 Supplies 13
31.34 Copyrights 13
31.35 Subawards to debarred and suspended parties 13
* 31.36 Procurement 13
31.37 Subgrants 18
31.38 Indian Self Determination Act 19

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

31.40 Monitoring and reporting program performance 19
31.41 Financial reporting 20
31.42 Retention and access requirements for records 21
31.43 Enforcement 22
31.44 Termination for convenience 22
31.45 Quality assurance 23

Subpart D -- After-the-Grant Requirements

31.50 Closeout 23
31.51 Later disallowances and adjustments 23
31.52 Collection of amounts due 23

Subpart E -- Entitlement [Reserved]

Subpart F -- Disputes

31.70 Disputes 23

Appendix A to Part 31 -- Audit Requirements for State and Local Government Recipients 24

Authority: 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1401 et seq.

Source: 53 FR 8075 and 8087, Mar. 11, 1988, unless otherwise noted.

§ 31.1 Purpose and scope of this part.
This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 31.2 Scope of subpart.
This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 31.3 Definitions. As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for:
(1) Goods and other tangible property received;
(2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and
(3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of:
(1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and
(2) Amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from programmatic requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means
(1) with respect to a grant, the Federal agency, and
(2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for grant and subgrant in this section and except where qualified by Federal) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means:
(1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report);
(2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services

instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, *council of* governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

OMB means the U.S. Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted -- not the value of third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under *United States Housing Act of 1937*.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of grant in this part.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than equipment as defined in this part.

Suspension means depending on the context, either

(1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or

(2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant *transactions for a period*, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. Termination does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(2) Withdrawal of the unobligated balance as of the expiration of a grant;

(3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or

(4) Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 31.4 Applicability.

(a) General. Subparts A-D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 31.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583 -- the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 ; and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) Entitlement programs. Entitlement programs enumerated above in § 31.4(a) (3) through (8) are subject to subpart E.

§ 31.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 31.6.

§ 31.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the Federal Register.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

(1) In the Environmental Protection Agency, the Director, Grants Administration Division, is authorized to grant the exceptions.

(2) [Reserved]

(d) The EPA Director is also authorized to approve exceptions, on a class or an individual case basis, to EPA program -- specific assistance regulations other than those which implement statutory and executive order requirements.

[53 FR 8068 and 8087, Mar. 11, 1988, and amended at 53 FR 8075, Mar. 11, 1988]

§ 31.10 Forms for applying for grants.

(a) Scope.

(1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) Authorized forms and instructions for governmental organizations.

(1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 31.11 State plans.

(a) Scope. The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) Requirements. A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) Assurances. In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) Amendments. A State will amend a plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations or

(2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 31.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

§ 31.13 Principal environmental statutory provisions applicable to EPA assistance awards.

Grantees shall comply with all applicable Federal laws including:

(a) Section 306 of the Clean Air Act, (42 U.S.C. 7606).

(b) Section 508 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1368).

(c) Section 1424(e) of the Safe Drinking Water Act, (42 U.S.C. 300h-3(e)).

[53 FR 8075, Mar. 11, 1988]

§ 31.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to --

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) Source documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury

and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 31.21 Payment.

(a) Scope.-This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) Basic standard. Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) Advances. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) Reimbursement. Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) Working capital advances. If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimbursethe grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) Effect of program income, refunds, and audit recoveries on payment.--

(1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) Withholding payments.

(1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless --

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 31.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) Cash depositories.

(1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) Interest earned on advances. Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 31.22 Allowable costs.

(a) Limitation on use of funds. Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a--	Use the principles in--
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education,(2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OBM Circular A-122.
Educational institutions.	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular.	48 CFR part 31, Contract Cost Principles and Procedures; or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 31.23 Period of availability of funds.

(a) General. Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) Liquidation of obligations. A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 31.24 Matching or cost sharing.

(a) Basic rule: Costs and contributions acceptable. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) Qualifications and exceptions --

(1) Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) Cost or contributions counted towards other Federal costs-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) Costs financed by program income. Costs financed by program income, as defined in § 31.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 31.25(g).)

(5) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) Special standards for third party in-kind contributions.

(i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or.

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) Valuation of donated services --

(1) Volunteer services. Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) Valuation of third party donated supplies and loaned equipment or space.

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) Valuation of third party donated equipment, buildings, and land. If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 31.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) Valuation of grantee or subgrantee donated real property for construction/acquisition. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) Appraisal of real property. In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish

the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 31.25 Program income.

(a) General. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) Definition of program income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 31.34.)

(f) Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 31.31 and 31.32.

(g) Use of program income. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) Income after the award period. There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 31.26 Non-Federal audit.

(a) Basic rule. Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) Subgrantees. State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends $300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) Auditor selection. In arranging for audit services, § 31.36 shall be followed.

[53 FR 8075, 8087, Mar. 11, 1988, as amended at 62 FR 45939, 45944, Aug. 29, 1997]

§ 31.30 Changes.

(a) General. Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) Relation to cost principles. The applicable cost principles (see § 31.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) Budget changes.

(1) Nonconstruction projects. Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) Construction projects. Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) Combined construction and nonconstruction projects. When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) Programmatic changes. Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 31.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) Additional prior approval requirements. The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) Requesting prior approval.

(1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 31.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 31.31 Real property.

(a) Title. Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) Use. Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) Disposition. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) Retention of title. Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sale of property. Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer of title. Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 31.32 Equipment.

(a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) States. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) Use.

(1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 31.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) Federal equipment. In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) Right to transfer title: The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow 31.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 31.33 Supplies.

(a) Title. Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) Disposition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 31.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 31.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 31.36 Procurement.

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards.

(1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable federal law, the standards identified in this section, and if applicable, § 31.38.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by

contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only --

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition.

(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 31.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The

description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(5) Construction grants awarded under Title II of the Clean Water Act are subject to the following "Buy American" requirements in paragraphs (c)(5) (i)-(iii) of this section: Section 215 of the Clean Water Act requires that contractors give preference to the use of domestic material in the construction of EPA-funded treatment works.

(i) Contractors must use domestic construction materials in preference to nondomestic material if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic material, including all costs of delivery to the construction site and any applicable duty, whether or not assessed. The grantee will normally base the computations on prices and costs in effect on the date of opening bids or proposals.

(ii) The award official may waive the Buy American provision based on factors the award official considers relevant, including:

(A) Such use is not in the public interest;

(B) The cost is unreasonable;

(C) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(D) The articles, materials or supplies of the class or kind to be used or the articles, materials or supplies from which they are manufactured are not mined, produced or manufactured in the United States in sufficient and reasonably available commerical quantities or satisfactory quality for the particular project; or

(E) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(iii) All bidding documents, subagreements, and, if appropriate, requests for proposals must contain the following "Buy American" provision: In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 et seq.) and implementing EPA regulations, the contractor agrees that preference will be given to domestic construction materials by the contractor, subcontractors, materialmen and suppliers in the performance of this subagreement.

(d) Methods of procurement to be followed --

(1) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) Procurement by sealed bids (formal advertising): Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in 31.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively and for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms.

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

(f) Contract cost and price.

(1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given

to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 31.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review.

(1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

(All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

(j) Payment to consultants.

(1) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by grantees or by a grantee's contractors or subcontractors to the maximum daily rate for a GS-18. (Grantees may, however, pay consultants more than this amount). This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; grantees will pay these in accordance with their normal travel reimbursement practices. (Pub. L. 99-591).

(2) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

(k) Use of the same architect or engineer during construction.

(1) If the grantee is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(i) The grantee received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(ii) The award official approves noncompetitive procurement under § 31.36(d)(4) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(iii) The grantee attests that:

(A) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subagreement for services during construction; and

(B) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(C) No employee, officer or agent of the grantee, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(D) None of the grantee's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subagreements.

(2) However, if the grantee uses the procedures in paragraph (k)(1) of this section to retain an architect or engineer, any Step 3 subagreements between the architect or engineer and the grantee must meet all of the other procurement provisions in § 31.36.

[53 FR 8068 and 8087, Mar. 11, 1988, and amended at 53 FR 8075, Mar. 11, 1988; 60 FR 19639, 19644, Apr. 19, 1995; 66 FR 3794, Jan. 16, 2001]

§ 31.37 Subgrants.

(a) States. States shall follow State law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing

regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 31.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) All other grantees. All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) Exceptions. By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 31.10;

(2) Section 31.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 31.21; and

(4) Section 31.50.

§ 31.38 Indian Self Determination Act.

Any contract, subcontract, or subgrant awarded under an EPA grant by an Indian Tribe or Indian Intertribal Consortium shall require to the extent feasible:

(a) Preferences and opportunities for training and employment in connection with the administration of such contracts or grants shall be given to Indians as defined in the Indian Self Determination Act (25 U.S.C. 450b); and

(b) Preference in the award of subcontracts and subgrants in connection with the administration of such contracts or grants shall be given to Indian organizations and to Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (88 Stat. 77) [25 U.S.C. 1452].

[66 FR 3794, Jan. 19, 2001]

§ 31.40 Monitoring and reporting program performance.

(a) Monitoring by grantees. Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) Nonconstruction performance reports. The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) Construction performance reports. For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) Significant developments. Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) Waivers, extensions.

(1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 31.41 Financial reporting.

(a) General:

(1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) Financial Status Report --

(1) Form. Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with § 31.41(e)(2)(iii).

(2) Accounting basis. Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) Frequency. The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) Due date. When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) Federal Cash Transactions Report --

(1) Form.

(i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) Forecasts of Federal cash requirements. Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) Cash in hands of subgrantees. When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide

short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) Frequency and due date. Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) Request for advance or reimbursement---

(1) Advance payments. Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) Reimbursements. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 31.41(b)(3).

(e) Outlay report and request for reimbursement for construction programs.

(1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 31.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 31.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 31.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 31.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 31.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) Accounting basis. The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 31.41(b)(2).

§ 31.42 Retention and access requirements for records.

(a) Applicability.

(1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 31.36(i)(10).

(b) Length of retention period.

(1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) Starting date of retention period -- (1) General. When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) Real property and equipment records. The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) Records for income transactions after grant or subgrant support. In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) Indirect cost rate proposals, cost allocations plans, etc. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) Substitution of microfilm. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) Access to records --

(1) Records of grantees and subgrantees. The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) Expiration of right of access. The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) Restrictions on public access. The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 31.43 Enforcement.

(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(i) EPA can also wholly or partly annul the current award for the grantee's or subgrantee's program,

(ii) [Reserved]

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) Hearings, appeals. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to Debarment and Suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 31.35).

[53 FR 8068 and 8087, Mar. 11, 1988, as amended at 53 FR 8076, Mar. 11, 1988]

§ 31.44 Termination for convenience.

Except as provided in § 31.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the

termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 31.43 or paragraph (a) of this section.

§ 31.45 Quality assurance.

If the grantee's project involves environmentally related measurements or data generation, the grantee shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions.

[53 FR 8076, Mar. 11, 1988]

§ 31.50 Closeout.

(a) General. The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) Reports. Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this time frame. These may include but are not limited to:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable.)

(3) Final request for payment (SF-270) (if applicable).

(4) Invention disclosure (if applicable).

(5) Federally-owned property report: In accordance with § 31.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) Cost adjustment. The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) Cash adjustments.

(1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 31.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 31.42;

(d) Property management requirements in §§ 31.31 and 31.32; and

(e) Audit requirements in § 31.26.

§ 31.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

§ 31.70 Disputes.

(a) Disagreements should be resolved at the lowest level possible.

(b) If an agreement cannot be reached, the EPA disputes decision official will provide a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning assistance agreements.

(c) The disputes decision official's decision will constitute final agency action unless a request for review is filed by registered

mail, return receipt requested, within 30 calendar days of the date of the decision.

(1) For final decisions issued by an EPA disputes decision official at Headquarters, the request for review shall be filed with the Assistant Administrator responsible for the assistance program.

(2) For final decisions issued by a Regional disputes decision official, the request for review shall be filed with the Regional Administrator. If the Regional Administrator issued the final decision, the request for reconsideration shall be filed with the Regional Administrator.

(d) The request shall include:

(1) A copy of the EPA disputes decision official's final decision;

(2) A statement of the amount in dispute;

(3) A description of the issues involved; and

(4) A concise statement of the objections to the final decision.

(e) The disputant(s) may be represented by counsel and may submit documentary evidence and briefs for inclusion in a written record.

(f) Disputants are entitled to an informal conference with EPA officials.

(g) Disputants are entitled to a written decision from the appropriate Regional or Assistant Administrator.

(h) A decision by the Assistant Administrator to confirm the final decision of a Headquarters disputes decision official will constitute the final Agency action.

(i) A decision by the Regional Administrator to confirm the Regional disputes decision official's decision will constitute the final Agency action. However, a petition for discretionary review by the Assistant Administrator responsible for the assistance program may be filed within 30 calendar days of the Regional Administrator's decision. The petition shall be sent to the Assistant Administrator by registered mail, return receipt requested, and shall include:

(1) A copy of the Regional Administrator's decision; and

(2) A concise statement of the objections to the decision.

(j) If the Assistant Administrator decides not to review the Regional Administrator's decision, the Assistant Administrator will advise the disputant(s) in writing that the Regional Administrator's decision remains the final Agency action.

(k) If the Assistant Administrator decides to review the Regional Administrator's decision, the review will generally be limited to the written record on which the Regional Administrator's decision was based. The Assistant Administrator may allow the disputant(s) to submit briefs in support of the petition for review and may provide an opportunity for an informal conference in order to clarify technical or legal issues. After reviewing the Regional Administrator's decision, the Assistant Administrator will issue a written decision which will then become the final Agency action.

(l) Reviews may not be requested of:

(1) Decisions on requests for exceptions under § 31.6;

(2) Bid protest decisions under § 31.36(b)(12);

(3) National Environmental Policy Act decisions under part 6;

(4) Advanced wastewater treatment decisions of the Administrator; and

(5) Policy decisions of the EPA Audit Resolution Board.

[53 FR 8076, Mar. 11, 1988].

Appendix A to Part 31 -- Audit Requirements for State and Local Government Recipients

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget
Circular No. A-128
April 12, 1985
To the Heads of Executive Departments and Establishments.
Subject: Audits of State and Local Governments.

1. Purpose. This Circular is issued pursuant to the Single Audit Act of 1984, Public Law 98-502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. Supersession. The Circular supersedes Attachment P, "Audit Requirements," of Circular A-102, "Uniform requirements for grants to State and local governments."

3. Background. The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making

appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. Policy. The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A-102, "Uniform requirements for grants to State or local governments."

5. Definitions. For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. Cognizant agency means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. Federal financial assistance means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. Federal agency has the same meaning as the term agency in section 551(1) of Title 5, United States Code.

d. Generally accepted accounting principles has the meaning specified in the generally accepted government auditing standards.

e. Generally accepted government auditing standards means the Standards for Audit of Government Organizations, Programs, Activities, and Functions, developed by the Comptroller General, dated February 27, 1981.

f. Independent auditor means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. Internal controls means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. Indian tribe means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. Local government means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. Major Federal Assistance Program, as defined by Pub. L. 98-502, is described in the Attachment to this Circular.

k. Public accountants means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. Subrecipient means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. Scope of audit. The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A-110. "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles:

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. Frequency of audit. Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. Internal control and compliance reviews. The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. Internal control review. In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. Compliance review. The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether.

-- The amounts reported as expenditures were for allowable services, and

-- The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

-- Matching requirements, levels of effort and earmarking limitations were met,

-- Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and.

-- Amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost principles for State and local governments," and Attachment F of Circular A-102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the Compliance Supplement for Single Audits of State and Local Governments, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliancerequirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. Subrecipients. State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A-110. "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have

met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. Relation to other audit requirements. The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurance they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in additon to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. Cognizant agency responsibilities. The Single Audit Act provides for congnizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional audits build up such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. Illegal acts or irregularities. If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also program 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. Audit Reports. Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the Catalog of

Federal Domestic Assistance. Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The author's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

-- A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

-- Negative assurance on those items not tested;

-- A summary of all instances of noncompliance; and

-- An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. Audit Resolution. As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. Audit workpapers and reports. Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. Audit Costs. The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A-87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. Sanctions. The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

-- Withholding a percentage of assistance payments until the audit its completed satisfactorily,

-- Withholding or disallowing overhead costs, and

-- Suspending the Federal assistance agreement until the audit is made.

18. Auditor Selection. In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where

use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. Small and Minority Audit Firms. Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. Reporting. Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. Regulations. Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. Effective date. This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

23. Inquiries, All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395-3993.

24. Sunset review date. This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance. David A. Stockman, Director.

Attachment -- Circular A-128

Definition of Major Program as Provided in Pub. L. 96-502

Major Federal Assistance Program, for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $308,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million
Over $7 billion		$20 million.

[51 FR 6353, Feb. 21, 1986. Redesignated at 53 FR 8076, Mar. 11, 1988]

CHECKLIST OF ITEMS TO BE SUBMITTED TO EPA REGION 7

		FORM NAME
1	☐	Application for Federal Assistance (SF-424 & 424A), with original signatures
2	☐	Each applicant (individuals excluded) must provide a DUNS Number on their application. (Organizations can receive a DUNS number in one day, at no cost, by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711. The website where an organization can obtain a DUNS number is: http://www.dnb.com.)
3	☐	Assurances - Non-Construction Programs (SF-424B)
4	☐	Key Contacts List
5 & 6	☐	Narrative Budget (Explain what is included in your Budget Categories)
	☐	Narrative Workplan demonstrating anticipated environmental results, how they will be measured and a time table anticipated for the measured results
7	☐	Biographical Sketch of the Project Manager (for other than State grants)
8	☐	Pre-Award Compliance Review Report
9	☐	Quality Assurance Requirement Form
10	☐	Certification Regarding Lobbying *(Applicable only if you are requesting $100,000 or more in federal funds.)*
11 (NA)	☐	Copy of Negotiated Indirect Cost Agreement - If you are requesting Indirect Costs you must submit a copy of your current Negotiated Indirect Cost Agreement.
12	☐	State Clearinghouse or Local Planning Agency Approval Notification, when Applicable
13	☐	Non-Profit Organizations ONLY - Certification regarding Internal Revenue Code of 1986
14 (NA)	☐	Superfund Applicants ONLY - Procurement Certification
15	☐	Method of Payment Form

OMB Number: 4040-0004
Expiration Date: 04/31/2012

Application for Federal Assistance SF-424

Version 02

*1. Type of Submission	*2. Type of Application	*If Revision, select appropriate letter(s):
☐ Preapplication	☑ New	
☑ Application	☐ Continuation	* Other (Specify)
☐ Changed/Corrected Application	☐ Revision	

*3. Date Received:

4. Application Identifier: NA

5a. Federal Entity Identifier:	*5b. Federal Award Identifier:
NA	NA

State Use Only:

6. Date Received by State: NA	7. State Application Identifier: NA

8. APPLICANT INFORMATION:

* a. Legal Name: City of Wichita, Kansas

* b. Employer/Taxpayer Identification Number (EIN/TIN):	*c. Organizational DUNS:
48-600653	043063460

d. Address:

*Street1: 455 N Main St
Street 2:
*City: Wichita
County: Sedgwick
*State: KS
Province:
Country: USA
*Zip/ Postal Code: 67202

e. Organizational Unit:

Department Name:	Division Name:
Public Work & Utilities	Stormwater Management Division

f. Name and contact information of person to be contacted on matters involving this application:

Prefix: Mr.
First Name: Scott
Middle Name:
*Last Name: Lindebak
Suffix:

Title: Engineer

Organizational Affiliation:
City of Wichita;
Public Works & Utilities;
Stormwater Management Division

*Telephone Number: 316-268-4545
Fax Number: 316-858-7545

*Email: slindebak@wichita.gov

OMB Number: 4040-0004
Expiration Date: 04/31/2012

Application for Federal Assistance SF-424

Version 02

9. Type of Applicant 1: Select Applicant Type: C. City or Township Government

Type of Applicant 2: Select Applicant Type:

- Select One -

Type of Applicant 3: Select Applicant Type:

- Select One -

*Other (specify):
NA

*10. Name of Federal Agency:
U.S. Environmental Protection Agency

11. Catalog of Federal Domestic Assistance Number:

66.202

CFDA Title:

Congressionally Mandated Projects

*12. Funding Opportunity Number: NA

*Title:
NA

13. Competition Identification Number: NA

Title:

NA

14. Areas Affected by Project (Cities, Counties, States, etc.):

City of Wichita

*15. Descriptive Title of Applicant's Project:

Stag earmark for construction of
"Storm Water Sewer Improvements to Serve North Iva & 27th Street"

Attach supporting documents as specified in agency instructions.

OMB Number: 4040-0004
Expiration Date: 04/31/2012

Application for Federal Assistance SF-424

Version 02

16. Congressional Districts Of: Kansas

*a. Applicant 4 *b. Program/Project: 4

Attach an additional list of Program/Project Congressional Districts if needed.

17. Proposed Project: Storm Water Sewer Improvements to Serve North Iva & 27th Street

*a. Start Date: May 22, 2011 *b. End Date: September 01, 2011

18. Estimated Funding ($):

*a. Federal	$123,000.00	*d. Local	
*b. Applicant	$268,000.00	*e. Other	
*c. State		*f. Program Income	
*d. Local		*g. TOTAL	$391,000.00

***19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

☐ a. This application was made available to the State under the Executive Order 12372 Process for review on
☐ b. Program is subject to E.O. 12372 but has not been selected by the State for review.
☑ c. Program is not covered by E.O. 12372

*20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes", provide explanation.)
☐ Yes ☑ No

21. *By signing this application, I certify (1) to the statements contained in the list of certifications** and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)

☑ **I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: Mr. *First Name: Carl

Midd le N ame:

*Last Name: Brewer

Suffix:

*Title: Mayor

*Telephone Number: 316-268-4331 Fax Number: 316-858-7743

*Email: cbrewer@wichita.gov

*Signature of Authorized Representative: Date Signed:

Approved as to form

Director of Law and City Attorney

Application for Federal Assistance SF-424

Version 02

*Applicant Federal Debt Delinquency Explanation

The following field should contain an explanation if the Applicant organization is delinquent on any Federal Debt. Maximum number of characters that can be entered is 4,000. Try and avoid extra spaces and carriage returns to maximize the availability of space.

NA

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form (including the continuation sheet) required for use as a cover sheet for submission of preapplications and applications and related information under discretionary programs. Some of the items are required and some are optional at the discretion of the applicant or the Federal agency (agency). Required items are identified with an asterisk on the form and are specified in the instructions below. In addition to the instructions provided below, applicants must consult agency instructions to determine specific requirements.

Item	Entry:
1.	**Type of Submission:** (Required): Select one type of submission in accordance with agency instructions. • Preapplication • Application • Changed/Corrected Application – If requested by the agency, check if this submission is to change or correct a previously submitted application. Unless requested by the agency, applicants may not use this to submit changes after the closing date.
2.	**Type of Application:** (Required) Select one type of application in accordance with agency instructions. • New – An application that is being submitted to an agency for the first time. • Continuation - An extension for an additional funding/budget period for a project with a projected completion date. This can include renewals. • Revision - Any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision, enter the appropriate letter(s). More than one may be selected. If "Other" is selected, please specify in text box provided. A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration E. Other (specify)
3.	**Date Received:** Leave this field blank. This date will be assigned by the Federal agency.
4.	**Applicant Identifier:** Enter the entity identifier assigned by the Federal agency, if any, or applicant's control number, if applicable.
5a	**Federal Entity Identifier:** Enter the number assigned to your organization by the Federal Agency, if any.
5b.	**Federal Award Identifier:** For new applications leave blank. For a continuation or revision to an existing award, enter the previously assigned Federal award identifier number. If a changed/corrected application, enter the Federal Identifier in accordance with agency instructions.
6.	**Date Received by State:** Leave this field blank. This date will be assigned by the State, if applicable.
7.	**State Application Identifier:** Leave this field blank. This identifier will be assigned by the State, if applicable.
8.	**Applicant Information:** Enter the following in accordance with agency instructions:
	a. Legal Name: (Required): Enter the legal name of applicant that will undertake the assistance activity. This is the name that the organization has registered with the Central Contractor Registry. Information on registering with CCR may be obtained by visiting the Grants.gov website.
	b. Employer/Taxpayer Number (EIN/TIN): (Required): Enter the Employer or Taxpayer Identification Number (EIN or TIN) as assigned by the Internal Revenue Service. If your organization is not in the US, enter 44-4444444.
	c. Organizational DUNS: (Required) Enter the organization's DUNS or DUNS+4 number received from Dun and Bradstreet. Information on obtaining a DUNS number may be obtained by visiting the Grants.gov website.
	d. Address: Enter the complete address as follows: Street address (Line 1 required), City (Required), County, State (Required, if country is US), Province, Country (Required), Zip/Postal Code (Required, if country is US).
	e. Organizational Unit: Enter the name of the primary organizational unit (and department or division, if applicable) that will undertake the

Item	Entry:
10.	**Name Of Federal Agency:** (Required) Enter the name of the Federal agency from which assistance is being requested with this application.
11.	**Catalog Of Federal Domestic Assistance Number/Title:** Enter the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested, as found in the program announcement, if applicable.
12.	**Funding Opportunity Number/Title:** (Required) Enter the Funding Opportunity Number and title of the opportunity under which assistance is requested, as found in the program announcement.
13.	**Competition Identification Number/Title:** Enter the Competition Identification Number and title of the competition under which assistance is requested, if applicable.
14.	**Areas Affected By Project:** List the areas or entities using the categories (e.g., cities, counties, states, etc.) specified in agency instructions. Use the continuation sheet to enter additional areas, if needed.
15.	**Descriptive Title of Applicant's Project:** (Required) Enter a brief descriptive title of the project. If appropriate, attach a map showing project location (e.g., construction or real property projects). For preapplications, attach a summary description of the project.
16.	**Congressional Districts Of:** (Required) 16a. Enter the applicant's Congressional District, and 16b. Enter all District(s) affected by the program or project. Enter in the format: 2 characters State Abbreviation – 3 characters District Number, e.g., CA-005 for California 5th district, CA-012 for California 12th district, NC-103 for North Carolina's 103rd district. • If all congressional districts in a state are affected, enter "all" for the district number, e.g., MD-all for all congressional districts in Maryland. • If nationwide, i.e. all districts within all states are affected, enter US-all. • If the program/project is outside the US, enter 00-000.
17.	**Proposed Project Start and End Dates:** (Required) Enter the proposed start date and end date of the project.
18.	**Estimated Funding:** (Required) Enter the amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines, as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses.
19.	**Is Application Subject to Review by State Under Executive Order 12372 Process?** Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the

	assistance activity, if applicable. **f. Name and contact information of person to be contacted on matters involving this application**: Enter the name (First and last name required), organizational affiliation (if affiliated with an organization other than the applicant organization), telephone number (Required), fax number, and email address (Required) of the person to contact on matters related to this application.		State intergovernmental review process. Select the appropriate box. If "a." is selected, enter the date the application was submitted to the State
		20.	**Is the Applicant Delinquent on any Federal Debt?** (Required) Select the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. If yes, include an explanation on the continuation sheet.
9.	Type of Applicant: (Required) Select up to three applicant type(s) in accordance with agency instructions. A. State Government B. County Government C. City or Township Government D. Special District Government E. Regional Organization F. U.S. Territory or Possession G. Independent School District H. Public/State Controlled Institution of Higher Education I. Indian/Native American Tribal Government (Federally Recognized) J. Indian/Native American Tribal Government (Other than Federally Recognized) K. Indian/Native American Tribally Designated Organization L. Public/Indian Housing Authority M. Nonprofit with 501C3 IRS Status (Other than Institution of Higher Education) N. Nonprofit without 501C3 IRS Status (Other than Institution of Higher Education) O. Private Institution of Higher Education P. Individual Q. For-Profit Organization (Other than Small Business) R. Small Business S. Hispanic-serving Institution T. Historically Black Colleges and Universities (HBCUs) U. Tribally Controlled Colleges and Universities (TCCUs) V. Alaska Native and Native Hawaiian Serving Institutions W. Non-domestic (non-US) Entity X. Other (specify)	21.	**Authorized Representative**: (Required) To be signed and dated by the authorized representative of the applicant organization. Enter the name (First and last name required) title (Required), telephone number (Required), fax number, and email address (Required) of the person authorized to sign for the applicant. A copy of the governing body's authorization for you to sign this application as the official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. Mandated Project	66.202	$	$	$ 123,000	$ 268,000	$ 391,000
2.						0
3.						0
4.						0
5. Totals		$ 0	$ 0	$ 123,000	$ 268,000	$ 391,000

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$ 0
b. Fringe Benefits					0
c. Travel					0
d. Equipment					0
e. Supplies					0
f. Contractual					0
g. Construction	391,000				391,000
h. Other					0
i. Total Direct Charges *(sum of 6a-6h)*	391,000	0	0	0	391,000
j. Indirect Charges					0
k. TOTALS *(sum of 6i and 6j)*	$ 391,000	$ 0	$ 0	$ 0	$ 391,000
7. Program Income	$	$	$	$	$ 0

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. NA	$	$	$	$ 0
9.				0
10.				0
11.				0
12. TOTAL *(sum of lines 8-11)*	$ 0	$ 0	$ 0	$ 0

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0	$	$	$	$
14. Non-Federal	0				
15. TOTAL *(sum of lines 13 and 14)*	$ 0	$ 0	$ 0	$ 0	$ 0

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16. NA	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0	$ 0	$ 0	$ 0

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges: NA	22. Indirect Charges: NA

23. Remarks: NA

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

DUNS

City of Wichita

3/21/2011

Per Carol McMillan, Controller, Finance Department, City of Wichita, there should be only one number that is used for the City from the EPA's Dun and Bradstreet Universal Numbering System (DUNS).

City of Wichita DUNS #: **04-306-34-60**

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Approved as to form

Director of Law and City Attorney

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE Mayor
APPLICANT ORGANIZATION City of Wichita	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

EPA

KEY CONTACTS FORM

Authorized Representative: *Original awards and amendments will be sent to this individual for review and acceptance, unless otherwise indicated.*

Name: Carl Brewer
Title: Mayor
Complete Address: City Hall, 1st Floor
455 N Main St, Wichita, KS 67202
Phone Number: 316-268-4331

Payee: *Individual authorized to accept payments.*

Name: Rhonda Harper
Title: Administrative Assistant
Mail Address: 1900 E 9th St N
Wichita, KS 67214
Phone Number: 316-268-8311

Administrative Contact: *Individual from Sponsored Program Office to contact concerning administrative matters (i.e., indirect cost rate computation, rebudgeting requests etc.)*

Name: Rhonda Harper
Title: Administrative Assistant
Mailing Address: 1900 E 9th St N
Wichita, KS 67214
Phone Number: 316-268-8311
FAX Number: 316-219-6269
E-Mail Address: rharper@wichita.gov

Principal Investigator: *Individual responsible for the technical completion of the proposed work.*

Name: Scott Lindebak
Title: Stormwater Engineer
Mailing Address: City Hall, 8th Floor, Public Works & Utilities
455 N Main St, Wichita, KS 67202
Phone Number: 316-268-4545
FAX Number: 316-858-7545
E-Mail Address: slindebak@wichita.gov
Web URL: http://www.wichita.gov/CityOffices/PublicWorks/StormWater/

City of Wichita
Stormwater Sewer to Serve Iva & 27th St

Work Plan & Estimated Construction Costs
4/18/2011

The City of Wichita is seeking an EPA grant to assist with the completion of an infrastructure project that will reduce drainage issues along North Iva Ave, near East 27th St, North. The grant and project can provide environmental benefits in three ways: 1.) by reducing flood risk, storm runoff stays away from homes built in the 1950s and therefore reduces the chance to absorb and carry 1950s building materials and chemicals into the water supply such as lead and asbestos; 2.) it reduces the consumption of energy and resources with fewer repairs to damaged structures and streets; 3.) the storm sewer system reduces thermal water pollution of storm runoff by conveying water underground instead of overland on streets that have no cover from the sun. To achieve the total environmental benefit and desired reduction in flood risk, the issue requires two projects. The first project will install storm sewer to serve the area, and the second project will re-grade Iva Ave and install curb and gutter. The grant request from the City is for assistance on the first project which can immediately achieve some environmental benefits from items 2.) & 3.), and it also provides the necessary infrastructure for the second project.

The first project consists of a storm sewer drainage system, 2400 ft of pipe and 33 structures, starting at Iva and 26th St with area curb inlets on the east side of the intersection to collect storm water runoff. From the said intersection, storm sewer will head east to an unpaved alley, then run north in the alley to 27th St and then east along the school-side street right-of-way. The proposed storm sewer will then go north along N Bluff Ave and outfall into East Fork Chisholm Creek. Area inlets in the alley will collect nuisance water, and curb inlets at intersections are to be installed with the storm sewer to collect street drainage.

The estimated cost to construct the storm sewer project is $391,000 and includes contracted materials and labor. The figure does not include City administrative costs nor design costs. The City does not plan to use "indirect costs" to meet its 45% required matching fund as the requested assistance from the EPA is $123,000, or 31% of the estimated construction (direct) costs of the project. The City will pay for the remaining 69% of the direct costs through the Stormwater Utility fund. The Stormwater Utility fund is derived from charges to residential and commercial property owners and is based on the respective property's impervious area.

Project Schedule:

Project Stage	*Month (2011)*
100% Plan Submittal	April
Advertisement for Bids	May
Bid Award & Notice to Proceed	June
Project Construction	June – July
Asbuilts and Project Closure	August
EPA Grant Closure	September

Estimated (4/18/2011) Construction Costs (labor & equipment are inclusive with specified item):

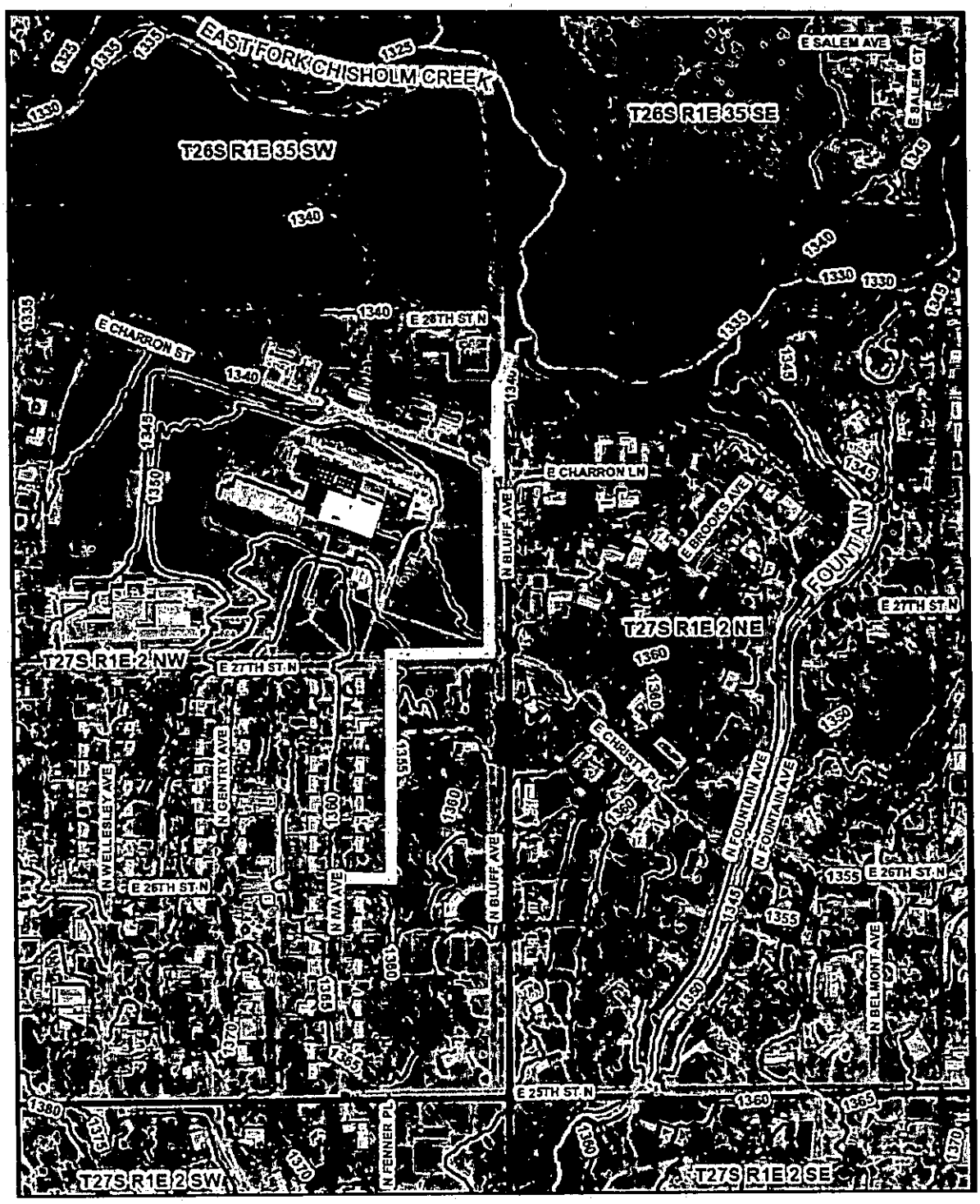
Lump Sum Bid Items				
Site Clearing	1	LS	$10,000.00	10,000.00
Site Restoration	1	LS	$10,000.00	10,000.00
SWS Pipe RCP 24"	332	lf	$40.00	13,280.00
SWS Pipe RCP 30"	1107	lf	$50.00	55,350.00
SWS Pipe RCP 36"	538	lf	$60.00	32,280.00
SWS Pipe RCP 42"	423	lf	$80.00	33,840.00
Riprap, Heavy Stone	18	sy	$100.00	1,800.00
Modified Inlet, Curb 1A 10'x4'	4	ea	$6,000.00	24,000.00
Inlet, Curb 1 5'x3'	10	ea	$3,500.00	35,000.00
Inlet, Curb 1 10'x3'	1	ea	$5,500.00	5,500.00
Inlet, Curb 1 10'x4'	1	ea	$6,000.00	6,000.00
Inlet, Double Drop 4'x2' (LxW)	4	ea	$3,500.00	14,000.00
MH, Reinforced Concrete (4'x4')	1	ea	$4,000.00	4,000.00
MH, Reinforced Concrete (4'6"x4'6")	3	ea	$4,500.00	13,500.00
MH, Reinforced Concrete (5'x5')	4	ea	$5,000.00	20,000.00
MH, Reinforced Concrete	5	ea	$4,000.00	20,000.00
Project Seeding	1	ac	$1,500.00	1,500.00
Traffic Control	1	LS	$15,000.00	15,000.00
Measured Quantity Bid Items				
Pavement Removed and Replaced	673	sy	$50.00	33,650.00
Pavement Removed	490	sy	$5.00	2,450.00
Concrete Approach, Rem & Repl	738	sf	$10.00	7,380.00
Comb. C & G Removed & Replaced	232	lf	$15.00	3,480.00
Concrete Sidewalk 4" Rem & Repl	2273	sf	$6.00	13,638.00
Concrete Sidewalk Removed	39	sy	$17.00	663.00
Flowable Fill	365	lf	$25.00	9,125.00
Sawcut	1186	lf	$2.00	2,372.00
Inlet Protection	20	ea	$100.00	2,000.00
Erosion Control Mat	330	sy	$4.00	1,320.00
Construction Subtotal				391,128.00

The above estimated construction cost is intended to be confidential and should not be shared with the public until the project has been completed. Exact costs and quantities may change due to field conditions, availability of materials, neighborhood concerns, or other unforeseen circumstances.

Project Site Location:

0 125 250 500 Feet

The yellow line depicts the proposed storm sewer system route.



No environmental data will be generated for this project, and a quality assurance plan pertaining to such collection of information is not applicable.

Scott C. Lindebak, P.E., CFM

Stormwater Engineer
Public Work & Utilities Department
Stormwater Management Division

6 Years in Public Works & Utilities

Scott Lindebak was named the Stormwater Engineer for the Department of Public Works & Utilities in July 2008.

Job Description: As the Stormwater Engineer, Scott oversees a staff of 55 employees that work for the City's Stormwater Utility and the Wichita-Sedgwick County Flood Control. The Stormwater Utility implements and enforces the City's NPDES water quality program; designs and constructs stormwater capital projects; investigates and responds to drainage complaints; maintains the ERU revenue records; and maintains our community's drainage systems. Flood Control inspects and maintains the Wichita Valley Center Flood Control Project per the U.S. Army Corp of Engineer's standards and specifications. About 18 of the 55 full-time employees in Flood Control work to maintain over a 100 miles of earthen levees which provide flood protection to Sedgwick County from the Big and Little Arkansas River systems.

Education: Scott graduated from Kansas State University in August 1997, with a degree in Civil Engineering, and holds licenses as both a Professional Engineer and a Certified Floodplain Manager.

Background: Scott worked in Wichita for a private engineering consultant for more than five years as a drainage engineer, designing and permitting public and private drainage improvements for commercial and residential developments. In July 2004, he accepted a position as a Senior Civil Engineer for DuPage County in Wheaton, Illinois (suburb of Chicago). The duties included reviewing private storm water improvements and managing public drainage projects. He returned to Wichita in June 2005, and accepted a Civil Engineering position with the City's Stormwater Utility. As a Civil Engineer in Engineering, Scott was assigned to review and approve FEMA flood map revisions, private storm water projects, and subdivision drainage plans; design and construct emergency drainage projects; manage the Stormwater's CIP; aid the Office of Central Inspection with reviewing building permits; and respond to drainage complaints.

Key Projects: Implemented a countywide GPS based reference station network to assist with inventorying the stormwater assets into the City's GIS. Developed a countywide LiDAR topographic mapping project that partnered the City of Wichita with Sedgwick County and United States Geological Survey.

Other: In 2007, Scott was named the Wichita and the State of Kansas Government Engineer of the Year. Scott and his wife live in west Wichita and have two daughters ages 7 and 5 years old. In his spare time, he enjoys outdoor activities including camping and yard projects. Scott was born in Ames, Iowa and moved to Wichita in 1974, where his father was Wichita's City Engineer for nearly twenty years.

*FORM

Approved as to form

Director of Law and City Attorney

Approved By OMB: No. 2030-0020 Expires 04-30-2012

Preaward Compliance Review Report for
All Applicants and Recipients Requesting EPA Financial Assistance
Note: Read instructions on other side before completing form.

I. Applicant/Recipient (Name, Address, State, Zip Code).
City of Wichita, 455 N Main St, KS, 67202

DUNS No.
043063460

II. Is the applicant currently receiving EPA assistance?
Yes. The City is receiving assistance for Air Quality, contact Randy Owen (phone: 316-268-8350).

III. List all civil rights lawsuits and administrative complaints pending against the applicant/recipient that allege discrimination based on race, color, national origin, sex, age, or disability. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)
See Attachment A, cases against City; None v. Stormwater Management

IV. List all civil rights lawsuits and administrative complaints decided against the applicant/recipient within the last year that allege discrimination based on race, color, national origin, sex, age, or disability and enclose a copy of all decisions. Please describe all corrective action taken. (Do not include employment complaints not covered by 40 C.F.R. Parts 5 and 7. See instructions on reverse side.)
No cases have been decided against applicant or City of Wichita within the last year.

V. List all civil rights compliance reviews of the applicant/recipient conducted by any agency within the last two years and enclose a copy of the review and any decisions, orders, or agreements based on the review. Please describe any corrective action taken. (40 C.F.R. § 7.80(c)(3))
The City's Law Department has not been notified of reviews or corrective actions as described.

VI. Is the applicant requesting EPA assistance for new construction? If no, proceed to VII; if yes, answer (a) and/or (b) below.
✓ Yes No

a. If the grant is for new construction, will all new facilities or alterations to existing facilities be designed and constructed to be readily accessible to and usable by persons with disabilities? If yes, proceed to VII; if no, proceed to VI(b). ✓ Yes No

b. If the grant is for new construction and the new facilities or alterations to existing facilities will not be readily accessible to and usable by persons with disabilities, explain how a regulatory exception (40 C.F.R. § 7.70) applies. Yes No

VII.* Does the applicant/recipient provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, sex, age, or disability in its programs or activities? (40 C.F.R. § 5.140 and § 7.95) ✓ Yes No

a. Do the methods of notice accommodate those with impaired vision or hearing? Yes ✓ No

b. Is the notice posted in a prominent place in the applicant's offices or facilities or, for education programs and activities, in appropriate periodicals and other written communications? ✓ Yes No

c. Does the notice identify a designated civil rights coordinator? Yes ✓ No

VIII.* Does the applicant/recipient maintain demographic data on the race, color, national origin, sex, age, or handicap of the population it serves? (40 C.F.R. § 7.85(a))
Not aware of City data beyond US Census data; City does have workforce data.

IX.* Does the applicant/recipient have a policy/procedure for providing access to services for persons with limited English proficiency? (40 C.F.R. Part 7, E.O. 13166)
Customer Service serves Spanish and Vietnamese speaking customers.

X.* If the applicant/recipient is an education program or activity, or has 15 or more employees, has it designated an employee to coordinate its compliance with 40 C.F.R. Parts 5 and 7? Provide the name, title, position, mailing address, e-mail address, fax number, and telephone number of the designated coordinator. See Attachment B; Susan Leiker, Diversity Management; Senior HR

XI* If the applicant/recipient is an education program or activity, or has 15 or more employees, has it adopted grievance procedures that assure the prompt and fair resolution of complaints that allege a violation of 40 C.F.R. Parts 5 and 7? Provide a legal citation or Internet address for, or a copy of, the procedures. Admin Regs: http://www.wichita.gov/CityOffices/HR/PersonnelDocs.htm

For the Applicant/Recipient

I certify that the statements I have made on this form and all attachments thereto are true, accurate and complete. I acknowledge that any knowingly false or misleading statement may be punishable by fine or imprisonment or both under applicable law. I assure that I will fully comply with all applicable civil rights statutes and EPA regulations.

A. Signature of Authorized Official	B. Title of Authorized Official	C. Date
	Mayor	

For the U.S. Environmental Protection Agency

I have reviewed the information provided by the applicant/recipient and hereby certify that the applicant/recipient has submitted all preaward compliance information required by 40 C.F.R. Parts 5 and 7; that based on the information submitted, this application satisfies the preaward provisions of 40 C.F.R. Parts 5 and 7; and that the applicant has given assurance that it will fully comply with all applicable civil rights statutes and EPA regulations.

A. Signature of Authorized EPA Official	B. Title of Authorized EPA Official	C. Date
See ** note on reverse side		

EPA Form 4700-4 (Rev. 04/2009). Previous editions are obsolete.

Instructions for EPA FORM 4700-4 (Rev. 04/2009)

General

Recipients of Federal financial assistance from the U.S. Environmental Protection Agency must comply with the following statutes and regulations.

Title VI of the Civil Rights Acts of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. The Act goes on to explain that the statute shall not be construed to authorize action with respect to any employment practice of any employer, employment agency, or labor organization (except where the primary objective of the Federal financial assistance is to provide employment).

Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act provides that no person in the United States shall on the ground of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the Federal Water Pollution Control Act, as amended. Employment discrimination on the basis of sex is prohibited in all such programs or activities.

Section 504 of the Rehabilitation Act of 1973 provides that no otherwise qualified individual with a disability in the United States shall solely by reason of disability be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Employment discrimination on the basis of disability is prohibited in all such programs or activities.

The Age Discrimination Act of 1975 provides that no person on the basis of age shall be excluded from participation under any program or activity receiving Federal financial assistance. Employment discrimination is not covered. Age discrimination in employment is prohibited by the Age Discrimination in Employment Act administered by the Equal Employment Opportunity Commission.

Title IX of the Education Amendments of 1972 provides that no person in the United States on the basis of sex shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Employment discrimination on the basis of sex is prohibited in all such education programs or activities. Note: an education program or activity is not limited to only those conducted by a formal institution.

40 C.F.R. Part 5 implements Title IX of the Education Amendments of 1972.

40 C.F.R. Part 7 implements Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, and Section 504 of The Rehabilitation Act of 1973.

The Executive Order 13166 (E.O. 13166) entitled: "Improving Access to Services for Persons with Limited English Proficiency" requires Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

Items

"Applicant" means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance. 40 C.F.R. §§ 5.105, 7.25.

"Recipient" means any entity, other than applicant, which will actually receive EPA assistance. 40 C.F.R. §§ 5.105, 7.25.

"Civil rights lawsuits and administrative complaints" means any lawsuit or administrative complaint alleging discrimination on the basis of race, color, national origin, sex, age, or disability pending or decided against the applicant and/or entity which actually benefits from the grant, but excluding employment complaints not covered by 40 C.F.R. Parts 5 and 7. For example, if a city is the named applicant but the grant will actually benefit the Department of Sewage, civil rights lawsuits involving both the city and the Department of Sewage should be listed.

"Civil rights compliance review" means any review assessing the applicant's and/or recipient's compliance with laws prohibiting discrimination on the basis of race, color, national origin, sex, age, or disability.

Submit this form with the original and required copies of applications, requests for extensions, requests for increase of funds, etc. Updates of information are all that are required after the initial application submission.

If any item is not relevant to the project for which assistance is requested, write "NA" for "Not Applicable."

In the event applicant is uncertain about how to answer any questions, EPA program officials should be contacted for clarification.

* Questions VII – XI are for informational use only and will not affect an applicant's grant status. However, applicants should answer all questions on this form. (40 C.F.R. Parts 5 and 7).

** Note: Signature appears in the Approval Section of the EPA Comprehensive Administrative Review For Grants/Cooperative Agreements & Continuation/Supplemental Awards form.

Approval indicates, in the reviewer's opinion, questions I – VI of Form 4700-4 comply with the preaward administrative requirements for EPA assistance.

"Burden Disclosure Statement"

EPA estimates public reporting burden for the preparation of this form to average 30 minutes per response. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to U.S. EPA, Attn: Collection Strategies Division (MC 2822T), Office of Information Collection, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

The information on this form is required to enable the U.S. Environmental Protection Agency to determine whether applicants and prospective recipients are developing projects, programs and activities on a nondiscriminatory basis as required by the above statutes and regulations.

DUNS No: 043063460

Attachment A
to EPA Form 4700-4

Preaward Compliance Review Report
Question II.

Pending Civil Rights Litigation and Administrative Complaints

EPA Grant Application for
Storm Sewer Improvements to Serve North Iva & 27th Street
City of Wichita

4/18/2011

Re: A list of civil rights lawsuits and administrative complaints pending against the City

Lawsuits:

Riggs v. City of Wichita (race)

Administrative Complaints:

Ricky Bryant (race)
Gilbert James, II (race)
Kenneth Hadley (race)
Samantha Sargent (sex)
Carlos Thomas (race)
Yolanda Anderson (employment/race & sex)
Querida Brown (employment/race)
Hayet Takkouk (employment/religion & national origin)
Jan Jarman (gender)

Law Department:
City Hall, 13th Fl
455 N Main St
Wichita, KS 67202
Phone: 316-268-4681
Fax: 316-268-4335

DUNS No: 043063460

Attachment B
to EPA Form 4700-4

Preaward Compliance Review Report
Question X.

Compliance with 40 CFR Parts 5 & 7

EPA Grant Application for
Storm Sewer Improvements to Serve North Iva & 27th Street
City of Wichita

4/18/2011

Re: Contact information for compliance with 40 CFR Parts 5 & 7

Susan Leiker

Title: Senior HR Specialist, Diversity Management
Dept: Human Resources

Address: City Hall, 2nd Fl
455 N Main St
Wichita, KS 67202

Email: sleiker@wichita.gov
Fax: 316-858-7323
Phone: 316-262-4723

QUALITY ASSURANCE REQUIREMENT FORM

40 CFR 30.54 and 31.45

If your program/project involves environmentally related measurements or data generation, you are required to develop and implement quality assurance practices. Please complete this form in its entirety and return it with the Application for Federal Assistance, SF424.

YES	NO	
☐	☑	**The workplan, which is submitted with the Application for Federal Assistance, includes environmental sampling or Data generation.**
☐	☐	**A Quality Management Plan was previously reviewed and approved by the U.S. EPA and is still current and applicable.**

Please note that prior to environmental sampling or data generation, a site specific Quality Assurance Project Plan must be prepared and approved. **For additional informational information concerning quality assurance, please contact the R7 Quality Assurance Manager at 913-551-7258.**

Date

Applicant Signature

Mayor

Applicant Title

City of Wichita

Applicant Organization

Approved as to form

Director of Law and City Attorney

ENSV Revised 03/97

EPA United States Environmental Protection Agency

EPA Project Control Number

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, **LOANS AND COOPERATIVE AGREEMENTS**

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 influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee 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 modification 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 attempting to influence an officer or employee of any agency, a Member 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 sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients 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.

Carl Brewer, Mayor, City of Wichita

Typed Name & Title of Authorized Representative

Signature and Date of Authorized Representative

Approved as to form

Director of Law and City Attorney

EPA Form 6600-06 (Rev. 06/2008) Previous editions are obsolete.

Pending Local Planning
Agency Approval
(South Central Economic Development District)

Non-Profit Organization Certification Regarding Internal Revenue Code of 1986

In order to comply with government-wide restrictions on lobbying activities for non-profit organizations and educational institutions, all non-profit organizations who apply for financial assistance with the U.S. Environmental Protection Agency, Region VII, must certify the following (check the appropriate block):

☑ It **is not** a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or

☐ It **is** a non-profit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 but does not, and will not, engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995.

☐ It **is** a non-profit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 who engages in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995.

Carl Brewer, Mayor

Typed Name & Title of Authorized Representative

Approved as to form

Director of Law and City Attorney

Signature of Authorized Representative

Date

Applicant Name: City of Wichita

Assistance Number: NA

METHOD OF PAYMENT

All applicants will receive payments, upon award of federal financial assistance from the U.S. Environmental Protection Agency, via the Automated Clearing House method of payment. Please check the applicable box below:

☑ YES, I have an ACH Account with EPA. This ACH account number is:

ACH Number: 77592

☐ NO, I do not have an ACH Account with EPA.

If you do not have a ACH account with EPA, upon award of financial assistance, you will receive a TFS Form 3881, Department of Treasury Payment Information Form, ACH Vendor Payment System. This form will allow you to enroll in the ACH system and to receive payments from the EPA via electronic funds transfer.

If you have any questions concerning this payment method, please contact the EPA, Region VII, Financial Management Office, at 702-798-2406.

Project Name: Stormwater Sewer Improvements to Serve North Iva & 27th Street___
Grant No.: _____ Reviewer: _____ Date: _____

GRANT CONDITION REQUIREMENTS (may vary - check grant conditions.)

____ (a) Eligibility Contract is part of the scope of the project as per the grant award agreement.

____ (b) Environmental Review The environmental review requirements of NEPA have been completed for this project with the issuance of a Categorical Exclusion, A Finding of No Significant Impact, or and Environmental Impact Statement.

____ (c) Anti-Lobbying Act Language required by grant condition is included in specifications.

____ (d) Debarment & Suspension/Excluded Parties Required language is included in specs.

____ (e) DBE EPA spec insert included in specifications, or goals and affirmative steps for grants awarded prior to May 28, 2008.

____ (f) Prompt Payment Grantee will make prompt payment to contractors retaining only justifiable amounts

PROCUREMENT STANDARDS

____ (g) Contract awards will be made to responsible contractors possessing the ability to perform successfully considering integrity, compliance with public policy, record of past performance, and financial and technical resources. [31.36(b)(8)]

____ (h) Time and material contracts will not be used unless no other kind of contract is suitable and the proposed contract includes a ceiling price. [31.36(b)(10)]

____ (i) Specs should advise contractors that the grantee will be responsible for settling all issues including source evaluation, protests, disputes, and claims. [31.36(b)(11)]

____ (j) Specs should advise contractor to exhaust all administrative remedies with the grantee before protesting to the EPA, which will only review protests based on violation of Federal law or regulation or for failure of grantee to review a protest under their protest procedures. [31.36(b)(12)]

COMPETITION

____ (k) Full and open competition should not be restricted by placing unreasonable requirements on firms to qualify to do business or by requiring unnecessary experience and excessive bonding. [31.36(c)(1)(i) & (ii)]

____ (l) Full and open competition should not be restricted by specifying only a brand name instead of allowing "an equal" product. [31.36(c)(1)(vi)]

____ (m) The use of statutorily or administratively imposed in-State or local geographical preferences is prohibited except where applicable Federal statutes expressly mandate or encourage geographic preference. [31.36(c)(2)]

____ (n) Specifications shall incorporate a clear and accurate description of the technical requirements for materials, products, and services to be provided. Minimum essential characteristics and standards should be used. Detailed requirements which unduly limit competition should not be used. [31.36(c)(3)]

NA (o) Buy American requirements do not apply to special infrastructure grant projects. The grantee should be advised if this requirement is included. [31.36(c)(5)]

REQUIREMENTS FOR SEALED BID PROCUREMENT

____ (p) A firm-fixed-price contract, either lump sum or unit price, will be used. [31.36(d)(2)]

____ (q) Award of contract will be made to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The basis of award must be specified if bid alternates are included. [31.36(d)(2)]

____ (r) Invitation for bids will be publicly advertised providing sufficient time to attract an adequate number of bidders. If less than 30 days is proposed, grantee should provide a justification which demonstrates adequate competition will be obtained. [31.36(d)(2)(ii)(A)]

____ (s) Any or all bids may be rejected for a sound documented reason. [31.36(d)(2)(ii)(E)]

____ (t) Noncompetitive procurement from a sole source may be used when (1) the item is available only from a single source, (2) public exigency or emergency requires quick action, (3) the awarding agency authorizes noncompetitive proposals, or (4) after solicitation, competition is determined inadequate. [31.36(d)(4)]

BONDING REQUIREMENTS

____ (u) A 5% bid guarantee is required. A firm commitment such as bid bond, certified check or other negotiable instrument will be provided. [31.36(h)(1)]

____ (v) A 100% performance bond is required to secure the fulfillment of the contractor's obligations. [31.36(h)(2)]

____ (w) A 100% payment bond is required for payment for all labor and material. [31.36(h)(3)]

CONTRACT PROVISIONS

____ (x) Administrative, contractual or legal remedies shall be provided for when contractors violate or breach contract terms, with sanctions and penalties as appropriate. [31.36(i)(1)]

____ (y) Provisions to terminate for cause and for convenience shall be provided including the manner it will be effected and the basis for settlement. [31.36(i)(2)]

____ (z) Compliance with Executive Order 11246 (Equal Employment Opportunity) shall be required. The Advertisement for Bids and the Notice to Contractors shall cite this requirement and list the goals for minorities and women on the contractor's workforce, and the specifications shall include the two Department of Labor inserts. [31.36(i)(3)]

NA (aa) The Copeland "Anti-Kickback" Act only applies to contracts subject to Davis-Bacon Act wage rates. This grant is not subject to Federal wage rates. [31.36(i)(4)]

NA (bb) Davis-Bacon Act Federal wage rates are not required by the special infrastructure grant funding legislation. Advise the grantee if included. [31.36(i)(5)]

____ (cc) Contractor will comply with Sections 103 & 107 of the Contract Work Hours and Safety Standards Act as directed in Dept. of Labor regulations at 29 CFR Part 5. [31.36(i)(6)]

____ (dd) Access to pertinent contract records is provided to the grantee, EPA, US Comptroller General, or any duly authorized representatives for the purpose of making audit, examination, excerpts, and transcriptions. [31.36(i)(10)]

____ (ee) Contractor is required to retain contract records for 3 years after final payment is made and all other pending matters are closed. [31.36(i)(11)]

____ (ff) Contractor will comply with Clean Air Act Section 306, Clean Water Act Section 508, Executive Order 11738, and EPA regulations at 40 CFR 15, which prohibits dealing with entities in noncompliance with the cited acts. [31.36(i)(12)]

____ (gg) Contractor will comply with the energy efficiency requirements in the state energy conservation plan issued as required by the Energy Policy and Conservation Act. (P.L. 94-163) [31.36(i)(13)]

____ (hh) EPA and authorized representatives will be provided access to construction site. [31.40(e)]

____ (ii) Specs should provide for steps to be taken if historical or archaeological artifacts are uncovered during construction. [44 CFR 800.11]

(a) *NOTE: This is a check to ensure that the project defined by the plans and specifications agrees with the definition of the scope of the project in the grant award document. If not, this is a show stopper and the grantee should be advised accordingly.*

(b) *NOTE: This is a check to make sure that the appropriate NEPA environmental review document has been issued as per the grant condition. If not, a judgment should be made as to whether this will delay the project, and the grantee should be advised accordingly. The NEPA review process should be completed before construction begins, and should preferably be completed before a construction contract is awarded, in case the NEPA review results in a change in the project.*

(c) Administrative Condition No. **X** in the Environmental Protection Agency grant agreement requires the following to be included in all solicitation documents:

"Subrecipients who request or receive from the grant recipient a subgrant, contract, or subcontract exceeding $100,000, at any tier under a Federal grant, shall comply with the Anti-Lobbying Act, Section 319 or Public Law 101-121, and file an Anti-Lobbying Certification form, and the Disclosure of Lobbying Activities form, if required, to next tier above."

The forms can be found at the following websites:
http://epa.gov/region07/economics/pdf/Certification_Regarding_Lobbying.pdf
http://epa.gov/region07/economics/pdf/lobbying_activities_disclosure.pdf

(d) **For the older condition requiring a suspension & debarment certification, use the following:**

Administrative Condition No. **X** in the Environmental Protection Agency grant agreement requires the following language to be included in all solicitation documents:

The prospective participants must certify by submittal of EPA Form 5700-49, Certification Regarding Debarment, Suspension and Other Responsibility Matters, that to the best of its knowledge and belief it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.

For the newer condition not requiring the certification form, use the following comment:

To satisfy Administrative Condition No. **X** in the Environmental Protection Agency grant agreement, the following should be included in the Instructions to Bidders section of the project specifications:

The Code of Federal Regulations at Title 2, Part 180, prohibits participation in EPA funded contracts by persons excluded or disqualified from doing business with the federal government. Bidders are responsible for advising the Owner if they are excluded or disqualified, and to check whether subcontractors they intend to use are excluded or disqualified. All tiers of subcontractors have the same responsibility to notify the one for which they are providing services if they are excluded or disqualified, and to check the status of any subcontractors they intend to use. Status can be checked on the Excluded Parties List System located on the Internet at www.epls.gov. All subcontracts at any tier should include this language.

(e) **For grants awarded after May 27, 2008, use the following comment:**

To satisfy Administrative Condition No. X in the Environmental Protection Agency grant agreement, the enclosed EPA DBE spec insert should be included in the specifications.

For grants awarded prior to May 28, 2008, use the following comment:

***NOTE**: The following comment should be edited to fit the particular project situation.*

As per Administrative Condition No. **X** in the Environmental Protection Agency grant agreement, the specifications must require the contractor and any subcontractors to take the six affirmative steps listed at 40 CFR 31.36(e)(2) in attempting to reach the fair share objectives of **XX%** subcontracting to minority business enterprises and **XX%** subcontracting to women business enterprises. A copy of the six affirmative steps is enclosed for your information. This list should be included in the specifications for clarity. Although no goals are required, the contractor must take the same affirmative steps to subcontract with small business enterprises. Prior to award of the contract, the apparent low bidder should be required to identify the disadvantaged firms which will receive subcontracts, and for each firm, a listing of the type of enterprise and the contract amount. If the established goals are not met, the bidder should also be required to submit documentation which demonstrates that the six affirmative steps were taken. The bidder would be considered unresponsive without such documentation. Further information on this EPA requirement can be obtained at the following web site address: www.epa.gov/osdbu/pubs.htm.

***NOTE**: Some consultants include in the specifications an old EPA document developed for the SRF program which does not include the current six affirmative steps. This form should be revised to include the wording in the current regulation, as included on page 5 of this document.*

(f) As per Programmatic Condition No. **X**, the specifications must include a description of the payment process which insures that the contractor will receive prompt payments of sums due except for justifiable amounts retained until completion of the project.

(g) As per 40 CFR 31.36(b)(8), the specifications should advise bidders that contract award will be made only to responsible contractors possessing the ability to perform successfully, which will be determined by considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(h) As per 40 CFR 31.36(b)(10), time and material contracts will not be used unless no other kind of contract is suitable and the proposed contract includes a ceiling price. Please provide a justification which explains why a lump sum or unit price type of contract is not suitable.

(i) As per 40 CFR 31.36(b)(11), the specifications should advise bidders that the grantee alone will be responsible, in accordance with good administrative practice and sound business judgment, for settlement of all contractual and administrative issues including source evaluation, protests, disputes, and claims.

(j) As per 40 CFR 31.36(b)(12), the specifications should advise bidders that a protestor must exhaust all administrative remedies with the grantee before pursuing a protest with the Environmental Protection Agency, and that protests reviewed by EPA will be limited to situations where Federal law or regulations are violated or where the grantee fails to review a protest under their procedures.

(k) As per 40 CFR 31.36(c)(1), full and open competition should not be restricted [by placing unreasonable requirements on firms in order for them to qualify to do business and/or by requiring unnecessary experience and/or excessive bonding.] ***INCLUDE HERE** the unacceptable requirements.*

***NOTE**: edit the first sentence, within the brackets, to fit each situation.*

(l) As per 40 CFR 31.36(c)(1)(vi), specifying only a "brand name" product restricts full and open competition. Brand names can only be used to define performance and other relevant requirements of the item, and the specification must allow the use of an "or equal" product when "brand names" are specified.

(m) As per 40 CFR 31.36(c)(2), unless mandated by applicable Federal statutes, the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of proposals is prohibited and such requirements should be removed from the specifications. ***INCLUDE HERE*** *what the unallowable provisions are and where they are located in the specifications.*

NOTE*: HUD Section 3 requirements for Community Development Block Grants are an example of federally mandated, local preference requirements which can be included in the specifications, but if included, make sure grantee is receiving CDBG funds.*

(n) ***NOTE****: This comment needs to be written with reference to 40 CFR 31.36(c)(3) on a case-by-case basis to identify where specifications do not adequately describe the technical requirements or are too detailed and thereby limit competition.*

(o) The "Buy American" requirement is not required for construction contracts funded by the Environmental Protection Agency special infrastructure grant, but it can be included in the specifications.

NOTE*: This comment can be used if this provision is in the specifications to advise the grantee that they are not required to include it.*

(p) As per 40 CFR 31.36(d)(2), a firm-fixed-price contract, either lump sum, unit price or a combination of these two types, must be used for sealed bid procurement.

(q) As per 40 CFR 31.36(d)(2), the award of contract must be made to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. ***OR***

As per 40CFR 31.36(d)(2), bid alternates cannot be used in the proposal for bids unless the specifications define a definite basis of award which is the same for all bidders. ***OR***

As per 40 CFR 31.36(d)(2), the award of contract must be made to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price, and bid alternates cannot be used in the proposal for bids unless the specifications define a definite basis of award which is the same for all bidders.

(r) As per 40 CFR 31.36(d)(2)(ii)(A), the publicly advertised invitation for bids will provide bidders with sufficient time prior to the date set for the bid opening. 30 days has been used historically to provide sufficient time. How long will the invitation for bids be advertised? If it will be advertised less than 30 days, provide a justification which explains why the purposed advertisement period will provide sufficient time to attract an adequate number of qualified bidders.

s) As per 40 CFR 31.36(d)(2)(ii)(E), the specifications should advise bidders that any or all bids may be rejected for a sound, documented reason.

(t) As per 40 CFR 31.36(d)(4), noncompetitive procurement from a sole source is usually not allowed. Provide justification for specifying a sole source to procure ***INSERT HERE*** *the material or equipment in question.*

(u) As per 40 CFR 31.36(h)(1), the specifications must require bidders to submit a bid guarantee in an amount equal to five percent of the bid price. The guarantee shall be a firm commitment such as a bid bond, certified check, or other negotiable instrument, which assures that the bidder will, upon acceptance of the bid, execute required contract documents within the time period specified.

NOTE*: Can combine with comment "v" and/or "w" if applicable.*

(v) As per 40 CFR 31.36(h)(2), the specifications must require the successful bidder to provide a performance bond in an amount equal to 100 percent of the contract price. The bond will assure fulfillment of all of the obligations of the contractor as required by the contract documents.

NOTE: Can combine with comment "v" and/or "x" if applicable.

(w) As per 40 CFR 31.36(h)(3), the specifications must require the successful bidder to provide a payment bond in an amount equal to 100 percent of the contract price. The bond will assure payment as required by law to all persons supplying labor and material in the execution of the work specified in the contract documents.

NOTE: Can combine with comment "v" and/or "w" if applicable.

(x) As per 40 CFR 31.36(i)(1), for contracts exceeding $100,000, the specifications must include the administrative, contractual, and legal remedies which will be used by the grantee in instances where contractors violate or breach contract terms, and also provide for such sanctions and penalties as may be appropriate.

(y) As per 40 CFR 31.36(i)(2), for contracts exceeding $10,000, the specifications must include provisions for the grantee to terminate the contract for cause and for convenience, including the manner by which the termination will be effected and the basis for settlement.

(z) As per 40 CFR 31.36(i)(3), for contracts exceeding $10,000, the specifications must require the contractor to comply with Executive Order 11246, entitled "Equal Employment Opportunity." This requirement is not the same as the Environmental Protection Agency MBE/WBE program which deals with subcontracting. Attached are two documents which must be included in the specifications. They are entitled "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity" and "Standard Federal Equal Employment Opportunity Construction Contract Specifications. The 6.9% figure for female participation on the contractor's aggregate work force is a nation-wide figure. The **XX%** figure for minority participation is specific to the project area. Also, include the following statement in the Advertisement for Bids and the Notice to Contractors:

> Bidders of this Work will be required to comply with the President's Executive Order Number 11246, as amended, which requires the contractor to take steps to meet aggregate workforce goals of **XX%** for minority participation and 6.9% for female participation. These requirements are explained in the Equal Employment Opportunity provisions included in the Contract Documents.

NOTE: Replace the XXs above with the appropriate percentage for minority participation for the applicable area from the 10/3/80 Federal Register. Also type the same percentage for minority participation and edit Section 4 to include the geographical area in the copy of the DOL "Notice..." form that is sent to the grantee as an attachment to the comment letter. The inserts and table of percentages by county are attached to this document.

(aa) NA

(bb) The legislation which authorized the funding for this project did not make the Federal wage rates of the Davis-Bacon Act a requirement for this construction project, so the Federal wage rates do not need to be included in the specifications.

NOTE: Use this comment if Federal wage rates are included in the specifications.

(cc) As per 40 CFR 31.36(i)(6), for contracts exceeding $2000, the specifications must require the contractor to comply with Sections 103 and 107 of the Contract Work Hours and Safety Standard Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

(dd) As per 40 CFR 31.36(i)(10), the specifications must require the contractor to provide access for the grantee, the Environmental Protection Agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions.

(ee) As per 40 CFR 31.36(i)(11), the specifications must require the contractor to retain all required records for three years after the latter of grantee making final payment or all other pending matters are closed.

(ff) As per 40 CFR 31.36(i)(12), for contracts exceeding $100,000, the specifications must require the contractor and subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations at 40 CFR part 15.

(gg) As per 40 CFR 31.36(i)(13), the specifications must require the contractor to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163, 89 Stat 871).

(hh) As per 40 CFR 31.40(e), the specifications must require the contractor to provide access to the site for the Environmental Protection Agency and its duly authorized representatives.

(ii) As per 44 CFR 800.11, the following requirement must be included in the specifications:

If during the course of construction evidence of deposits of historical or archaeological interest is found, the contractor shall cease operations affecting the find and shall notify the owner, who shall notify the EPA and ***INSERT HERE*** *the name and address of the State Historic Preservation Officer*. No further disturbance of the deposits shall ensue until the contractor has been notified by the owner that construction may proceed. The owner will issue a notice to proceed only after the state official has surveyed the find and made a determination to the EPA and the owner. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the contract documents.

NOTE: *Following are the* ***affirmative steps*** *for MBE/WBE/SBE subcontracting as included in the current EPA regulation at 40 CFR 31.36(e)(2).*

(e) Contracting with small and minority firms, women's business enterprises and labor surplus area firms.

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

EPA Specification Locator Table

The following table specifies: 1) which City document, and 2) where in that document the suggested or required EPA specifications are located for plans receiving federal grant dollars.

The entire City of Wichita Standard Specifications can be viewed at:
http://www.wichita.gov/CityOffices/PublicWorks/Engineering/StandardSpecifications.htm

The Special Provisions particular to this project, "Stormwater Sewer Improvements to Serve North Iva & 27th Street", are included with the application.

EPA Item	City Document	Section
a	**NA**	
b	**NA**	
c	Special Provisions (SP)	Attachment A, EPA/Item **1.** (Att, EPA/**1**)
d	SP	Att, EPA/**2**
e	SP	Att, EPA/**3**
f	Standard Specifications	102.1 & 109.6
g	SP	Att, EPA/**4**
h	Stand. Spec.	102.1 & 109.6
i	SP	Att, EPA/**5**
j	SP	Att, EPA/**5**
k	**NA**	The City does not unduly restrict open competition.
l	SP	Att, EPA/**7**
m	Stand. Spec.	106.1 & 106.6
n	Stand. Spec.	Throughout
o	**NA**	
p	Stand. Spec.	102.1 & 109.5
q	SP	Att, EPA/**8**
r	SP	Cover
s	Stand. Spec.	102.8
t	**NA**	The City does not unduly restrict procurement.
u	Stand. Spec.	102.3
v	Stand. Spec.	103.4
w	Stand. Spec.	103.4
x	Stand. Spec.	108.6 & 108.7
y	Stand. Spec.	108.8
z	SP	Att, EPA/**6**
aa	**NA**	
bb	**NA**	
cc	SP	Att, EPA/**9**
dd	SP	Att, EPA/**10**
ee	SP	Att, EPA/**11**
ff	SP	Att, EPA/**12**
gg	SP	Att, EPA/**13**
hh	SP	Att, EPA/14
ii	SP	Att, EPA/15

NOTICE TO CONTRACTORS

Notice is hereby given that sealed proposals for constructing Storm Water Sewer Improvements to serve North Iva and 27th Street in Harvey's Walnut Grove Addition will be received at the Office of the Purchasing Manager, City Hall, 455 North Main, Wichita, Kansas until 10:00 o'clock A. M. on **May 13, 2011**, at which time the bids will be opened publicly and read aloud and tabulated by the Board of Bids and Contracts for consideration by the City Council. Bids received after said time will be returned unopened.

NOTE: BIDDER SHALL AFFIX THE FOLLOWING PROJECT NUMBER TO THE BID ENVELOPE **468-84709**

ATTENTION ALL BIDDERS: A BID BOND IN THE AMOUNT OF FIVE PERCENT (5%) OF THE TOTAL BID OR AN ANNUAL BID BOND IS REQUIRED PRIOR TO BID OPENING. SEE SECTION 102.3 OF THE CITY OF WICHITA STANDARD SPECIFICATIONS FOR FURTHER INFORMATION.

BIDDERS ARE ADVISED TO CONTACT THE OFFICE OF THE CITY ENGINEER (316-268-4501) SHOULD THEY HAVE ANY QUESTIONS OR CONCERNS ABOUT THE PLANS, SPECIAL OR SUPPLEMENTAL PROVISIONS, MINORITY STATUS, OR THE PROPER PREPARATION OF THE BID DOCUMENT.

BIDDERS OF THIS WORK WILL BE REQUIRED TO COMPLY WITH THE PRESIDENT'S EXECUTIVE ORDER NUMBER 11246, AS AMENDED, WHICH REQUIRES THE CONTRACTOR TO TAKE STEPS TO MEET AGGREGATE WORKFORCE GOALS OF **7.9%** FOR MINORITY PARTICIPATION AND **6.9%** FOR FEMALE PARTICIPATION. THESE REQUIREMENTS ARE EXPLAINED IN THE EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS INCLUDED IN THE CONTRACT DOCUMENTS.

THE BID FORM SHALL BE PREPARED USING UNIT PRICES PER BID ITEM, UNLESS OTHERWISE NOTED.

SPECIAL PROVISION TO CITY OF WICHITA, KANSAS
STANDARD SEWER SPECIFICATIONS

Storm Water Sewer Improvements to Serve North Iva & 27th Street
(east of Hillside Ave, south of East Fork Chisholm Creek)
468-84709 133117

The City of Wichita's Standard Specifications are required provisions for the furnishing of all materials and doing all work to complete the above referenced project, and are hereby made a part of these provisions as if fully set forth herein. Said Standard Specifications shall control except as modified by the following Special Provisions. The Standard Specifications are on file in the City Engineer's Office, available for purchase from City Blue-Print for the construction of City projects, or can be found online at http://www.wichita.gov/CityOffices/PublicWorks/Engineering/StandardSpecifications.htm. The following **Special Provisions** shall be applicable to this project:

1. ***Federal Funding***. The project is being partially funded with a grant from the Environmental Protection Agency (EPA). As such, the Contractor must abide by their requirements in conjunction with City requirements to receive payment for work. Said requirements from the EPA are included at the end of this document as **"Attachment A: EPA Grant Special Provisions"**.

2. ***Start Date***. The work order on this project shall be issued **20 (twenty)** calendar days after the date on which the contract for this project has been awarded to the successful bidder.

3. ***Working Days/Completion Date***. The work on this project shall be completed within **60 (sixty)** working days and in accordance with the plans and Standard Specifications. Working days will be charged as provided for in the Standard Specifications, once the work order is issued. **The non-availability of material shall not prevent working days from being assessed.**

4. ***Basis of Award***. The contract shall be awarded on the basis of the **lowest responsible Base Bid**, provided the bid is within the Engineer's Estimate. If applicable, Add Alternate(s) may be accepted as determined by the City after the bids are opened, as available funding may allow. The City reserves the right to reject any and all bids.

5. ***Disadvantaged and Emerging Business Participation***. The City of Wichita encourages all bidders to include disadvantaged and emerging business participation in their bids. Therefore, each vendor shall specifically identify the participation of disadvantaged and emerging contractors and subcontractors in the work to be performed by the vendor and shall list such disadvantaged and emerging contractors or subcontractors by name and show the dollar amount of work to be performed by each. The successful vendor will be required to submit subcontracting document forms 1, 2, 3 & 4, which will be provided with the contract.

6. ***Basis of Payment***. Payment for the bid items will be as a **lump sum/measured quantity** amount based on the bid quantities and unit prices in the bid proposal.

7. ***Partial Payment Estimates***. The awarded contractor shall waive all rights on all partial estimate calculations, and estimates shall be processed without the contractor's review and authorization. However, contractor shall review and approve the final estimate at the completion of the project. The contractor may request partial estimate review and approval by *written request submitted with the signed contract*.

8. ***Reasonable access***. Successful contractor must allow City Inspectors and vehicles reasonable access onto the project site.

9. ***Topsoil***. A clean layer of topsoil per City Standards shall be used for all disturbed areas applicable to sod to establish a healthy root structure. The cost of material and installation of the topsoil is subsidiary to the bid item, "Site Restoration."

10. ***Mono Curb***. The Contractor shall construct a mono edge curb on pavement removed and replaced where it currently exists. The cost is subsidiary to the bid item, "Pavement Removed and Replaced."

11. ***Erosion Control Mat***. The Contractor shall use Curlex II erosion control mat, or an approved equivalent, for sediment control as required on the plans. The cost is subsidiary to the bid item, "Erosion Control Mat".

12. ***Grading and Excavation***. The costs to grade and excavate to City standards and as called out in the plans are subsidiary to the respective storm sewer pipe and structure within the vicinity of that work.

13. ***Wheelchair Ramp***. The costs to install the wheelchair ramps as specified in the plans are subsidiary to the sidewalk bid items.

14. ***Reinforced Concrete Endsection, 42"***. The cost of material and installation of the 42" reinforced concrete end section is subsidiary to the bid item, "SWS Pipe RCP 42"".

15. ***Coarse Aggregate for Portland Cement Concrete Pavement***. City of Wichita Standard Specifications, Section 406.2, "Coarse Aggregate", delete the following sentence:

    "The soundness requirement will be waived if the aggregate meets all the requirements for durability of Class I aggregate as specified in the KDOT Standard Specifications."

16. ***Type I Pipe Bedding Material***. City of Wichita Standard Specifications, Section 801.2, Pipe Bedding, item "a)", revise to read as follows:

    "**Type I Pipe Bedding Material** will be crushed rock conforming to ASTM C-33, Gradation No. 67, and will meet all requirements for Portland Cement Concrete Pavement Coarse Aggregate, section 406.2, City of Wichita Standard Specifications."

    As of March 13, 2007, approved suppliers for Type I bedding are:

Dolese	Richard Spur quarry	Lawton, Oklahoma
Kansas Quality Stone	Harshman quarry	Moline, Kansas
Martin Marietta	Blake quarry	Severy, Kansas
Whittaker	Whittaker quarry	Winfield, Kansas

17. ***Rock Bedding for Structures***. All sanitary and storm sewer structures, including but not limited to Reinforced Concrete Box Culverts, Curb Inlets, Area Inlets, and Manholes, must have a minimum of 6" of Type I bedding material placed under the structure, to the limits of excavation. Improved bedding material for these structures will not be paid for separately, but will be considered subsidiary to the bid item for the structure itself. All Type I bedding material for sewer structures must be approved by the City's Materials Testing Lab prior to use.

18. ***Improved Bedding for Pipes in Groundwater***. City of Wichita Standard Specifications, Section 801.4, Trench Stabilization, delete the second paragraph and replace with the following:

    "Trench stabilization must be installed when any level of groundwater or unstable soils are encountered. Trench stabilization for sanitary/storm sewer pipe will consist of over excavation and placement of Type I bedding material, to a minimum of six inches under and on the sides of the pipe, and a minimum of one foot above the pipe. Any trench stabilization required as a result of surface water entering the trench or to correct inadvertent over-depth trenching will be installed at the contractor's expense."

All Type I bedding material for trench stabilization must be approved by the City's Materials Testing Lab prior to use.

19. ***Excess Excavation Disposal***. Unless otherwise directed by the plans, project special provisions or addenda, all excess excavation will become the property of the contractor, to be disposed of at a location determined also by the contractor. The contractor shall be aware of and take responsibility for obtaining required permits to place any fill in a designated floodplain, floodway or special management areas. Special management areas would include wetlands, US Corp of Engineer's holding areas, detention ponds, etc. Contact Rene Batchman at 268-4498 for flood determinations within the City limits. For flood determinations outside of the City, contact Mr. Kelly Dixon with Sedgwick County Code Enforcement at 660-1840.

20. ***Connecting to Existing Stub***. Where the proposed sanitary sewer construction requires connection to an existing pipe stub, the Contractor shall excavate to determine the flowline elevation, slope, horizontal alignment, pipe type, and condition of the stub prior to beginning construction. If removal, replacement, or resetting of the stub is required to facilitate connection to the manhole, the Contractor shall complete such work at no additional cost to the project.

21. ***Project Erosion Control Requirements***. The Contractor must implement erosion control measures on this project using Best Management Practices (BMPs). BMPs used may include silt fence and hay bale barriers, perforated (gravel filled) pipe inlet protection, or other as specifically approved by the City Engineer's Office. Gravel Packs and sand bags at inlets will no longer be accepted. The Contractor will comply with all sections of Ordinance #44-123 and practice 'good housekeeping' at all times. Any dirt or mud tracked off the Contractor's construction site onto paved public or private streets, or ditches, or discharges of same into lakes, ponds, ditches or storm sewers must be cleaned up within 24 hours. Failure to abide by these requirements may result in the assessment of fines, as provided in Ordinance #44-123. Ordinance #44-123 is referenced in Chapter 16.32 of the City Code, which may be viewed on the City's website.

    Construction activities that will, either individually or in combination with other related projects, disturb a total of one or more acres (as determined by the City Engineer) are subject to the requirements of the Kansas Water Pollution Control (KWPC) General NPDES Permit. If applicable to this project, a copy of the permit, including the Notice of Intent (NOI) and the Storm Water Pollution Prevention Plan (SWP3), is attached for detailed review. The terms and conditions of the KWPC general permit may be found on the KDHE website at www.kdheks.gov/stormwater/cons_stormwater_permit.htm. A copy of the attached Contractor's Certification Form, certifying comprehension of the general permit and SWP3 requirements, must be signed and submitted to the Field Engineer prior to starting construction. During construction, the Contractor must maintain copies of the approved NOI and current SWP3 on the construction site at all times. Should the Contractor's intended construction sequence or approach differ from that described in the plans, such that there will exist a change in the design, operation, or maintenance of BMPs during construction, the Contractor must submit an amended SWP3 to the Engineer for review and approval, prior to enacting the change.

22. ***Underground Irrigation Systems***. Properties within the project limits may have underground irrigation systems (lawn sprinklers) in conflict with and/or within the limits of new construction. The Contractor shall remove conflicting components as needed during construction. Removal shall be accomplished by cutting and capping, such that the balance of any system or zone will remain in place, functional, and protected from damage. Any area detrimentally affected by irrigation service interruptions, whether within or beyond the project limits, will be considered disturbed by construction and shall be restored to its original condition, utilizing the same sod and/or vegetation as existing. Prior to project completion, existing irrigation systems shall be repaired, replaced, and/or upgraded, whether disturbed by construction or not, to provide as follows. Full coverage of all sodded areas shall be provided, with the system being modified as necessary to accommodate newly constructed sidewalk, curb, and other project improvements, in a manner consistent with

industry standards and best practices. The Contractor shall coordinate all modifications with the system owner and supply as-built documentation upon request. All work and costs associated with restoration and improvements to underground irrigations systems shall be subsidiary to the bid item for the same. In the absence of a specific bid item for irrigation system repair/replacement, all associated work shall be considered subsidiary to other items of work.

23. ***Dewatering***. If dewatering is necessary on this project, the contractor shall contact Shawn Maloney at Environmental Health, 268-8318, to determine if the groundwater requires special handling. Cost of dewatering to be considered subsidiary to pipe installation bid items and not be bid or paid for separately.

24. ***Bid Form, Preparation and Final Payment***. **Bids should be prepared showing unit prices, extension amounts and a total of the extended amounts, which shall be the total bid.** Below is a brief example of a properly prepared bid:

(PRICES SHALL INCLUDE ALL MATERIAL AND LABOR) **[Quantity x Unit Price = Amount]**

ITEMS	QUANTITY	UNIT PRICE	AMOUNT
5" AC Pvmt (3" Bit Base)	1234 sy	6.00	7,404.00
Excavation	234 cy	2.00	468.00
Site Clrg & Restoration	1 LS	2,000.00	2,000.00
Bid Total			$9,872.00

LEGEND: LS = Lump Sum, **lf** = lineal ft, **ea** = each, **gl** = gallons, **sy** = square yds, **sf** = square ft, **tn** = tons, **cy** = cubic yds, **cf** = cubic ft, **Unit Price** = price per unit of measure as specified

ATTACHMENT A: EPA GRANT SPECIAL PROVISIONS

1. Subrecipients who request or receive from the grant recipient a subgrant, contract, or subcontract exceeding $100,000, at any tier under a Federal grant, shall comply with the Anti-Lobbying Act, Section 319 or Public Law 101-121, and file an Anti-Lobbying Certification form, and the Disclosure of Lobbying Activities form, if required, to next tier above. The forms can be found at the following websites:
   http://www.epa.gov/ogd/AppKit/form/Lobbying_sec.pdf
   http://www.epa.gov/ogd/AppKit/form/sflllin_sec.pdf

2. The Code of Federal Regulations at Title 2, Part 180, prohibits participation in EPA funded contracts by persons excluded or disqualified from doing business with the federal government. Bidders are responsible for advising the Owner if they are excluded or disqualified, and to check whether subcontractors they intend to use are excluded or disqualified. All tiers of subcontractors have the same responsibility to notify the one for which they are providing services if they are excluded or disqualified, and to check the status of any subcontractors they intend to use. Status can be checked on the Excluded Parties List System located on the Internet at www.epls.gov. All subcontracts at any tier should include this language.

3. The Contractor shall abide by the direction outlined in the EPA Disadvantaged Business Enterprise (DBE) Program including filing the appropriate forms with appropriate parties at the time specified in said forms and program. A document detailing the DBE requirements and forms is included at the end of these provisions and is entitled, "EPA Disadvantaged Business Enterprise (DBE) Program". The Contractor is to note that the forms included are expired, but to date, updated forms have not been supplied by the EPA. Once the EPA takes direction on whether to update said forms, or continue with the forms supplied herein, the Contractor shall follow EPA guidance on resubmitting the DBE forms.

4. The contract award will be made only to responsible contractors possessing the ability to perform successfully, which will be determined by considering such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

5. The City will be responsible, in accordance with good administrative practice and sound business judgment, for settlement of all contractual and administrative issues including source evaluation, protests, disputes, and claims. A protestor must exhaust all administrative remedies with the City before pursuing a protest with the Environmental Protection Agency, and that protests reviewed by EPA will be limited to situations where Federal law or regulations are violated or where the City fails to review a protest under their procedures.

6. The Contractor must comply with Executive Order 11246, entitled "Equal Employment Opportunity." This requirement is not the same as the Environmental Protection Agency MBE/WBE program which deals with subcontracting. Attached are two documents which relate to said executive order. They are entitled "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity" and "Standard Federal

Equal Employment Opportunity Construction Contract Specifications". The 6.9% figure for female participation on the contractor's aggregate work force is a nation-wide figure. The 7.9% figure for minority participation is specific to the project area.

7. If the City of Wichita Standard Specifications does not explicitly state an approved equivalent may be used for a given brand, the Contractor may do so, but only with the approval by the Engineer for the City. The City reserves the right, at no additional cost to the City, to request performance specifications and shop drawings for an alternative brand and reject or approve the alternative brand based on such information.

8. Primarily, the award of contract will be made to the responsible bidder whose bid conforms with all of the material terms and conditions of the invitation for bids, requirements herein these provisions, the City of Wichita Standard Specifications, and is the lowest in price.

9. The Contractor must comply with Sections 103 and 107 of the Contract Work Hours and Safety Standard Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

10. The Contractor must provide access for the City, the Environmental Protection Agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Contractor which are directly pertinent to the contract for the purpose of making audit, examination, excerpts, and transcriptions.

11. The Contractor must retain all required records for three years after the latter of the City making final payment or all other pending matters are closed.

12. The Contractor and subcontractors must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations at 40 CFR part 15.

13. The Contractor must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163, 89 Stat 871).

14. The Contractor must provide access to the site for the Environmental Protection Agency and its duly authorized representatives.

15. If during the course of construction evidence of deposits of historical or archaeological interest is found, the contractor shall cease operations affecting the find and shall notify the owner, who shall notify the EPA and ***Jennie Chinn, State Historic Preservation Officer,*** 6425 SW 66th Ave, Topeka, KS 66615-1099 (phone: 785-272-8681). No further disturbance of the deposits shall ensue until the contractor has been notified by the owner that construction may proceed. The owner will issue a notice to proceed only after the state official has surveyed the find and made a determination to the EPA and the owner. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the contract documents.

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation in each trade
All years	7.9%	6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the state of Kansas, Sedgwick County, City of Wichita.

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites

or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting it's EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than once month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m.Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory affect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these Specifications are being carried out.

n. Ensure that all facilities and company activities re nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union,

contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications providing that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these Specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these Specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligation under these Specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these Specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these Specifications, the Director shall proceed in accordance with 41-CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

EPA DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

(See **http://www.epa.gov/osbp/dbe_team.htm** for more information.)

Prime Contractor Responsibilities:

1. The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR Part 33 (DBE regulations) in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

2. If the contractor awards subcontracts, the contractor should take the following good faith efforts to subcontract with small business enterprises, minority business enterprises, and women's business enterprises (i.e. DBEs):

   a. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and local government grant recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

   b. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

   c. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local government grant recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

   d. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

   e. Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

3. The contractor should provide the attached DBE Subcontractor Participation Form (6100-2) and the attached DBE Subcontractor Performance Form (6100-3) to each DBE subcontractor when soliciting bid proposals.

4. The contractor should complete the attached DBE Subcontractor Utilization Form (6100-4).

5. The contractor should submit to the Owner with the bid package the completed DBE Subcontractor Utilization Form (6100-4), plus a DBE Subcontractor Performance Form (6100-3) for each DBE subcontractor used in the contractor's bid.

6. The contractor should pay DBE subcontractors for satisfactory performance no more than 30 days from receipt of payment from Owner.

7. The contractor should notify the Owner in writing prior to the termination of a DBE subcontractor for convenience.

8. The contractor should employ the good faith efforts in paragraph No. 2 if soliciting a replacement after a DBE subcontractor fails to complete work under the subcontract for any reason.

9. The contractor should report to the Owner each April 5 and October 5 the DBE participation achieved in each semiannual period ending March 31 and September 30.

10. The contractor should maintain records documenting efforts to comply with DBE requirements, including documentation of good faith efforts. The records of the successful bidder will be requested by Owner to be maintained in Owner's file.

Subcontractor Responsibilities:

1. A DBE must be certified as per the EPA regulation at 40 CFR 33.204. The DBE must first attempt to be certified by the U.S. Small Business Administration, the U.S. Department of Transportation, an Indian Tribal Government, State Government, local Government, or independent private organization. If unsuccessful, the DBE may apply to EPA.

2. The DBE may submit the attached DBE Subcontractor Participation Form (6100-2) to ATTN: Grant Assistant, EPA Region 7 PLMG, 901 N 5th Street, Kansas City, KS 66101.

3. The DBE should complete the attached DBE Subcontractor Performance Form (6100-3), and submit it to the prime contractor soliciting services from the subcontractor prior to the opening of bids for the prime contract.

Attachments

Website for forms:
http://www.epa.gov/osbp/dbe_forms.htm under Contract Administration Forms section.

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Participation Form

NAME OF SUBCONTRACTOR	PROJECT NAME
ADDRESS	CONTRACT NO.
TELEPHONE NO.	EMAIL ADDRESS
PRIME CONTRACTOR NAME	

Please use the space below to report any concerns regarding the above EPA-funded project (e.g., reason for termination by prime contractor, late payment, etc.).

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES RECEIVED FROM THE PRIME CONTRACTOR	AMOUNT SUBCONTRACTOR WAS PAID BY PRIME CONTRACTOR

Subcontractor Signature

Title/Date

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-2 (DBE Subcontractor Participation Form)

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Participation Form

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Participation Form to this address.

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Performance Form

NAME OF SUBCONTRACTOR[1]	PROJECT NAME
ADDRESS	BID/PROPOSAL NO.
TELEPHONE NO.	E-MAIL ADDRESS
PRIME CONTRACTOR NAME	

CONTRACT ITEM NO.	ITEM OF WORK OR DESCRIPTION OF SERVICES BID TO PRIME	PRICE OF WORK SUBMITTED TO PRIME CONTRACTOR

Currently certified as an MBE or WBE under EPA's DBE Program? _____ Yes _____ No Signature of Prime Contractor Date Print Name Title _____

_____ Signature of Subcontractor Date

_____ Print Name Title

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award or financial assistance.

EPA FORM 6100-5 (DBE Subcontractor Performance Form)

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Performance Form

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Performance Form to this address.

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Utilization Form

BID/PROPOSAL NO.	PROJECT NAME
NAME OF PRIME BIDDER/PROPOSER	E-MAIL ADDRESS
ADDRESS	
TELEPHONE NO.	FAX NO.

The following subcontractors[1] will be used on this project:

COMPANY NAME, ADDRESS, PHONE NUMBER, AND E-MAIL ADDRESS	TYPE OF WORK TO BE PERFORMED	ESTIMATED DOLLAR AMOUNT	CURRENTLY CERTIFIED AS AN MBE OR WBE?

I certify under penalty of perjury that the forgoing statements are true and correct. In the event of a replacement of a subcontractor, I will adhere to the replacement requirements set forth in 40 CFR Part 33 Section 33.302(c).

Signature of Prime Contractor _____ Date _____

Print Name _____ Title _____

[1]Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

EPA FORM 6100-4 (DBE Subcontractor Utilization Form)

OMB Control No: 2090-0030
Approved: 05/01/2008
Approval Expires: 01/31/2011

Environmental
Protection Agency

Disadvantaged Business Enterprise Program
DBE Subcontractor Utilization Form

The public reporting and recordkeeping burden for this collection of information is estimated to average fifteen (15) minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed EPA DBE Subcontractor Utilization Form to this address.

PART 100
GENERAL CONDITIONS

TABLE OF CONTENTS

SECTION	TITLE	PAGE(S)
101	Abbreviations and Definitions	3
102	Information for Bidders and General Bid Requirement	10
103	Award and Execution of Contract	16
104	Scope of Work	18
105	Control of Work	22
106	Control of Materials	26
107	Legal Relations and Contractor Responsibilities	28
108	Commencement, Prosecution and Progress	36
109	Measurements and Payments	42

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SECTION 101

ABBREVIATIONS AND DEFINITIONS

101.1 ABBREVIATIONS

AASHTO - American Association of State Highway and Transportation Official
AC - Asphalt Cement or Concrete
ACI - American Concrete Institute
ACPA - American Concrete Pipe Association
AJCHNS - American Joint Committee on Horticultural Nomenclature Standard: 1942 Edition Standardized Plant Names.
ANSI - American National Standards Institute, Inc. (American Standard for Nursery Stock)
APWA - American Public Works Association
ASCE - American Society of Civil Engineers
ASTM - American Society for Testing and Materials
AWWA - American Water Works Association
Bit - Bituminous
BM - Bench Mark or Board Measure
C - Centigrade
Caltrans - California Business, Transportation and Housing Agency, Department of Transportation
cf - Cubic Feet
cfs - Cubic Feet Per Second
CIP - Cast Iron Pipe
CIPP - Cured in Place Pipe
CM - Centimeter
CMP - Corrugated Metal Pipe
CU - Cubic
cy - Cubic Yard
Deg - Degree
Dia - Diameter
DICL - Ductile Iron Cement Lined pipe
DIP - Ductile Iron Pipe
Div - Division
Dr - Drive
Ea - Each
E - East
El - Elevation
F - Fahrenheit
FH - Fire hydrant
FHWA - Federal Highway Administration
Floodway - Wichita-Valley Center Flood Control Project
fps - Feet per second
Ft - Foot or feet
Ga - Gage
Galv - Galvanized
gph - Gallons per hour
gpm - Gallons per minute
HDPE - High Density Polyethylene
Hwy - Highway
ID - Inside Diameter
In - Inch

ISSA - International Slurry Seal Association
KDOT - Kansas Department of Transportation
KDOT Standard Specifications - Standard Specifications for State Road and Bridge Construction (1990 Edition including all applicable revisions)
KDHE - Kansas Department of Health and Environment
L - Length
lb - Pound
LF - Linear Feet
Lin - Linear
Lt - Left
Max - Maximum
Meas - Measured
MH - Manhole
Min - Minimum
Misc - Miscellaneous
mm - Millimeter
MTBM - Microtunnel Boring Machine
MUTCD - Manual on Uniform Traffic Control Devices developed by the National Advisory Committee on Uniform Traffic Control Devices
N - North
NE - Northeast
NEC - National Electric Code
Nom - Nominal
NPDES - National Pollution Discharge Elimination System
NW - Northwest
No. - Number
OD - Outside Diameter
Oz - Ounces
PCC - Portland Cement Concrete
PCCP - Prestressed Concrete Steel Cylinder Pipe
PL - Property Line
PLS - Pure live seed
PP - Power Pole
ppm - Parts per million
psi - Pounds per square inch
psf - Pounds per square foot
PVC - Polyvinyl Chloride pipe
Pvmt - Pavement
Q - Rate of Flow
RAP - Reclaimed Asphalt Pavement
RC - Reinforced concrete
RCP - Reinforced Concrete Pipe
Rd - Road
Rdwy - Roadway
Reinf - Reinforced, Reinforcing
rpm - Revolutions per minute
Rt - Right
R/W - Right-of-way
S - South
San - Sanitary
Sec - Seconds
SE - Southeast
Spec – Specifications
Sq Ft - Square Foot

Sq Yd - Square Yard
SS - Sanitary sewer
St - Street
Sta - Station
Std - Standard
SW - Southwest
SWS - Stormwater sewer
Temp - Temporary
Typ - Typical
USGS - United States Geological Survey
VCP - Vitrified clay pipe
Vert - Vertical
W - West
Wt - Weight
Yd - Yard
' - feet or minutes
" - inches or seconds
° - degrees
% - percent
# - number
@ - at
/ - per
= - equals

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101.2 DEFINITIONS

Wherever in these specifications or in other contract documents the following terms are used, the intent and meaning shall be interpreted as follows.

Addendum - A supplement to any of the contract documents issued, in writing, after advertisement of but prior to the opening of bids for a project.

Advertisement - The public announcement inviting bids for work to be performed or materials to be furnished.

Award - The formal action of the governing body in accepting a proposal.

Bidder - An individual, partnership, firm, corporation, or combination thereof, or joint venture, submitting a proposal for the advertised work.

Bid Bond - The approved form of security executed by the bidder and the bidder's surety or sureties, guaranteeing the good faith of the bidder and the execution of a satisfactory contract.

Bid Packet - (See Notice to Contractors)

Calendar Day - Each 24-hour day, including Saturdays, Sundays and holidays.

City - The term "City" shall signify the City of Wichita, Kansas or its authorized officers or representatives.

Change Order - A written order issued by the City to the Contractor and signed by both, which sets forth changes to the contract including, but not limited to, extra work, conditions or basis of payment, increases or decreases in contract quantities, contract time adjustments, or other additions or alterations to the contract.

Completion Time - The completion date of the project based on the number of working days specified plus any authorized modifications thereof, the number of calendar days specified plus any authorized modifications thereof, or the calendar date of completion plus any authorized modifications thereof.

Contract - The written agreement between the City and the Contractor by which the Contractor is required to furnish all labor, equipment and materials necessary to perform the work specified for compensation by the City as set forth in the specifications. The Contract includes the invitation for bids, bid proposal, all bond and insurance provisions, addenda, specifications, special provisions, plans, and any notices, agreements or change orders required to complete the construction of the project.

Performance & Maintenance Bond - A surety bond to the City of Wichita in the amount of 100% of the contract price, executed by the Contractor and the Contractor's surety or sureties, guaranteeing the complete and faithful performance and completion of the contract, and maintenance of the completed project for a period of two years after the date of completion and acceptance of the project.

Contractor - The individual, partnership, firms, corporation, or combination thereof, or joint venture entering into a Contract with the City of Wichita to perform the prescribed work.

Engineer - The City Engineer of Wichita, Kansas acting directly through his/her duly authorized representative(s).

Incidental Work - Any item of work specifically identified in the plans, specifications or special provisions, or any other work found to be necessary for the satisfactory completion of the contract, but for which there is no identified pay item. Such work shall be completed by the Contractor and all costs shall be considered as subsidiary to the other pay items of work in the Proposal. No claim from the Contractor will be allowed for payment of such work as extra work.

Inspector - The Engineer's authorized representative assigned to make detailed inspections of contract performance.

Holidays (City) - Current City holidays include New Year's day, the observance of Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the Friday after Thanksgiving Day, and Christmas Day. If New Year's Day, Independence Day, Veteran's Day or Christmas Day falls on a Saturday or Sunday, both that day and the preceding or following normal workday will be considered City Holidays. In addition, any other day(s) designated as a City Holiday, not specifically mentioned herein, but declared as a City Holiday by the governing body, shall also be considered a City Holiday.

Maintenance Bond - (See Contract Bond).

Notice of Award - A letter from the City advising the Contractor that the City's Board of Bids has recommended awarding the Contract. Attached to the letter are copies of the Contract, and the statutory and contract (performance and maintenance) bond forms.

Notice to Contractors - The bid packet provided to Contractors, which includes the project special provisions, any other specific project requirements or information and the Bid Proposal form.

Notice to Proceed - Written notice to the Contractor to proceed with the Contract work.

Payment Bond - (See Statutory Bond).

Plans - All approved plans, drawings, sketches, etc., or reproductions thereof pertaining to the details and work to be performed.

Proposal - The offer of a bidder, on the prescribed form, to perform the work and to furnish the labor, equipment and materials at the prices quoted.

Proposal Form - The approved form on which the City required bids to be prepared and submitted for the work.

Proposal Guarantee - (See Bid Bond).

Special Provisions - Special conditions, requirements, supplementary provisions, additions and/or revisions to the standard specifications that are applicable to the project under consideration.

Statutory Payment Bond - A bond to the State of Kansas in an amount not less than 100% of the total contract amount, conditioned that such Contractor and/or Subcontractor(s) shall pay all indebtedness incurred for labor furnished, materials, equipment or supplies used or consumed in the construction of the project.

Working Day - Each calendar day, excluding Saturdays, Sundays and City Holidays, on which weather and/or other conditions not under control of the Contractor will permit construction operations to proceed for at least 50% of the normal full work day schedule. For projects where work must be done within the right-of-way on any major street, Saturdays will also be included as Working Days.

Work Order - (See Notice to Proceed).

SECTION 102

INFORMATION FOR BIDDERS AND GENERAL BID REQUIREMENTS

102.1 PREPARATION OF PROPOSAL

The Bidder shall submit his/her proposal on the forms obtained from the City or by a third party employed by the City to prepare and/or supply the bid form and other bid documents. The bidder shall specify unit prices, extensions and a total of the extensions. The bidder must acknowledge receipt of and agree that the proposal is based on all addenda received after receipt of the initial bid packet.

The quantities and unit prices identified on the bid form will be used to develop the bid, and as a basis for establishing partial payment and change order values. Final payment will be based on final unit quantities measured in the field, on the lump sum contract amount, or a combination of both as specified in the bid packet for each project.

All bids must state the price bid for all items listed on the bid form, which price shall include all labor and materials required for the complete execution of the work.

All prices must be stated in figures. The unit prices will be considered to be the offer in case of any variation between unit prices and totals stated by the bidder. All amounts and totals will be subject to verification by the City of Wichita.

All bid prices must be clear, legible and must be written in ink or typed. If prices and/or totals are unclear, illegible or written in pencil, the City reserves the right not to read the bid and/or reject it.

The place of residence of each bidder must be given after his/her signature, which must be written in full. Two proposals under different names will not be received from one firm or association, and shall be cause for each bid to be rejected.

102.2 BID SUBMITTAL

All bids are to be enclosed in sealed envelopes, directed to the Purchasing Manager of the City of Wichita, Kansas. The outside of the envelope shall be clearly marked to indicate the name of the project, the project Index Code (the City's six-digit financial code) and the contracting company name.

Bids must be submitted to the Purchasing Manager's office (12th Floor, City Hall, 455 N. Main, Wichita, Kansas 67202) prior to 10:00 a.m. on the date specified. Bids turned in or received after 10:00 a.m. will not be read, and will be returned, unopened.

102.3 BID BOND

Each bid must be accompanied by an acceptable Bid Bond in an amount of not less than five percent (5%) of the total bid; said bond to be held by the Purchasing Manager, subject to the conditions specified in the proposal; as a guarantee of good faith of the bidder until such time as the contract is executed. Bid Bonds must be submitted on the standard, approved City of Wichita Bid Bond form. Other Bid Bond forms may be used only if they have been pre-approved by the City's Law Department.

In lieu of submitting a minimum five percent (5%) Bid Bond with each bid, contractors may opt to submit a standing bid bond that is kept on file in the Purchasing Manager's office. The Contractor shall indicate on the bid form whether a bid bond is being submitted with the bid or if a standing bid bond is on file.

Bid bonds, as well as statutory, and performance and maintenance bonds shall be issued by a bonding company authorized to do business in the State of Kansas through an agent located in the State of Kansas who is authorized by his/her company to accept on behalf of the company all notices of claims, court summons or other legal notices. The Surety shall provide the agent's name, address and phone number shall be provided to the City.

102.4 SUBCONTRACTORS

The Contractor shall submit a list of proposed subcontractors with the bid and indicate whether such subcontractors are Minority or Disadvantaged Business Enterprises (MBE, DBE). The City shall identify and certify DBE's and MBE's.

102.5 NONRESIDENT CONTRACTORS

All Contractors who are nonresident's of Kansas are required to be registered and bonded with the Secretary of Revenue of the State of Kansas pursuant to KSA 79-1008 through 79-1015, as amended. Nonresident Contractors shall submit satisfactory evidence that they are in compliance with such Kansas statutory requirements.

102.6 SALES TAX EXEMPTION

Most contracts for projects let through the City Engineer's office are exempt from state and local sales taxes. Projects that are not exempt (normally only water line projects funded 100% by the Water Utility Fund), will be clearly identified in the bid solicitation. Do not include sales tax in your bid unless clearly directed to do so.

For all projects that are exempt from sales tax under applicable Kansas statutes, the Contractor will be provided a sales tax exemption number and certificate. The Contractor must obtain such certificate before purchasing materials or starting work. No payments shall be made for any sales tax paid by the Contractor, unless the project provides for such. The Contractor will be required to be in compliance with the provisions of Kansas's law and submit the completed sales tax project completion certification prior to receiving final payment for the project.

102.7 EQUAL EMPLOYMENT OPPORTUNITY

All Contractors must be in compliance with all applicable federal, state and local EEO/AA and non-discrimination requirements and be certified by the City's Civil Rights and Services office as being in compliance prior to final execution of the contract. Failure to comply may result in cancellation of a contract award and forfeiture of the contracts Bid Bonds.

Federal-aid projects shall include a FHWA form 1273 as part of the contract:

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, Vietnam Era Veteran or Special Disabled Veteran 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 KSA 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 and contracting agency;

4. If the Contractor is fund 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 cancelled, terminated or suspended in whole or in part by the contracting agency;

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

c) Exempted from these requirements are (State of Kansas):

1. Any contractor, subcontractor, vendor or supplier who has already complied with the provisions set forth in sections pertaining to the State of Kansas by reason of holding a contract with the Federal government, or a contract involving Federal funds;

2. Contracts entered into by a contractor, subcontractor, vendor or supplier who employs fewer than four (4) employees during the term of this contract;

3. Contracts with the City of Wichita with a cumulative total of five thousand dollars ($5,000) or less during the fiscal year of the City.

d) Provisions 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 observe the provisions of the Code of the City of Wichita against discrimination (Section 2.12.900; et seq. of the Code of the City of Wichita, Kansas) and shall not discriminate against any employee or applicant for employment in the performance of work under the present contract, purchase order or agreement because of race, religion, color, sex, **"disability, Vietnam Era Veteran or Special Disabled Veteran and age except where age is a bona fide occupational qualification"**, national origin, ancestry or marital status. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination and Equal Employment Opportunity in all employment relations, including but not limited to employment, 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 Rights and Services Board of the City of Wichita, Kansas, **Civil Rights and Services** 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 in 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, Vietnam Era Veteran or Special Disabled Veteran and age except where age is a bona fide occupational qualification"**, national origin, ancestry or marital status. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase that is deemed acceptable by the **Wichita Civil Rights and Services Board**;

3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the rules, regulations and the orders issued by the Board pursuant thereto. And will permit access to books, records and procedures concerning employment relations by the **Civil Rights and Services Board** of said City for the purpose of investigation to ascertain compliance with Non-Discrimination and Equal Employment Opportunity Requirements. If the vendor, supplier, contractor or subcontractor fails to comply with the manner in which he/she or it reports to the Board 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 terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be initiated against such vendor supplier, contractor or subcontractor;

4. If the vendor, supplier, contractor or subcontractor is found guilty of a violation of any provision of the Code of the City of Wichita pertaining to and regulating Non-Discrimination and Equal Employment Opportunity under a decision or order of the **Civil Rights and Services Board** of the City of Wichita, Kansas, which has become final; 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 of Wichita, and such other synchronous and remedies may be imposed as provided by law;

5. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsection 1 through 4, inclusively, of this present section in every subcontract, sub-purchase order or sub-agreement so that such provisions will be binding upon each subcontractor, sub-vendor or sub-supplier.

e) Exempted from these requirements are: (City of Wichita)

1. Any contractor or subcontractor, vendor or supplier of the City of Wichita, or any of its agencies, who wishes to enter into a contract, purchase order or agreement which is covered by the provisions of Section 2.12.908 of the Code of the City of Wichita, Kansas, shall prior to entering into such contract, purchase order or agreement, submit to the **Civil Rights and Services Board** of the City of Wichita, Kansas, A preliminary report on forms provided by the Board concerning Non-Discrimination and Equal Employment/Affirmative Action for review and evaluation. Upon review of the preliminary form submitted:

   a. 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.

   b. The provisions of Section 2.12.908 shall not apply to vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reasons 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) days period from the Federal agency involved.

   c. Those contractors, subcontractors, vendors or suppliers not exempted herein whose preliminary report reveals deficiencies shall be required to submit goals and timetables for correction of such deficiencies in accordance with instructions included with the preliminary report for review, evaluation and acceptance prior to a contract, purchase order or agreement award.

f) Failure of any contractor, subcontractor, vendor or supplier to report to the **Kansas Human Rights Commission** as required by KSA 1976 Supp. 44-1031, as amended, or to the **Civil Rights and Services Board** of the City of Wichita as required by 2.12.908, of the Code of the City of Wichita, Kansas, or has been found guilty of a violation of the City's Ordinances, State Statutes, or Federal Statutes, or regulations pertaining to unlawful discrimination, which finding, decision or order has become final, shall be deemed a breech of this contract and said contract may be canceled, terminated or suspended in whole or in part by the City or its contracting agency.

102.8 IRREGULAR PROPOSALS/REJECTION OF PROPOSALS

Bid proposals will be considered irregular and may be rejected for the following reasons:

a) Failure to submit the bid on the form provided by the City or a copy thereof.
b) Failure to sign and date the bid.
c) The bid form contains any unauthorized additions, statements, conditional or alternate bids or irregularities of any kind.
d) Failure to acknowledge all applicable addenda.
e) Failure to provide unit prices for each pay item listed, except in the case of authorized alternate unit prices of pay items.
f) Failure to submit the list of potential subcontractors (or indication on the bid form that there are no anticipated subcontractors) and any other documents or certifications that are included in the Bid Packet and/or required to be submitted with the bid (ex. Buy American, Certification of Nonsegregated Facilities, Certification Regarding Lobbying, Notice to Labor Unions, Contracts with Legislators, Noncollusion, etc.)
g) Receipt of more than one proposal for the same work from an individual, partnership or corporation under the same or different names.
h) Evidence of collusion among bidders
I) Obvious unbalancing of one or more bid items.

The City reserves the right to reject any and all bids.

SECTION 103

AWARD AND EXECUTION OF CONTRACT

103.1 CONSIDERATION OF PROPOSALS

After the proposals have been opened and read, they shall be verified and compared by checking the extensions and additions. In the event of a discrepancy between the unit prices and the extensions thereof, the unit bid price shall govern.

Until the project is awarded, the City reserves the right to reject any and all proposals.

103.2 AWARD OF CONTRACT

The award of contract, if it is awarded, shall be made within thirty (30) days after opening the proposal, unless both the City and the Contractor agree to an extension of the 30-day time period. Notice of such award shall be in writing by the City. The successful bidder shall provide all required certificates of insurance, bonds and/or proof of filing of such bonds, and any other required certifications with ten (10) calendar days from the date the project is awarded.

103.3 CANCELLATION OF AWARD

The City reserve the right to cancel the award of any contract at any time before execution of said contract by all parties, without any liability against the City.

103.4 CONTRACT BONDS

The following bonds and bonding amounts are required for all projects unless specifically exempted or modified by the Special Provisions issued for the project being bid:

a) **Statutory Payment Bond** - A bond to the State of Kansas in an amount not less than 100% of the total contract amount, conditioned that such Contractor and/or Subcontractor(s) shall pay all indebtedness incurred for labor furnished, materials, equipment or supplies used or consumed in the construction of the project.

b) **Performance and Maintenance Bond** - A bond to the City in the amount of 100% of the total contract amount, guaranteeing the faithful performance of the work and the completion of the contract, and to replace or repair any latent defects or failures in the improvement for a period of two years from the date of completion and acceptance of the project. Such bond shall also include the provision that the Contractor shall save and hold the City harmless for all claims and suits brought against the Contractor, or the City for damages to property or injury to persons occasioned by or growing out of the construction of said improvement, or the failure or neglect of the Contractor to carry out said contract, or to complete the work and replace or repair any latent defects or failures in said improvement and the works thereon as provided by the terms and provisions of said contract.

The Statutory as well as Performance and Maintenance Bond, and Bid Bond, shall be issued by a bonding company authorized to do business in the State of Kansas through an agent located in the State of Kansas who is authorized by his/her company to accept on behalf of the company all notices of claims, court summons or other legal notices. The Surety shall provide the agent's name, address and phone number to the City.

103.5 INSURANCE

The Contractor shall carry all insurance, which may be required by federal, state and local laws and regulations. The Contractor will be required to submit a Certificate of Insurance, issued by an insurer authorized by the Kansas Commissioner of Insurance to do business in Kansas, certifying the following insurance coverage:

1. Comprehensive General Liability
   Covering premises – operations, xcu hazards when applicable, Product/Completed Operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

Bodily Injury Liability $500,000 Each Aggregate	$500,000 Each Occurrence
Property Damage Liability $500,000 Each Aggregate	$500,000 Each Occurrence
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$500,000 Each Occurrence $500,000 Each Aggregate

2. Comprehensive Automobile Liability
   All Owned, Non-Owned, and Hired vehicles with minimum limits as follows:

Bodily Injury Liability	$500,000 Each Accident
Property Damage Liability	$500,000 Each Accident
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$500,000 Each Accident

3. Workers' Compensation
   For minimum limits of:

Employers Liability	$100,000 Each Accident

   The Insurance Certificate must contain the following:
   a) Statement that the Contractual Liability includes the Liability of the City of Wichita assumed by the Contractor in the contract documents.
   b) Cancellation - Should any of the above policies be canceled before the expiration date thereof, the issuing company will mail ten (10) days written notice to certificate holder.

Certificates of Insurance shall be furnished to the City Engineer's office before the contract is issued. Required insurance shall be maintained and in effect until the date of final acceptance.

103.6 EXECUTION AND APPROVAL OF CONTRACT

The Contractor shall submit all bonds and insurance certificates, and execute the contract within ten (10) calendar days from the date the project is awarded.

SECTION 104

SCOPE OF WORK

104.1 WORK TO BE DONE

Unless otherwise specified in the plans, specifications or special provisions, the Contractor shall furnish all labor, materials, equipment, tools, transportation, supplies, utilities, services and facilities required to construct and complete the project in a satisfactory and acceptable manner in full compliance with the plans, specifications and terms of the contract.

104.2 MAINTENANCE OF TRAFFIC/ACCESS TO PROPERTIES

Unless otherwise stated in the project plans or special provisions, traffic flow must be maintained at all times, and access must be provided to all properties at all times. Safe and adequate pedestrian access must also be provided.

All traffic lanes maintained during construction activities shall be a minimum ten (10) feet, with eleven (11) feet preferred, in width and shall be hard surfaced. Nine (9) foot wide lanes may be provided on lower volume roadways at the discretion of the Engineer.

104.3 CLEANUP, DUST CONTROL, POLLUTION CONTROL, SURFACE WATER AND EROSION CONTROL

The Contractor shall take whatever steps as may be necessary to at all times keep the entire site clean and free from trash, excess materials, surface water and debris generated or caused by construction activities.

The Contractor shall also take whatever steps as may be necessary to prevent and control dust and erosion of material as a result of construction. Erosion, surface water runoff and pollution control measures must be implemented on all job sites as required by federal, state and local laws, NPDES plan and permit requirements, and the plans and specifications for the project.

Failure of the Contractor to comply with cleanup orders and/or all other mitigation and control measures, shall be cause for suspension of work until such unacceptable conditions are corrected. Liquidated damages, as specified for completion of work on the project, shall be charged for each day that unacceptable conditions are not corrected.

104.4 MAINTENANCE OF ROADWAY AND SIDEWALK SURFACES

The Contractor shall be responsible for maintenance of street and sidewalk area surfaces within the construction limits of the project and along haul roads, upon commencement of construction or construction related activities on the project. Such maintenance shall include maintaining the traveled portions of roadways and walkways in smooth and acceptable surface conditions free from potholes settlements, elevation offsets, etc.

Upon observation of a defect in the roadway or sidewalk surface, or upon notification by the Engineer, by a public safety representative or by a citizen, the Contractor shall immediately respond to temporarily repair or correct the defect. Failure of the Contractor to respond in a reasonable period of time may result in the Contractor being charged liquidated damages for each day defects are not corrected in addition to any other direct costs the City may incur in correcting the defect.

Because of obvious safety concerns to motorists and pedestrians, the Contractor is expected to respond promptly to all reasonable notices of defects, regardless of the cause of the defect. If it is determined after the defect is corrected that the defect is the responsibility of another entity (example - utility cut trench settlement within the project limits), the Contractor shall be reimbursed for direct expenses in correcting the defect.

104.5 MAINTENANCE OF WORK AREAS

The Contractor shall be responsible for maintenance of all work areas, including all signs and barricades and all other traffic control devices during performance of the work.

The Contractor shall be available 24 hours per day to respond to calls or notification from the City regarding maintenance of signs, barricades, work site equipment, or other work site conditions. The Contractor shall provide the City with the telephone number(s), where the City can contact the Contractor at any time. If required or approved, the Contractor will equip one or more personnel with pagers, which will allow the City to directly contact them. Upon receiving notification of the need to perform any type of maintenance to any work site, the Contractor shall immediately respond and make such temporary repairs or reset signs and barricades as required to return the work site to a safe and proper operating condition.

Often the City is called about hazardous work site conditions or barricades knocked down. It is the City's obligation and policy to respond to calls as soon as possible without regard to agency responsibility. If it can be easily determined which Contractor has responsibility then that Contractor will be notified. However, the City reserves the right to respond to any such calls to remedy a hazardous condition. The Contractor shall reimburse the City for the costs of time, equipment, and materials for response to any such call connected with the Contractor's work.

104.6 NO PAY ITEM

Frequently plans, specifications, and/or Special Provisions will identify specific items of work to be completed by the Contractor for which the Proposal does not include a pay item. It shall be perceived in these cases that such work will be completed by the Contractor and all costs for such work shall be considered as subsidiary to the other pay items of work in the Proposal. No claim from the Contractor will be allowed for payment of such work as extra work.

104.7 DETAILS/SILENCE OF CONTRACT

The apparent silence of Specifications, Plans, and Special Provisions as to any detail or the apparent omission from them of a detailed description concerning any point shall be regarded as meaning that only the best general practice of the trade or profession involved is to be used. All interpretations of the project plans, specifications, and special provisions shall be made on the basis stated above.

104.8 APPEARANCE AND CONDUCT

All of the work done on this project will be done in full view of the general public. Citizens' impressions of the Contractor's employees work procedures and finished product will reflect both on the Contractor and the City of Wichita. For this reason, it is important for the Contractor's employees to present a pleasing appearance and conduct himself or herself in a proper manner. Any failure to comply with reasonable requirements regarding appearance and conduct may result in the City shutting the job down until the situation is rectified or dismissal from the job of any Contractor's employee that fails to comply with these requirements.

Acceptable clothing will be jeans or work slacks, T-shirt or standard type shirt-blouse and leather or similar type work shoes. Tank tops, going shirtless, wearing an unbuttoned shirt and shorts will not be allowed.

The Contractor shall inform his employees to respect private property and to not lounge on or litter private property.

104.9 FIELD OFFICE

If the Contract Documents require furnishing a Field Office for use by the Engineer during the course of construction of the project, a Field Office meeting the requirements of "Field Office Special" as contained in KDOT Standard Specifications, shall be provided. Unless otherwise approved, electricity shall be provided from the local power company (not a generator) and an electronic surge protector of the type designed to protect computers and other similar electronic equipment shall be provided. If requested, the phone shall include a portable 900 MHz handset that can be used on the job site in the vicinity of the phone's base unit.

104.10 REPLACEMENT OF SIDEWALK AND CURBS/CONSTRUCTION OF WHEELCHAIR RAMPS

At all locations where existing sidewalks connect to curbs and/or street surfaces and where any such connection (curbing, sidewalk or both) is disturbed by construction activities, such sidewalk connections shall be replaced with wheelchair ramps meeting current City of Wichita and ADA design standards. Such ramps shall be constructed even if not specifically identified on the plans and in the bid quantities. Payment for such wheelchair ramps shall be considered incidental to other pay items unless specifically identified in the project plans and bid items.

It shall be the policy of the Engineering Division to require wheelchair ramp construction:

Whenever sidewalk is constructed or repaired at intersections

a. Applicable to: Sidewalk Condemnation Program
Utility Cut Repair Program
New Construction
Contract Maintenance Program

b. Applicable only when walk is constructed or replaced between the curb and private property; that is, no wheelchair ramp shall be constructed when the section of replaced walk is adjacent only to private property.

c. WCR construction shall be limited to the side of the street where the repair is made.

Whenever curb and gutter is replaced at intersections

a. Applicable to: Utility Cut Repair Program
Contract Maintenance Program

b. WCR construction shall be limited to the side of the street where the repair is made.

SECTION 105

CONTROL OF WORK

105.1 AUTHORITY OF THE ENGINEER

The Engineer will decide all questions which may arise as to the quality and acceptability of materials furnished, the work performed, the rate of progress of the work, the interpretation of the plans and specifications and the acceptable fulfillment of the contract on the part of the Contractor. The Engineer's estimates and decisions shall be final. The Engineer shall have the authority to suspend the work wholly or in part, due to the failure of the Contractor to carry out provisions of the contract, and carry out orders. The Engineer shall also have the authority to suspend the work for periods necessary due to unsuitable weather, for conditions considered unsuitable for the prosecution of work, or for any other condition or reason deemed to be in the public interest.

Upon all questions concerning the execution of the work in accordance with these specifications and the measurements thereof, the decision of the Engineer shall be final.

105.2 SHOP DRAWINGS, MATERIAL SUBMITTALS AND CERTIFICATIONS

The Contractor will be required to submit shop drawings, material certifications, test reports and any other certifications or submittals required by the contract documents to the Engineer for review and approval. Failure to submit required submittals in a timely manner to allow the Engineer sufficient time to review the submittals and/or to allow for sufficient ordering, fabrication and delivery times, shall not be considered sufficient justification to extend the contract time.

105.3 CONFORMITY WITH PLANS AND SPECIFICATIONS

All work performed and all materials furnished shall be in conformity with the lines, elevations, grades, cross sections, dimensions and material requirements, including tolerances, shown on the plans or indicated in the specifications.

In the event the Engineer finds the materials or the finished product in which the materials are used not in conformity with the plans and specifications, but that reasonably acceptable work has been produced, he/she shall then make a determination if the work shall be accepted and remain in place. In this event, the Engineer will document the basis of acceptance by contract modification, which will provide for an appropriate adjustment in the contract price for such work or materials as he/she deems necessary to conform to his/her determination based on engineering judgment.

In the event the Engineer finds the materials or the finished product in which the materials are used or the work performed are not in conformity with the plans and specifications and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by the Contractor at no additional cost to the City.

In all instances wherein the items and/or specifications require installation or construction in accordance with either manufacturers' or suppliers' recommendations and/or instructions, said recommendations and/or instructions shall be submitted with the applicable portion clearly marked for approval prior to the commencement of work on that item or portions of the contract.

105.4 COOPERATION OF CONTRACTOR

The Contractor shall give the work the constant attention necessary to facilitate the progress thereof, and shall cooperate with the Engineer, inspectors, utility companies and other Contractors in every way possible. The Contractor shall at all times be represented on the job site by a competent supervisor capable of understanding the project and authorized to receive and fulfill instructions from the Engineer. The Contractor shall file with the Engineer, the names, addresses and telephone numbers of representatives who can be contacted anytime, in case of emergency. These representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice.

105.5 CONSTRUCTION STAKES, LINES AND GRADES

Unless otherwise specified in the Contract, the Engineer shall set construction stakes establishing lines and grades for the project. The Contractor shall be held responsible for the preservation of all stakes and marks. If construction stakes or marks have been carelessly or willfully destroyed or disturbed by the Contractor, the cost for replacing them will be charged against the Contractor and will be deducted from the payment for the work.

105.6 PRESERVATION OF PROPERTY IRONS AND MONUMENTS

Property Irons:
The Contractor shall be responsible for preserving property irons whether or not they are shown on the plans. Any property irons damaged or destroyed by the Contractor shall be re-established by a licensed land surveyor in accordance with state laws. The Contractor shall receive no additional payment for re-establishing property irons damaged or destroyed during construction activities.

Monuments:
The Contractor shall protect from disturbance or damage all section and survey monuments until the Engineer has witnessed or otherwise referenced their location and shall not remove them until directed.

105.7 INSPECTION

Inspectors may be appointed whose duties shall be to point out to the Contractor any neglect or disregard of these specifications. The Contractor is not relieved of responsibility for defective work, errors, imperfections or oversights in his product by the inspector. The Engineer shall make final acceptance or rejection of the work.

Notice of any imperfections in any portion of the work to any foreman or agent shall be considered as notice to the Contractor.

105.8 REMOVAL OF UNACCEPTABLE AND UNAUTHORIZED WORK, AND CORRECTION OF DEFECTS

Generally unauthorized work is work performed beyond the limits indicated by the lines and grades shown on the plans or other terms of the contract, beyond the limits defined by the stakes set, or it is extra work not authorized by written agreements. Such work is not subject to compensation and may at the discretion of the Engineer be ordered removed or otherwise corrected by the Contractor at his/her expense.

Defective work is work, which does not conform to the requirements of the contract, or work in which defective materials have been incorporated. Upon written order, by the Engineer, the Contractor shall be required to remove and replace or otherwise satisfactorily correct defective work as directed. Upon failure of the Contractor to comply with such orders, the Engineer may have such defective work removed or replaced, or otherwise corrected. All costs incurred by such actions may be deducted from any monies due or which may be due the Contractor. In some instances of defective work, such as surface courses, base courses, and similar items of work which have minor defects as constructed or have been constructed with materials having minor defects, the Engineer has the right to permit such work to be left in place without any compensation to the Contractor or to make payment to the Contractor at a reduced rate from the contract price, which the Engineer may deemed a reasonable value of the work.

During the course of construction of the project, the Engineer will notify the Contractor of identified defects. Upon substantial completion of major components of the project and/or the entire project, the Engineer will provide the Contractor a written list of identified defects. The Contractor shall be required to correct and/or properly address all defects within the required contract completion time, unless the Engineer grants an exception in writing. Failure to correct defects promptly may result in liquidated damage charges to the Contractor for failure to complete all work within the specified time.

105.9 MAINTENANCE DURING CONSTRUCTION

The Contractor shall maintain the work during construction and until the project is accepted. This maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces to the end so that the roadway or structures are kept in satisfactory conditions at all times.

In the case of a contract for the placement of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations. All cost of maintenance work during construction and before the project is accepted shall be included in the unit bid price on the various pay items, and/or in the lump sum price for the project.

If the Contractor, at any time, fails to perform maintenance during construction, the Engineer will immediately notify the Contractor of such noncompliance. If the Contractor fails to remedy unsatisfactory maintenance that is not a threat to public safety within 24 hours after receipt of such notice, the Engineer may immediately proceed to maintain the project. The entire cost of this maintenance will be deducted from monies due or to become due the Contractor on his contract. If the Contractors failure to maintain the project is deemed by the Engineer to be an immediate threat to public safety, the Engineer shall immediately proceed to maintain the project and correct the problem

105.10 ACCEPTANCE

Partial Acceptance:
If at any time during the prosecution of the project the Contractor substantially completes a unit or portion of the project, such as a structure, utility service, or a section of road or pavement, he may request the Engineer to make final inspection of that work. If the Engineer finds, upon inspection, that the work has been satisfactorily completed in compliance with the contract he may accept the work as being completed. Such partial acceptance shall in no way void or alter any terms of the contract.

Final Acceptance:
Upon due notice from the Contractor of presumptive completion of the entire project, the Engineer will make an inspection. If all construction provided for and contemplated by the contract is found completed to his satisfaction, that inspection shall constitute the final inspection and the Engineer will make the final acceptance. The Contractor will be notified in writing of this acceptance as of the date of the final inspection.

If, however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the Engineer will give the Contractor the necessary instructions for correction of same and give the Contractor a reasonable and specific length of time in which to correct such unsatisfactory work. The Contractor shall immediately comply with and execute such instructions. Upon correction of the work, another inspection will be made which shall constitute the final inspection provided the work has been satisfactorily completed. In such event, the Engineer will make the final acceptance and notify the Contractor, in writing, of this acceptance as of the date of the final inspection.

SECTION 106

CONTROL OF MATERIALS

106.1 SOURCE OF MATERIALS AND QUALITY

All construction materials to be used on the work or incorporated into the work, equipment, plant, tools, appliances or methods to be used on the work shall be subject to the inspection and approval or rejection of the Engineer.

The materials used on the work shall meet all quality requirements of the contract. In order to expedite the inspection and testing of materials, the Contractor shall notify the Engineer of the proposed source of materials prior to delivery. At the option of the Engineer, materials may be approved at the source of supply before delivery is started. If it is found after trial those sources of supply for previously approved materials do not produce specified products, the Contractor shall furnish materials from other sources.

Unless otherwise noted, all materials used in the project shall be new and unused. Additionally, any new materials used in the project that are damaged during the construction of the project and prior to final acceptance, as determined by the Engineer, shall be replaced by the Contractor with new material at no additional cost to the City.

106.2 SAMPLES AND TESTS OF MATERIALS

All materials to be incorporated in the work may be subject to sampling, testing and approval, and samples furnished shall be representative of the materials to be used. The Engineer may select samples, or may require that the Contractor to a laboratory designated by the Engineer deliver samples.

The Engineer will determine the procedures and methods used to sample and test materials. Generally, testing methods and procedures will follow established criteria (ASTM, AASHTO, KDOT, etc.) or will be contained in the project specifications.

Unless otherwise designated, where one manufacturer's product is specified, it shall be understood that this represents the standard required, but that a similar product of another manufacturer may be considered as a satisfactory substitute and may be approved. If the Contractor desires to use such an "or equal" product, pertinent information on the proposed substitute product (description, catalog cuts, shop drawings, samples, etc.) shall be submitted to the Engineer for review and either approval or rejection, in a timely manner so as not to delay the projects construction after "rejection".

106.3 PLANT INSPECTION

The Engineer may undertake the inspection of materials at the source. In this event, the following conditions shall be met:

a) The Engineer shall have the cooperation and assistance of the Contractor and the producer with whom he has contracted for materials.

b) The Engineer shall have full entry at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished.

106.4 STORAGE OF MATERIALS

The Contractor shall provide storage facilities and exercise such measures as will insure the preservation of the quality and fitness of all materials and/or equipment to be used in the work. Stored items shall be located so as to facilitate their prompt inspection. That portion of the right-of-way and easements not required for public travel may be used for storage purposes, when approved by the Engineer. Any additional storage area as required must be provided by the Contractor. Private property shall not be used for storage purposes without written permission of the owner or lessee. If requested by the Engineer, copies of such written permission shall be made available. All storage areas shall be restored to their original condition at the Contractor's expense.

106.5 HANDLING MATERIALS

All materials and/or equipment shall be handled in such a manner as to preserve their quality and fitness for the work.

106.6 UNACCEPTABLE MATERIALS

All materials and/or equipment not conforming to the requirements of the specifications, whether in place or not, may be rejected. Rejected materials and/or equipment shall be removed immediately from the site of work unless otherwise permitted by the Engineer. No rejected material and/or equipment, the defects of which have been subsequently corrected, shall be used until approved, in writing, by the Engineer.

SECTION 107

LEGAL RELATIONS AND CONTRACTOR RESPONSIBILITIES

107.1 LAWS TO BE OBSERVED

The Contractor shall keep fully informed of all Federal and State laws, County and City ordinances, regulations, codes, and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, codes, and all orders and decrees; and shall protect and indemnify the City and its representatives against any claim or liability arising from or based on the violation of such, whether by the Contractor or the Contractor's employees or subcontractors.

107.2 PERMITS, LICENSES AND TAXES

The Contractor shall obtain all necessary permits and licenses, pay all charges, fees and taxes, and give all notices necessary for the lawful prosecution of the work. Required permits from the Corps of Engineers (404), the Division of Water Resources (work in or near waterways), the Kansas Department of Health and Environment (401 and National Pollution Discharge Elimination System (NPDES)), Sedgwick County and railroads may have already been obtained by the City or developer. It is the Contractor's responsibility to ensure that all required permits have been obtained prior to commencing work.

107.3 PATENTED DEVICES, MATERIALS AND PROCESSES

If the Contractor employees any design, device, material, or process covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the surety shall indemnify and save harmless the City, any affected third party or political subdivision from any and all claims for infringement by reason of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the City for any costs, expenses, and damages which it may be obligated to pay by reason or any infringement, at any time during the prosecution or after the completion of the work.

107.4 SAFETY, HEALTH AND SANITARY PROVISIONS

The Contractor shall provide and maintain in a neat, sanitary condition such accommodations for use by the Contractor's employees as may be necessary to comply with all federal, state and local requirements and regulations.

The Contractor shall provide and maintain in a neat and sanitary condition a portable toilet at any worksite where at least five employees will be working for more than one day. Toilet facilities shall comply with all applicable health regulations and shall not cause a public nuisance. Toilets shall not be placed on private property.

The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions, on his/her own responsibility or as the Engineer may determine, reasonably necessary to protect the life and the health of employees on the job, the safety of the public and to protect property in connection with the performance of the work covered by the contract.

Precaution shall be exercised by the Contractor at all times for the protection of persons (including employees) and property. The Contractor shall comply with the provisions of all applicable laws, pertaining to such protection including all Federal and State occupational safety and health acts, and standards and regulations promulgated thereunder.

107.5 USE OF FIRE HYDRANTS

Contractors desiring to use water from public hydrants will be required to make application to the Water and Sewer Department, pay all permit and use fees, and conform to the rules and regulations pertaining to using hydrants.

107.6 SANITARY SEWER OVERFLOWS

A sanitary sewer overflow is defined as any spillage of untreated sewage from any public or private sanitary sewer line. Examples of sewage overflows are - damaging or shattering a sewage line or manhole that allows untreated sewage to flow aboveground or underground outside of designated sewage lines or manholes; blocking sewage flow in any manner that causes sewage to overflow existing sewer lines or manholes, or that causes backups in adjacent sewer lines, building lines, and buildings; cutting, damaging or misdirecting bypass pump lines that allow or cause a raw sewage spillage; failure to provide adequate pumping capacity or backup capabilities when pumping sewage around one or more pipe sections or manholes; allowing or causing raw sewage to flow anywhere other than in approved sewage lines; and allowing or causing sewage to flow in an open, exposed condition, whether contained or channeled within existing sewage lines and structures or not, in such a manner that could cause a safety or health attractive nuisance to the general public (ex., broken top of an exposed line that could be easily accessed by children).

Any time a Contractor working on any type of project, is working on, near, or in reasonable proximity to an existing, functioning sanitary sewer line, the Contractor will be expected to have properly planned and addressed how the Contractor will pump sewage, bypass existing lines or manholes being constructed or reconstructed and/or damaged by construction, and what emergency procedures the Contractor will follow if a sewage overflow or bypass occurs. The Contractor shall discuss the plan with the project inspector or field engineer prior to beginning work. If requested by the inspector or engineer, the Contractor shall submit a plan for review and approval. However, approval of the Contractor's plan shall not relieve the Contractor from all responsibility for ensuring that the plan is sufficient to prevent and address sewage bypasses and overflows, and from all liabilities, costs and penalties that may result from a sewage overflow. The Contractor must receive approval from the project inspector or engineer prior to commencing any pumping or bypass operations.

If a sanitary sewage overflow occurs, the Contractor shall immediately take whatever steps necessary to correct the problem, to contain and cleanup the spillage, and to properly dispose of spillage material. If any bypass or spillage occurs, the Contractor shall immediately notify the project inspector and project engineer. If the project inspector or engineer is unavailable, the Contractor shall call the Sewer Maintenance Division of the Water and Sewer Department (during normal working hours call 268-4024, at other times or in an emergency call 262-6000).

The Contractor will be required to pay, at no additional compensation from the City, any actual costs the City may incur in investigating and verifying the spillage, any actual costs the City may incur in assisting in or performing containment and cleanup of the spillage, and any penalties that may be assessed as a result of the spillage or overflow.

107.7 WORK WITHIN A RAILROAD RIGHT-OF-WAY

When a railroad right-of-way is included in the work, the Contractor shall:

a) Comply with the rules and regulations of the railroad company relative to the required manner of constructing said portion of the work; and shall perform the work so as not to endanger or interfere with the safe operation of the track(s) and property of the railroad company and of the traffic moving on such track(s).

b) Carry the kinds and amounts of insurance and bonds required by the railroad company for the period of time in which work is performed on or adjacent to the railroad company's property, and until such work has been satisfactorily completed and all tools, equipment and materials have been removed from the railroad company's property and such property is left in a clean and presentable condition.

c) Contact the Railroad Company at least 72 hours in advance of performing any construction within the right-of-way or any track(s).

d) Any and all contractors or City personnel who will be working within four feet of track rail will attend a safety program administered by the railroad.

107.8 NOTIFICATIONS BY CONTRACTOR

The Contractor will be required to give advance notification of construction activities to all concerned parties per the following:

a) Prior to beginning construction: Public Safety Departments (police, fire, emergency communications, EMS), U.S. Post Office, and all utility companies which occupy the right- of-way or easement where construction work will take place.

b) If any major traffic streets are to be partially or wholly closed - notify and request authorization through the Traffic Engineering Section of the City Engineer's office. Major street closings, unless of an emergency nature, require City Council approval. Requests for closures should be submitted a minimum of 13 days prior to the requested closure date.

c) For all projects that may affect the adjacent property owner, tenant or business - A minimum of ten. (10) days advance written notice will be provided to all adjacent property owners, businesses and tenants. The Engineer may provide the notification letter and/or format. In any case, the notification shall include at least the following information: name of contractor, contractor's contact person and phone number, nature of the work, expected construction schedule, effect the construction may have on adjacent property (e.g. limited access, detour routes, interruption of water service, etc.), and the contact person with the City.

d) The City shall notify media.

107.9 WORK ZONE TRAFFIC CONTROL

General:

All construction traffic control signing or delineation for this project shall conform to the applicable requirements of the latest revision of the Manual on Uniform Traffic Control Devices (MUTCD) developed by the National Advisory Committee on Uniform Traffic Control Devices and in particular to Part VI of said manual.

Traffic Control Devices:
The Contractor shall provide, erect, and maintain all barricades, signs and other traffic control devices, and shall take all necessary precautions for the protection of the work area and safety of the public. The Contractor shall also provide, erect, and maintain any additional signs or barricades related to the construction area or detour route as required by the Engineer. All such required signs or barricades shall be considered subsidiary to the traffic control bid item.

a) Temporary traffic control devices shall be used to guide traffic through construction areas. They include traffic cones to channelize traffic, portable barricades for warning, vertical panel channelizing devices to divert traffic, and lighting devices between the hours of sunset and sunrise.

b) Advance warning devices shall be used to alert the motorist of an obstruction in the roadway. They include diamond-shaped signs and flasher-type high level warning devices mounted eight feet (8') above the roadway.

All construction traffic control signs and barricades shall be reflectorized with either Type II high performance of fluorescent orange prismatic grade sheeting as required.

Flagger or Pilot Cars:
Flagger or pilot cars shall be provided to ensure the safe passage of traffic.

Traffic Control Measures:
The application of all traffic control measures shall be based primarily upon the conditions existing at the time that such measures are deemed necessary. Prior to the start of any work that would interrupt the normal flow of traffic, sufficient and adequate devices and measures shall be provided and erected as directed by the Engineer. These devices shall be immediately removed when no longer needed.

General Traffic Regulations:
A traffic lane shall be a minimum of ten feet (10') of clear street width with a safe motor vehicle operating speed of at least 30 miles per hour on major streets and 20 miles per hour on local streets and alleys.

A minimum of two traffic lanes, one for each direction, shall be maintained open to traffic at all times on all major streets, unless otherwise specified.

Local access shall be maintained to all properties on the project at all possible times. When local access cannot be maintained, the Contractor must notify the affected property owner at least 24 hours in advance and restore access as soon as possible.

A traffic lane shall not be considered as satisfactorily open to traffic unless it is paved with hot mix or cold mix asphalt paving. Where pavement did not previously exist or where all of the existing pavement has been removed, a traffic lane shall not be considered as satisfactorily open to the traffic unless it is graded reasonably smooth and maintained dust free as directed by the Engineer.

The Contractor shall maintain all existing STOP, YIELD, and street name signs erect, clean, and in full view of the intended traffic at all times. If these signs interfere with construction, the Contractor shall temporarily relocate the signs away from the construction but still in full view of the intended traffic. Existing traffic signs other than STOP, YIELD, and street name signs shall be maintained by the Contractor until such time as construction renders them obsolete. At that time the Contractor shall remove signs and posts without damage and deliver them as directed by the Engineer.

A Contractor, who wishes to reduce traffic speed in the work zone, is required to contact the City Traffic Engineer, present their reasoning and identify proposed location of temporary speed limit signs.

Subject to the approval of the Engineer, the Contractor shall furnish and install the Construction Zone Speed Limit Signs. The Contractor shall maintain the signs erect, clean, and in full view of the intended traffic at all times. Should the signs interfere with construction, the Contractor shall relocate the signs as necessary.

Minimum Requirements:

The following information is to be used to control traffic in and around construction areas unless specific traffic control is detailed in the project plans or specifications. The information given should be considered the minimal requirements and may be modified on the job by the Engineer and must conform to the latest version of the MUTCD.

Minimum lists of signs that may be required by the construction operations as directed by the Engineer are as follows:

Road Work Ahead*
Right or Left Lane Closed Ahead*
No Right or Left Turn**
Keep Right or Left**
Road Closed Ahead*
Detour Ahead*
Detour
Road Closed
End Construction

* Required in advance of the construction area.
** To be used whenever confusion might exist over how traffic should flow, especially at intersections as required.

This list should not be considered all inclusive, and other work zone signs may be required to fit special situations as directed by the Engineer or at the Contractor's discretion.

Signs, barrels and barricades should be clean, reflective and in sound condition, weighted as required to prevent movement. All black on orange warning signs used in the construction area will be required to use fluorescent orange prismatic grade retro-reflective sheeting. All other signs, barrels and barricades used in the construction area will be required to be reflectorized with Type II high performance sheeting. Use of Engineer grade retro-reflective sheeting on signs and barricades is no longer acceptable. Tapers left in place overnight must consist of barrels or Type II barricades. Cones shall not be used for nighttime traffic control.

The following table is for the distances from the start of the taper to the lane closure sign and from that sign to and between other advance warning signs:

Speed Limit, MPH	Distance
30 or less	200'-300'
35	300'-350'
40	350'-400'

The sign spacing should be adjusted to fit conditions in the field, such as intersections, driveways, curves, hills and sight obstructions. In no case shall the spacing of the advance warning signs be less than identified in the above table. Unless directed by the Engineer, all advance warning signs shall be placed in the parking, **NOT on the pavement.** On one-way streets identical signs should be placed on both sides of the street. Generally, more advance warning should be given if traffic is being moved over more than one lane or if the road curves.

Detour Routes:
If necessary, the Traffic Engineer shall establish detour routes and the Contractor will be required to install and maintain detour route signing. The Contractor shall notify the Traffic Engineer sufficiently in advance of starting the project to permit the detour route to be identified.

Traffic Control Plans:
The Contractor will be required to develop plans for detour signing and for construction traffic control signing and delineation for the project. Construction traffic control signing and delineation plans and detour signing plans shall be prepared as scaled drawings using the same scale as the project construction plans. Such plans shall be developed in consultation with the City's Construction Engineer and The City's Traffic Engineer, or their authorized representatives, in conformance with the Contractor's proposed construction sequence and schedule. Such plans shall be developed prior to any work proceeding on the project, which would create a hazard to vehicular traffic. The Engineer may shut down job until traffic control is in compliance. To insure the safety of the traveling public, the Contractor will be charged liquidated damages for failure to maintain signing and delineation in compliance with the plans developed for the project. Such liquidated damages shall be as specified for the completion of work on the project and will be charged for each calendar day during which the signing and delineation is not maintained in compliance with the developed plans for a period of time in excess of two hours in any one calendar day. Costs for installing, maintaining, and removing traffic control signing and delineation shall be subsidiary to other bid items.

107.10 DAMAGES AND OBSTRUCTIONS

The Contractor shall be responsible for all damages to public or private property and utilities caused by the Contractor's construction or construction-related activities throughout the contract and warranty time. The Contractor will be required to replace all damaged City infrastructures (pavement, sidewalk, water lines, sewer lines, etc.) at no cost to the City.

107.11 SITE RESTORATION

The Contractor shall be responsible for the restoration of public and private property disturbed, modified or damaged by construction-related activities. Yards, grassed and landscaped areas shall be restored in an equal to or better condition per the requirements of the City of Wichita's Administrative Regulation 78, unless specifically directed otherwise by the project plans, specifications or special provisions.

Administrative Regulation 78 - Cleanup, Restoration or Replacement Following Construction is provided in total as follows:

The purpose of this Regulation is to define and establish the policy, procedures and requirements of the City as they pertain to the cleanup, restoration or replacement of private and public properties, including easements, rights-of-way, etc., when damaged (disturbed) by City personnel, contractors or franchises.

It shall be the policy of the City to ensure prompt and correct restoration of areas damaged (or disturbed) by construction activities. The prompt restoration and cleanup of such areas will prevent blight and visual degradation of property, lawns and turf damaged by construction and promote proper maintenance of such areas by the property owners.

Responsibilities:

The Department head involved in the project either by city personnel or by contract administration, shall be responsible to the City Manager for the implementation and coordination of the requirements of this Regulation. The City Manager may designate City departments and individuals within departments to administer, monitor and enforce the policies and requirements of this Regulation.

Any person or persons authorized to engage in construction activities in the City's right-of-way, or public easements, including, but not limited to, utility contractors, subcontractors, drainlayers and City maintenance personnel (i.e.; Street, Water/Sewer, Traffic, Parks) shall be responsible for the proper and expeditious restoration of lawn/turf that may be damaged, removed or disturbed by construction and maintenance activities.

Requirements:

a) All contracts issued by the City shall contain standard provisions, approved by the City Attorney, to assure that contractors and persons performing work on behalf of the City will clean and restore City right-of-way and adjacent property to the condition it was prior to construction.

b) The City will require complete and proper cleanup, restoration of construction work areas in the City's right-of-way, public easements and property adjacent thereto, by the person or persons responsible for the construction/maintenance.

c) Restoration shall include, but not be limited to, cleanup and disposal of materials and debris, regrading to original condition and replacement of lawn/turf damage (or disturbed) from maintenance/construction.

d) Lawn/turf areas shall be restored with the same grass/sod as existing (wherever possible). Restoration may include, but not limited to, top soil preparation, seeding, mulch and/or resodding. (It is the intent of this provision that in case of planted areas, the Contractor will restore such areas to their original (or better) condition using techniques and materials, which will provide for complete restoration.)

e) Restoration of lawn/turf areas shall commence as soon as practical after completion of the construction/maintenance work. (The intent of this provision is to ensure that all cleanup, disposal of materials and debris, and grading and leveling of soil be performed immediately upon job completion. Restoration of lawn/turf shall be scheduled as soon as possible depending upon the appropriate time relative to grass species and, where required, upon availability of sod.)

f) On projects contracted by the City, no final payment shall be paid to the Contractor until final inspection and approval of all cleanup, restoration work is completed in a sound and acceptable manner.

g) Where possible, all excavation work in finished lawn areas/easements should be performed in such a manner to protect shrubs, trees, and sod (not shown or directed to be removed).

All contractors and franchises shall be encouraged to work with property owners to ensure cleanup and restoration work is performed to the reasonable satisfaction of the property owner. However, such agreement will not relieve the Contractor from provisions and expectations of the contracted work to be performed.

City inspection personnel will be charged with the responsibility to assure compliance of this Regulation.

107.12 THIRD PARTY BENEFICIARY

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create the public or member thereof a third party beneficiary hereunder, or to authorize anyone not party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Contract. The duties, obligations and responsibilities of the parties of this contract with respect to third parties shall remain as imposed by law.

107.13. ASSIGNMENT PROHIBITED

No part of the work herein shall be assigned or subcontracted without the written consent of the Engineer, and in no case shall such consent relieve the Contractor from the obligations herein entered into by the same, or change the terms of this agreement.

SECTION 108

COMMENCEMENT, PROSECUTION AND PROGRESS

108.1 NOTICE TO PROCEED

The Contract Documents will indicate when the project is to begin. The Engineer will issue a Notice to Proceed (work order) to the Contractor when construction on the project may proceed.

Unless otherwise indicated in the Contract, no work shall begin until the work order is issued and all required contract documents (bonds, insurance certificate, contract, etc.) are signed and submitted to the City Engineer's office. Late return of Contracts and Bonds shall in no way waive the project working days or completion date. The Contractor will ascertain that an adequate supply of material for the construction of this project is available prior to submitting his bid. Working days will be charged as provided for in the Standard Specifications, once the work order is issued. The non-availability of material shall not prevent working days from being assessed.

If requested from and approved by the Engineer, an early start date may be authorized.

108.2 CONTRACTOR'S CONSTRUCTION SCHEDULE

When requested, the Contractor shall furnish the Engineer with a proposed construction schedule for review. If requested by the Engineer the Contractor shall provide the proposed construction schedule in CPM (critical path method) or network schedule format at no additional cost to the City. The Engineer's review of the schedule shall be for the purposes of determining the City's staffing needs, providing notifications and expected work schedules to property owners, media, etc., and to insure general compliance with the Contract Documents relating to phasing and completion of the work. The Engineer reserves the right to reject part or all of the proposed schedule and request that a revised schedule and/or additional information be submitted. Review of a submitted schedule shall in no way be construed as an affirmation or admission that the schedule is reasonable or workable - such responsibilities remain with the Contractor.

The Contractor shall conduct the work at all times in such a manner and sequence that will assure the least interference with traffic and inconvenience to the public. The Engineer may require the Contractor to finish a section on which work is in progress before work is started on any additional sections if the opening of such section is essential to public convenience.

If, in the opinion of the Engineer, the Contractor has fallen behind the approved progress schedule, the Contractor shall take such steps as may be required by the Engineer, including but not limited to, increasing the number of personnel, shifts, and/or overtime operations, days of work, and/or amount of construction equipment until such time as the work is back on schedule. The Contractor shall also submit for approval no later than seven (7) working days, such supplementary schedule or schedules as may be deemed necessary to demonstrate the manner in which the approved rate of progress will be regained, all at no additional cost to the City.

Should it appear at any time after the Contractor has fallen behind schedule and has not satisfactorily taken whatever steps necessary to return the project to schedule, either on the Contractor's own initiative or at the direction of the Engineer, the Engineer may employ such additional help and purchase material as may be required to complete the work, all at the Contractor's expense.

108.3 CHARACTER OF WORKERS; METHODS AND EQUIPMENT

The Contractor shall at all times employ sufficient labor and equipment for prosecuting the several classes of work to full completion in the manner and time required by the specifications.

All workers shall be competent and have sufficient skill, knowledge and experience in their class of work and in the operation of equipment required to perform all work properly and satisfactorily.

Any person employed by the Contractor or any Subcontractor who, in the opinion of the Engineer, does not perform his/her work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Engineer, be removed from the work by the Contractor or Subcontractor employing such person, and shall not be employed again in any portion of the work without the approval of the Engineer. The Contractor or Subcontractor shall keep the City harmless from damages or claims for compensation that may occur in the enforcement of this section.

Should the Contractor or Subcontractor fail to remove such person as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the Engineer may suspend the work by written notice until such orders are complied with.

All equipment, which is proposed to be used on the work, shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the project shall be such that it will not damage property adjacent to the work area.

When the methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed, the Contractor is free to use any method or equipment that is demonstrated to be satisfaction of the Engineer to be capable of accomplishing the work in conformity with the requirements of the specifications.

When the specifications state the construction shall be performed by the use of certain methods and equipment, such methods and equipment shall be used, unless others are authorized by the Engineer. If the Contractor desires to use a method of type of equipment other than those specified, the Contractor may request authority from the Engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed to be used and an explanation of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing construction work in conformity with the specifications. If, after trial use of the substituted methods or equipment, the Engineer determines that the work produced does not meet the specifications, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods and equipment. The Contractor shall remove the deficient work and replace it with work of specified quality, or take such other corrective action as the Engineer may direct. No change will be made in basis of payment for the construction items involved or in contract time as result of authorizing a change in methods or equipment under these provisions.

108.4 CONTRACT TIME AND EXTENSIONS

The Contract Documents will clearly indicate the type of contract period - working day, calendar day, completion date or specified contract period (e.g. yearly utility cut repair contract).

If the Contractor finds it impossible, for reasons beyond the Contractor's control, to complete the work within the contract time, as specified or extended, a written request shall immediately be submitted to the Engineer for an extension of time setting forth the reasons the Contractor believes will justify granting the request. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Engineer finds that the work was delayed because of conditions beyond the control and through no fault of the Contractor, the Engineer may extend the time for completion by such amounts as the conditions justify. The extended time for completion shall then be in full force and effect the same as though it were the original time for completion.

108.5 WORKING DAYS

A working day as defined in this section shall be each calendar day, excluding Saturdays, Sundays and City Holidays, on which weather and/or other conditions not under control of the Contractor will permit construction operations to proceed for at least 50% of the normal full work day schedule. For projects where work must be done within the right-of-way on any major street, Saturdays will also be included as Working Days.

The Engineer shall issue to the Contractor a Notice to Proceed stating the date upon which the work should begin. A grace period (normally three days) of the length stated in the specifications or Notice to Proceed, which shall include the effective date of the Notice to Proceed, while excluding Saturdays, Sundays and City Holidays, shall be allowed the Contractor in which to begin work before the Engineer starts counting working days.

Assessment of working days shall be in accordance with the following provisions:

a) One whole day will be assessed for each working day that the Contractor is not prevented from working at least fifty percent (50%) of his/her full normal daily schedule by weather or other conditions beyond the Contractor's control. Unsuitable cold weather shall be defined for clarification as a temperature in the shade below 20°F, except where the controlling operation being constructed has a controlling minimum temperature above 20°F.

b) Work which will require inspection by the Engineer, shall not be permitted on Sundays. These provisions relative to Sunday work may be waived only with the written approval of the Engineer, in which case working days shall be assessed if inspection is required. Performance of work on Saturdays shall be optional with the Contractor, except where such work occurs in the right-of- way of a major traffic street. The Contractor shall be required to work six (6) days per week when completing any work within a major traffic street right-of-way.

c) Days on which work is delayed or suspended due to acts of the Engineer or the City shall be counted as "City's Delay" and shall not be counted as working days.

d) Days required after the event of unsuitable weather conditions, storms, floods and other such circumstances beyond the Contractor's control to attain the approximate condition of work before such event shall not be counted as working days.

e) Delays caused by plant and equipment breakdown when due to failure of the Contractor to provide and maintain such equipment in good mechanical condition or to provide for immediate emergency repairs shall be considered within the Contractor's control and shall **not** be justification for **not** charging working days.

f) Delays due to slow delivery of materials from the supplier or fabricator for reasons of priority, late ordering, financial arrangements or other such causes shall be considered within the Contractor's control and shall **not** be justification for **not** charging working days.

g) Additional working days may be granted for additional work created by adding additional items to the contract or by overrunning existing contract items. The Contractor shall, when feasible, make a written request to the Engineer for an extension in the number of working days stating the tentative number of additional working days required with sufficient documentation to establish a claim before starting the extra work.

h) The Contractor shall be notified, in writing, by the Engineer immediately following the end of each work week as to the number of working days charged in that week. Should the Contractor disagree as to the number of working days charged in that week, the Engineer shall be notified, in writing, within ten (10) calendar days of such notice and the differences shall be settled at the earliest possible date.

i) During the Christmas/New Year's holiday season, the Contractor may request that working days not be charged for projects let under the working day method. Such request shall be in writing to the Engineer. It shall be at the sole discretion of the Engineer whether to suspend charging working days. The Contractor should not assume that all requests for suspension of charging working days will be approved.

Projects that are let under the calendar day or completion date methods will not be eligible for extensions due to the Christmas/New Year's holiday season.

108.6 FAILURE TO COMPLETE THE WORK ON TIME (LIQUIDATED DAMAGES)

Should the Contractor fail to complete the work within the contract time, including any authorized extensions thereof, the Contractor shall become liable to the City of Wichita for liquidated damages at the rate specified in the following table of liquidated damages for each **working day** that the work remains uncompleted, for projects let under the working day method, and for each **calendar day** that the work remains uncompleted under either the calendar day or calendar date methods; unless stated otherwise in the Contract Documents.

Generally, the City of Wichita shall deduct and withhold liquidated damages from any monies due or coming due to the Contractor. However, if said monies are insufficient to cover the amount owing, then the Contractor or the Contractor's surety shall pay any additional amounts due. This sum shall be considered and treated not as a penalty but as predetermined, fixed, agreed, reasonable liquidated damages due the City of Wichita to compensate for the detriment to the public and to defray expenses incurred by the City due to added cost of engineering, administration, supervision, inspection, and maintenance resulting from failure to complete the work within the time specified in the contract.

By the submission of its bid for this work, the Contractor evidences and warrants to be capable of performing the work within the time specified elsewhere in the Contract documents and shall begin work as specified in the notice to proceed, and that the Contractor and its surety shall be liable for and shall pay the liquidated damages as specified.

Permitting the Contractor to continue and finish the work or any part of it after the time fixed for its completion, or after the date for which the time for completion may have been extended shall in no way operate as a waiver on the part of the City of Wichita of any of its rights under the contract.

Neither by the act of taking over the work nor by the annulment of the contract, nor by requiring the surety to complete the contract shall the City of Wichita forfeit the right to recover liquidated damages from the Contractor or the Contractor's surety for failure to complete the contract work within the specified time.

The assessment of liquidated damages as set forth in this section shall not constitute a waiver of the City of Wichita's right to collect any additional damages which the City of Wichita may sustain by failure of the Contractor to carry out the terms of the contract. Additional damage for delays would include, for example, any claims against the City of Wichita caused by the Contractor's failure to complete the contract in a timely manner.

TABLE OF LIQUIDATED DAMAGES

Amount of Original Contract	Damages/Day
Less than $100,000	$ 300.00
$100,000 or greater, but less than $500,000	$ 500.00
Over $500,000	$ 1,000.00

108.7 DEFAULT OF CONTRACT

The Contractor shall be considered in default of the contract, if but not limited to the following items, the Contractor:

a) Fails to begin the work under the contract within a reasonable time;
b) Fails to perform the work with sufficient workers and equipment or with sufficient materials to assure the prompt completion of said work;
c) Performs the work unsuitably, or neglects or refuses to remove materials or to perform anew such work as may be rejected as unacceptable and unsuitable;
d) Discontinues the prosecution of the work;
e) Fails to resume work, which has been discontinued within a reasonable time after notice to do so;
f) At any time colluded with any party or parties;
g) Becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency;
h) Allows any final judgment to stand against the Contractor unsatisfied for a period of ten days;
i) Makes an assignment for the benefit of creditors;
j) Fails to comply with contract requirements regarding minimum wage payments or applicable requirements regarding equal employment opportunity;
k) For any other cause whatsoever, fails to carry on the work in an acceptable manner, then the Engineer shall give notice, in writing, to the Contractor, and the Contractor's surety, of such delay, neglect or default, and advise them that the work must be resumed immediately.

If the Contractor or surety, within a period of 14 calendar days after the date of issuance of such notice, has not proceeded in accordance therewith, then the City will, upon written notification from the Engineer of the fact of such delay, neglect or default and the Contractor's failure to comply with such notice, have full power and authority without violating the contract to take the prosecution of the work out of the hands of the Contractor. The City may appropriate or use any or all materials and equipment on the ground as may be suitable and acceptable and may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the Engineer will be required for the completion of said contract in an acceptable manner.

All costs and charges incurred by the City, together with the cost of completing the work under contract, will be deducted from any monies due or which may become due said Contractor. If such expense exceeds the sum which would have been payable under the contract, then the Contractor and the surety shall be liable and shall pay to the City the amount of such excess.

108.8 DEFERMENT OR CANCELLATION OF CONTRACT

The City may defer or cancel the Contract or any portion thereof if conditions encountered during the progress of work make it impossible or impracticable to proceed with the work, if there are reasons beyond the Contractor's control that prevent proceeding with or completing the work as originally contemplated, if a local or national emergency exists, or if deferment of cancellation is determined by the City to be in the public interest.

When any Contract, or any portion thereof, is deferred or canceled before completion of all work in the Contract, payment shall be made for the actual items of work completed and accepted, or as mutually agreed for pay items of work partially completed or when no unit prices are included in the Contract. No claim for loss of anticipated profits will be considered.

Deferment or cancellation of the Contract or any portion thereof shall not relieve the Contractor of responsibilities for the completed work or the surety of its obligation for and concerning any just claims out of the work performed.

SECTION 109

MEASUREMENTS AND PAYMENTS

109.1 SCOPE OF PAYMENT

Payment for the various items in the Proposal will be made in accordance with the type of contract (lump sum, lump sum plus measured quantities, measured quantities, unit price measured quantities, etc.), and shall be compensation in full for furnishing all labor, materials, equipment and appurtenances necessary to complete the work in a satisfactory manner as shown on the plans and as required in the specifications, with all connections, testing, and related work completed. Each item, fixture, piece of equipment, etc., shall be complete with all necessary connections and appurtenances, for the satisfactory use and operation of said item. No additional payment will be made for work related to any items unless specifically called for in the Proposal. This compensation shall also cover all risk, loss, damage or expense of whatever character arising out of the nature of the work or the prosecution thereof.

109.2 LUMP SUM BID ITEMS

When a lump sum bid item is included in the Contract, the price bid for such item shall include all labor, materials, equipment, and any other items required to fully construct and complete the bid item.

Unless otherwise specifically covered elsewhere in these specifications, the Contract Documents, or when there are one or more specific pay items normally covered under "Clearing Right-of-way and Site Preparation" or "Site Restoration", the lump sum bid for these items shall include the following:

a) **Clearing Right-of-way and Site Preparation** - All costs for removing existing street pavement, driveway, entrance and crossroad drainage pipes, sidewalks, storm sewer pipes, mailboxes, fences, inlets, trees, hedge, shrubs and any other items requiring removal to facilitate construction of the project. Construction of temporary roadways shall also be included in site preparation, unless otherwise specified.

b) **Site Restoration** - All costs for constructing, replacing, or reconstructing gravel roadways, mailboxes, seeding, fertilizing, mulching, ditch grading, area grading of the work area, removal of temporary roadways, and any other such items requiring replacement or restoration for which a pay item is not provided in the proposal. Mulching and seeding shall be done in accordance with the "Landscaping and Seeding" section of these specifications, unless otherwise specified. Gravel road reconstruction shall be completed using a minimum total thickness of four inches of road gravel of a type approved by the Engineer.

Quantities:
Bid Proposals and project plans may or may not provide a breakdown of estimated quantities. If quantities are provided, they are an estimate only - the Contractor should make a thorough investigation of the site to determine actual quantities of work to be done.

The Contractor will be required to furnish, to the Engineer, a breakdown estimate for all lump sum bid items in the Proposal prior to starting work, unless otherwise approved by the Engineer. Such breakdown estimates will require approval by the Engineer. Breakdown estimates, which are unbalanced in the opinion of the Engineer, will not be approved.

109.3 MEASUREMENT OF QUANTITIES

When work items are measured to determine exact quantities of work completed for interim or final payments, standard units of measurement shall be used per the bid item and/or as specifically defined in the applicable sections of these specifications.

109.4 ASSIGNMENT OF PAYMENTS

The contract shall not assign payments of a contract or any portion thereof without approval of surety and written consent of the City. Any assignment of money shall be subject to all proper set off and withholdings in favor of the City and to call deductions provided for in these specifications.

109.5 CONTRACT PAYMENT TYPE

Unless otherwise specified in the contract documents, most projects let and contracted for through the City Engineer's office will be one of the five types described as follows:

Lump Sum:
A lump sum price contract shall mean that the Contractor shall perform all the work identified in the project plans and specifications for the total lump sum amount bid. Quantities provided in the bid documents are estimates only and can not be used as a basis for drawing additional payment for work that is identified in the project plans and specifications.

Lump Sum plus Measured Quantities:
Shall be the same as lump sum as described previously except one or more bid items may be identified as measured quantities for which payment shall be based on the actual, measured quantities of work completed.

Measured Quantities:
A measured quantity contract shall mean that payment for all bid items, except lump sum bid items, will be based on actual measured quantities.

Unit Price:
Shall be the same as Measured Quantities, except that quantities provided in the bid proposal are estimates only and are used for the purpose of comparing bids and awarding a contract. The actual quantities of work to be done may vary significantly from the bid quantities. This type of contact and payment is frequently used for maintenance type projects where budget is set, but the actual amount and extent of work may vary.

Unit Price plus Contract Period:
Shall be the same as Unit Price, except that the contract will also included a provision for a set period of time that the unit prices bid and the Contract is valid. Frequently used for repetitive and on going work such as sidewalk replacement and utility cut patching.

109.6 PARTIAL PAYMENTS AND RETAINAGE

Partial Payments:
Throughout the course of the construction of each project, partial payments may be made at periodic intervals generally not exceeding one calendar month, provided work was prosecuted during the time period from the previous payment. The City reserves the right not to make partial payments in increments less than $1,000 and for total project with short completion times or total contract amounts of less than $10,000.

Partial payments shall be made on the bases of actual or estimated quantities of work completed, or a percentage of total work completed, as determined by the Engineer.

Partial payments may be made to the Contractor for stored material when requested. Such requests shall be in writing to the Engineer and shall include sufficient documentation for the engineer to determine if such a request should be granted and the reasonable amount of payment. Approval of such requests shall be at the sole discretion of the Engineer.

Retainage:
Unless otherwise specified, five percent (5%) shall be retained from all partial and final payments until the project is entirely complete and accepted by the City. The project shall not be considered completed and accepted until all work required by the specifications is completed to the satisfaction of the Engineer, all defects have been corrected and all required certifications and affidavits are submitted and approved by the City.

At the sole discretion of the Engineer, partial or final Retainage may be reduced and partial or conditional certificate of completion may be issued for partial work that is fully completed and functional for use by the public

109.7 ACCEPTANCE AND FINAL PAYMENT

When the Contractor has completed the improvement provided for in the contract, and the Engineer has made a final inspection, the Engineer shall issue a written final acceptance.

Upon concurrence from the Contractor, in writing, agreeing on the total payment due the Contractor, and upon submitted and acceptance of all certificates, affidavits, list of subcontractors and suppliers, project catalogs, operating manuals, test results and material certifications, and any other submittals required by the contract documents or the Engineer, final payments shall be made to the Contractor.

The two (2) year maintenance provision whereby the Contractor is liable for any latent defects or failures shall commence on the date of the written final acceptance.

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: Abatement of Dangerous & Unsafe Structures (Districts I, IV and VI)

INITIATED BY: Office of Central Inspection

AGENDA: Consent

Recommendation: Approve the assessments and ordinances.

Background: The Office of Central Inspection supports neighborhood maintenance and improvement through abatement of public nuisances under Titles 18 and 20 of the City Code. State law and local ordinances allow the City to demolish or board up and secure private property that is in violation of Housing and/or Building Code standards, after proper notification of the responsible party/parties. A private contractor or City staff performs the work, and the Office of Central Inspection bills the cost to the property owner.

Analysis: State law and City ordinance allow placement of the demolition and board-up costs as a special property tax assessment if the property owner does not pay. Payment has not been received for the demolition and board up abatements in question, and the Office of Central Inspection is requesting permission for the Department of Finance to process the necessary special assessments.

Financial Considerations: Statements of Charges will be mailed to the property owners on May 20, 2011. The property owners have 30 days from date of statement to pay their assessment and avoid paying interest. The interest added to the principal amount will be determined by the rate at which the February 2011 bonds sold. The principal and interest will then be spread for one year and placed on the 2011 tax roll.

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

Legal Considerations: The assessments are in accordance with City Code 18.16.070, 18.16.080 and 18.16.090.

Recommendations/Actions: It is recommended that the City Council approve the proposed assessments and place the ordinances on first reading.

Attachments:. Property List – Special Assessments

Tax Key #	PIN #	Location		Amount	District #
C-01087	136246*	1600 N Piatt (aka 2035-37 E 16th)	demolition	$48,676.77	I
C-15958	161519	1427 N Broadview	demolition	$9,313.25	I
C-04607	140801	1619 N Fairmount	demolition	$23,270.25	I
B-04812	123910*	934 S Emporia	demolition	$7,334.77	I
B-04812	123910*	936 S Emporia	demolition	$8,200.77	I
D-19163	220789	2736 W Anita	demolition	$707.00	IV
D-07320-15	208129	772 N St Paul	demolition	$630.00	VI
C-01087	136246*	1600 N Piatt (aka 2035-37 E 16th)	gas removal	$355.27	I
C-01087	136246*	1600 N Piatt (aka 2035-37 E 16th)	sealing Sewer	$367.50	I
D-17496	218700	708 N Anna	sealing Sewer	$577.50	VI
B-02600	121262	346 N Pennsylvania	emergency board-up	$148.00	I
C-59671	535415	4610 E Falcon	emergency board-up	$86.06	I
A-01219	100485	320 W 12th St	emergency board-up	$289.23	VI
B-07311	126891	1017 S Hydraulic	emergency board-up	$170.73	I
C-00346	135206	433 N Grove	emergency board-up	$124.49	I
B-03022	121737	935 N Ohio	emergency board-up	$140.22	I
C-01033	136176	1347 N Minnesota	emergency board-up	$174.89	I

____ Published in the Wichita Eagle on **May 20, 2011**

ORDINANCE NO**. 49-006**

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR THE REMOVAL OF CERTAIN STRUCTURES, BEING DANGEROUS AND UNSAFE BUILDINGS WHICH HAVE BEEN DECLARED A NUISANCE **(BUILDING EMERGENCY BOARD-UP)** UNDER THE PROVISION OF SECTIONS 18.16.010 TO 18.16.090 OF THE CODE OF THE CITY OF WICHITA, KANSAS

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

SECTION 1. That the sum set opposite the following lots, herein specified, be and the same is hereby levied to pay the cost of removal of certain structures, being dangerous and unsafe buildings which have been declared a nuisance under the provisions of Sections 18.16.010 to 18.16.090 of the Code of the City of Wichita, Kansas, located and situated upon the following described property:

Legal of Parcel in Benefit District	**Assessment**
LOT 43 PENNSYLVANIA AVE. MATHEWSON'S 4TH. ADD.	148.00
LOT 5 BLOCK B EAGLES LANDING AT NORTH OLIVER 3RD	86.06
E 39 1/2 FT LOT 1201 WACO AVE. LEWELLEN ADD.	289.23
LOTS 7-8 SALISBURY ADD.	170.73
LOTS 21-23 OHIO AVE. MOORE'S ADD.	140.22
LOT 16 & N 8 1/3 FT LOT 17 ROACH'S SUB.	124.49
LOTS 118-119 ROSENTHAL'S 2ND. ADD.	174.89

SECTION 2. The sum so assessed and apportioned against the lots herein before set out and not paid within 30 days from date of notice sent out by the Debt Management Office of the Department of Finance as provided by law, shall be collected by special assessment upon the property liable therefore in one installment and placed upon the tax roll for the year **2011** and shall be certified to the County Clerk and shall be levied and collected in the same manner as other taxes, and the Debt Management Office of the Department of Finance is hereby directed to give written notice to property owner(s) owning property assessed herein, as required by law.

SECTION 3. This ordinance shall take effect and be in force from and after its

publication once in the official City paper.

ADOPTED, at Wichita, Kansas, this **17th day of May, 2011**.

_____

Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

(SEAL)

Approved as to form

_____

Gary E. Rebenstorf, Director of Law

230200 **6 Affidavits**
6733 A81443

____ Published in the Wichita Eagle on **May 20, 2011**

ORDINANCE NO**. 49-007**

AN ORDINANCE MAKING A SPECIAL ASSESSMENT TO PAY FOR THE REMOVAL OF CERTAIN STRUCTURES, BEING DANGEROUS AND UNSAFE BUILDINGS WHICH HAVE BEEN DECLARED A NUISANCE **(BUILDING CONDEMNATION-DEMOLITION)** UNDER THE PROVISION OF SECTIONS 18.16.010 TO 18.16.090 OF THE CODE OF THE CITY OF WICHITA, KANSAS

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

SECTION 1. That the sum set opposite the following lots, herein specified, be and the same is hereby levied to pay the cost of removal of certain structures, being dangerous and unsafe buildings which have been declared a nuisance under the provisions of Sections 18.16.010 to 18.16.090 of the Code of the City of Wichita, Kansas, located and situated upon the following described property:

Legal of Parcel in Benefit District	**Assessment**
LOTS 48-50-52-54 EXC E 3 FT TKN FOR ST GUY NOW PIATT AVE LOGAN ADD	49,399.54
LOT 5 BLOCK W UNIVERSITY PARK ADD.	9,313.25
LOTS 77-79-81 FAIRMOUNT AVE. FAIRMOUNT ADD.	23,270.25
S 17 FT LOT 100 & N 16 2/3 FT LOT 102 BLOCK 13 ORME & PHILLIPS ADD.	15,535.54
LOTS 58-60 BLOCK 26 ORIENTA PARK 2ND ADD	707.00
LOT 47 SIM PARK GARDENS ADD.	630.00
LOT 9 GROVE'S ADD.	577.50

SECTION 2. The sum so assessed and apportioned against the lots herein before set out and not paid within 30 days from date of notice sent out by the Debt Management Office of the Department of Finance as provided by law, shall be collected by special assessment upon the property liable therefore in one installment and placed upon the tax roll for the year **2011** and shall be certified to the County Clerk and shall be levied and collected in the same manner as other taxes, and the Debt Management Office of the Department of Finance is hereby directed to give written notice to property owner(s) owning property assessed herein, as required by law.

SECTION 3. This ordinance shall take effect and be in force from and after its publication once in the official City paper.

ADOPTED, at Wichita, Kansas, this **17th day of May, 2011**.

_____

Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

(SEAL)

Approved as to form

_____

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: Transit Service Agreement for Oaklawn Improvement District (District III)

INITIATED BY: Wichita Transit

AGENDA: Consent Agenda

Recommendation: Approve the agreement to allow Wichita Transit to provide transit service to the Oaklawn Improvement District.

Background: For the past several years, Wichita Transit has provided fixed-route and paratransit van service to the Oaklawn Improvement District. Currently, Sedgwick County reimburses Wichita Transit for the actual cost of providing such service according to a year-by-year contractual agreement. The purpose of this action is to establish the contractual agreement for 2011, with an option to renew the agreement for two successive one-year terms in 2012 and 2013.

Analysis: Wichita Transit provides fixed-route bus service to the Oaklawn area. Paratransit service is also provided to Oaklawn based on ADA guidelines, (which require service in areas where fixed-route service is provided). In 2010, an estimated 567 hours of fixed-route service was provided. The estimated hourly cost for this service is $53.51 ($76.44 per hour less revenues and federal funding credit). Paratransit service cost, minus revenues, is estimated at $9.45 per trip, with an estimated 53 trips per month to be provided in 2011.

Financial Considerations: Based on the projected service levels, the total projected revenue from the 2011 agreement will be $34,214 after deducting passenger revenues and federal credit. The adopted 2011 budget includes the expenditure authority necessary to provide the service.

Goal Impact: To Ensure Efficient Infrastructure by maintaining and optimizing public facilities and assets.

Legal Consideration: The Law Department has approved the agreement as to form. City Council approval is required for contracts in excess of $25,000.

Recommendations/Actions: Approve the agreement and authorize the necessary signatures.

Attachments: Transit Service Agreement (Oaklawn Improvement District).

4369-5

TRANSIT SERVICE AGREEMENT
(Oaklawn Improvement District)

THIS AGREEMENT, made and entered into on the 30th day of March, 2011, by and between the City of Wichita, Kansas, hereafter referred to as "City," and Sedgwick County, Kansas, hereafter referred to as "County."

WITNESSETH:

WHEREAS, County desires to provide public transportation to a certain unincorporated area of Sedgwick County located within and around the general vicinity of the Oaklawn Improvement District; and

WHEREAS, City operates Wichita Transit, which provides public transportation throughout the City of Wichita; and

WHEREAS, County desires to contract with City to provide public transportation through Wichita Transit to said unincorporated area of Sedgwick County.

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

1. City, through Wichita Transit, agrees to provide public transportation to the unincorporated area of Sedgwick County located within and around the general vicinity of the Oaklawn Improvement District through the extension of a bus route to said area by way of Wichita Transit's regular route service. In addition, City will provide paratransit van services to meet Americans With Disabilities Act (ADA) guidelines.

2. Route service will operate Monday through Saturday and will run a minimum of eighteen (18) one-way trips per day. Paratransit services will operate Monday through Saturday and will be provided under present program guidelines. Trip totals are subject to change as demand and/or revenues require, with proper coordination between City and County.

3. County agrees to pay the City's actual costs to operate said services to the Oaklawn Improvement District, which, for 2011, is estimated to cost $34,214.00. City's costs for this service will not exceed this amount without County approval. After incurring actual costs up to this estimated level, City shall not be obligated to provide additional service absent County's agreement to pay all additional and reasonable costs.

4. City agrees to bill County on a quarterly basis and provide, at the same time, an operating report on the Oaklawn service, which will include ridership trips, passenger fare revenue, and other pertinent information.

5. City shall have sole discretion as to the time, means, and methods of providing bus service on the Oaklawn service, and the only obligation of County pertaining thereto and the only liability assumed by County hereunder is to pay the costs required in paragraph 3 above.

6. Either party may terminate this Agreement upon thirty (30) days' advance written notice to the other party. Such notice may be hand-delivered or sent via first-class mail. Notice must be given by City to the County Clerk, Sedgwick County Counselor's Office, and the director of the Sedgwick County Division of Community Development. Notice must be given by the County to the City Clerk, City of Wichita Department of Law, and the General Manager of Wichita Transit.

7. The term of this Agreement shall be for the period commencing January 1, 2011, and ending on December 31, 2011, with an option to renew the Agreement under the same terms and conditions for two (2) successive one (1)-year terms by mutual written agreement of the parties.

8. This Agreement is not intended to and, in fact, does not create a partnership or joint venture relationship between the parties hereto. City shall be an independent contractor to County for purposes of this Agreement.

9. The right of the City and County to enter into this agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This agreement shall be construed and interpreted so as to ensure that the City and County shall, at all times, stay in conformity with such laws and, as a condition of this Agreement, the City and County reserve the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be reasonably deemed to violate the terms of such laws.

10. This Agreement constitutes the complete agreement between the parties hereto. No amendment, waiver, or modification of this agreement shall be effective unless reduced to writing and signed by the parties hereto.

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

SEDGWICK COUNTY, KANSAS
Board of County Commissioners

David M. Unruh, Chairman

Attest:

Kelly Arnold, County Clerk

Approved as to form:

Bill H. Raymond
Asst. County Counselor

CITY OF WICHITA, KANSAS
By order of the City Council

Carl Brewer, Mayor

Attest:

Karen Sublett, City clerk

Approved as to form:

Gary E. Rebenstorf
Director of Law and City Attorney

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

SUBJECT: Notice of Intent to Use Debt Financing Amendment
Fuel Farm Relocation Study and Improvements

INITIATED BY: Department of Airports

AGENDA: Consent

Recommendation: Adopt the Amended Resolution.

Background: The Airport Authority relies on the City of Wichita for the issuance of General Obligation bonds and/or notes for capital projects. In order to use debt financing for a project it is necessary to declare that a public necessity exists for, and that the public safety, service and welfare will be advanced by, the authorization of certain capital improvements to the Mid-Continent Airport facility. Additionally, the nature of said improvements, the estimated costs thereof and the manner of payment needs to be disclosed. The actual issuance of the bonds/notes will require a separate authorization from the City Council. Debt financing can be in the form of temporary notes for durations as short as six months for timing considerations or the form of General Obligation bonds for long term financing.

Resolution No. 08-397 was adopted on August 5, 2008 finding the existence of a public necessity for a Fuel Farm Relocation Study at an estimated cost of $70,000. Resolution No. 10-033 was adopted on February 9, 2010, amending the project description and increasing the estimated cost to $270,000.

Analysis: On May 10, 2011, the City Council, sitting as the Wichita Airport Authority, will be asked to increase the budget of the Fuel Farm Relocation Study and Fuel Farm Improvements project to allow for additional design services related to the concrete loading islands, security fencing and vehicle gate for the bulk fuel farm at Mid-Continent Airport. It is appropriate to make notice of the intent to use debt financing for this project with the specific financing amount and length being identified when the actual issuance of the bonds/notes are authorized in the future by City Council.

Financial Considerations: The total budget approved for study and design services is $300,000, which represents the maximum cost that will be financed with General Obligation bonds/notes. The source of repayment for the bonds/notes will be Airport revenues.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is leveraged through the use of financing for capital projects.

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

Recommendation/Action: It is recommended that the City Council adopt the Amended Resolution and authorize the necessary signatures.

Attachments: Authorizing Resolution.

OCA = 501826; UC1 = 1003

Published in the Wichita Eagle May 13, 2011

RESOLUTION NO. 11-109

A RESOLUTION AMENDING RESOLUTION NO. 08-397, DECLARING THAT A PUBLIC NECESSITY EXISTS FOR, AND THAT THE PUBLIC SAFETY, SERVICE AND WELFARE WILL BE ADVANCED BY, THE AUTHORIZATION OF LAND ACQUISITION AND/OR CERTAIN CAPITAL IMPROVEMENTS TO THE WICHITA MID-CONTINENT AIRPORT FACILITY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS; THE ESTIMATED COSTS THEREOF; AND THE MANNER OF PAYMENT OF SAME.

WHEREAS, K.S.A. 3-114 provides that an airport authority established pursuant to K.S.A. 3-162 shall have the power to equip, improve and maintain an airport; and,

WHEREAS, K.S.A. l3-1348a provides that a city having an airport authority established pursuant to K.S.A. 3-162 is authorized to issue general obligation bonds for the purpose of purchasing land for airport purchases or for the construction, enlargement, reconstruction, repair or addition to or of any improvements to any such lands; and,

WHEREAS, Resolution No. 08-397 of the City of Wichita, Kansas, adopted on August 5, 2008 and published on August 8, 2008, found the existence of public necessity for a Fuel Farm Relocation Study, and approved the payment and financing of the same, at an estimated cost of $70,000, exclusive of the cost in interest on borrowed money; and,

WHEREAS, Resolution No. 10-033 of the City of Wichita, Kansas, adopted on February 9, 2010 and published on February 12, 2010, amended the project description and increased the estimated cost to $270,000, exclusive of the cost in interest on borrowed money; and,

WHEREAS, it has now become necessary to amend Resolution No. 08-397 to expand the Project approved therein to add certain additional design elements to the project.

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

SECTION 1. That Section 2 of Resolution No. 08-397 is hereby amended to read as follows:

> "SECTION 2. That the cost of the above described Project is estimated to be Three Hundred Thousand Dollars ($300,000), exclusive of the cost of interest on borrowed money, and is to be paid by the Wichita Airport Authority of the City of Wichita. Said Wichita Airport Authority cost shall be financed through the issuance of general obligation bonds under the authority of K.S.A. l3-1348a, as amended by Charter Ordinance No. 78 of the City of Wichita, Kansas. The maximum principal amount of bonds issued for this Project shall not exceed $300,000."

SECTION 3. That, to the extent the Project is a capital improvement, the above described Project shall be made in accordance with the Plans and Specifications prepared under the direction of the Airport Engineering and Planning Manager and approved by the Wichita Airport Authority. Said plans and specifications are to be placed on file in the office of the Airport Engineering and Planning Manager located at Wichita Mid-Continent Airport.

SECTION 4. That the original versions of Sections 1 and 2 of Resolution No. 08-397, as the same previously existed, are hereby repealed and replaced with the amended versions set forth herein.

SECTION 5. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

ADOPTED at Wichita, Kansas, May 10, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council Members

SUBJECT: Removal of Nuisance Abatement Special Property Tax Assessments
2450 South Leonine (Districts IV)

INITIATED BY: Office of Central Inspection

AGENDA: Consent

Recommendation: Approve and authorize removal of City of Wichita nuisance abatement special property tax assessments on property at 2450 South Leonine, which were previously approved for assessment by the City Council.

Background: The Office of Central Inspection supports neighborhood code enforcement through abatement of nuisances under Titles 7 and 8 of the City Code. State statutes and City ordinances allow the City to abate properties that are in violation of environmental standards after proper notification to responsible parties. Private contractors perform the work, and the Office of Central Inspection bills the cost of abatement to property owners. State statutes and City ordinances allow placement of billed but unpaid abatement costs as special property tax assessments after City Council approval.

Analysis: On February 10, 2009, the City Council approved special property tax assessments of unpaid tall grass and weed abatement billings for 720 properties, including a $120.24 assessment for 2450 South Leonine (Tax Key: D-29964-0001). On January 26, 2010, the City Council approved special property tax assessments of unpaid weed abatement billings for 178 properties, including a $169.43 assessment for 2450 South Leonine. The owner of record of the property at 2450 South Leonine was issued notices to cut tall grass and weeds in both 2008 and 2009. The Office of Central Inspection ordered its contract mower to cut tall grass and weeds on the property in each of these years, the costs of which were ultimately assessed against the property. However, a recent review of the weed abatement files (after an appeal from the property owner) indicates the property had been mowed between the time of issuance of notices to the owner and dispatch of Central Inspection's contract weed mower (the contract mower simply cut and trimmed some grass and weeds in the City's right-of-way near/around a couple of telephone poles). Furthermore, the property owner did not receive the bills for weed cutting prior to authorization of the weed abatement special assessments. The costs of the abatement actions were improperly assessed and the special tax assessments for tall grass and weed cutting should be removed.

Financial Considerations: The Office of Central Inspection's tall grass and weeds abatement contractor is paid through budgeted appropriations from the City's General Fund. Placement of special property tax assessments provides for potential reimbursement of these expenditures to the City. Removal of the special property tax assessments for 2450 South Leonine has a total value of $289.67.

Goal Impact: The abatement and assessment program supports Core Area and Vibrant Neighborhoods by continuing cleanup and abatement for properties that are detrimental to Wichita neighborhoods.

Legal Considerations: Upon City Council approval, the City's Debt Coordinator may be directed to prepare necessary paperwork to remove the special property tax assessments.

Recommendation/Action: It is recommended that the City Council approve removal of the nuisance abatement special property tax assessments for the property at 2450 South Leonine.

Attachments: None.

City of Wichita
City Council Meeting
May 19, 2011

TO: Mayor and City Council

SUBJECT: Street Closure: Arkansas at 32nd Street North (District VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the street closure.

Background: Danco Construction Co., Inc. has contracted to install a storm drain in 32nd Street North. This project was approved by the City Council on April 12, 2011. The contractor will need to avoid damage to numerous underground utilities during the installation of the drainage system across Arkansas. A 10 day closure of Arkansas will be required to install the stormwater sewer through the intersection area. The present progress of the project will cause the installation of the storm drain at the intersection area to begin during the second or third week of May, 2011.

Analysis: Danco Construction Co., Inc. is responsible for the placement of the required detour and construction signs and barricades and the notification of area businesses and residents. During the closure, traffic on Arkansas will be detoured using 33rd Street North, Broadway, and 29th Street North.

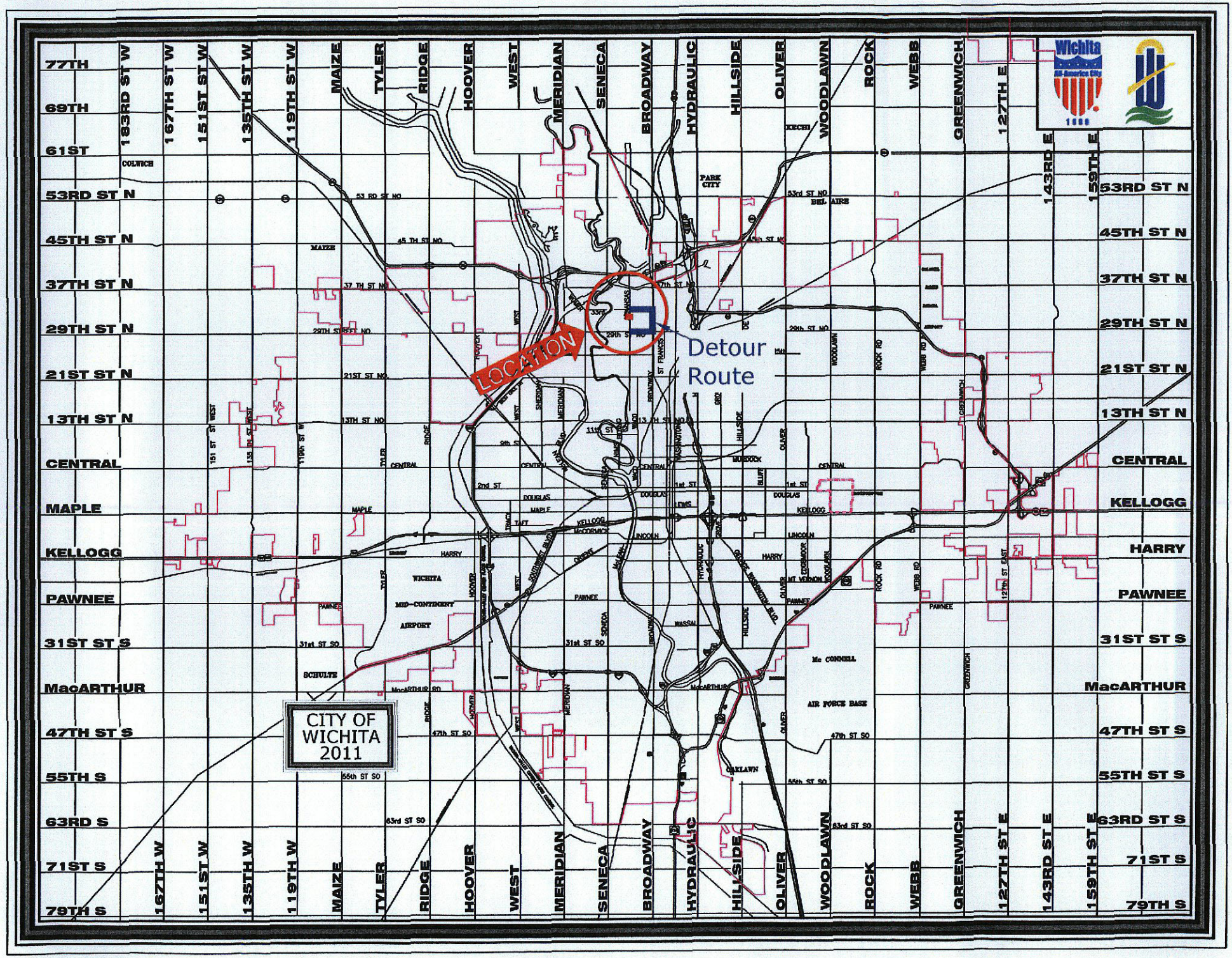
Financial Consideration: There is no cost to the City.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving the removal of storm water in the adjacent area.

Legal Consideration: None.

Recommendation/Actions: It is recommended that the City Council approve the street closure.

Attachment: Map


LOCATION
Detour Route
CITY OF WICHITA 2011
77TH
69TH
61ST
53RD ST N
45TH ST N
37TH ST N
29TH ST N
21ST ST N
13TH ST N
CENTRAL
MAPLE
KELLOGG
PAWNEE
31ST ST S
MacARTHUR
47TH ST S
55TH S
63RD S
71ST S
79TH S
183RD ST W
167TH ST W
151ST ST W
135TH ST W
119TH ST W
MAIZE
TYLER
RIDGE
HOOVER
WEST
MERIDIAN
SENECA
BROADWAY
HYDRAULIC
HILLSIDE
OLIVER
WOODLAWN
ROCK
WEBB
GREENWICH
127TH E
143RD E
159TH E
127TH ST E
143RD ST E
159TH ST E
53RD ST N
45TH ST N
37TH ST N
29TH ST N
21ST ST N
13TH ST N
CENTRAL
KELLOGG
HARRY
PAWNEE
31ST ST S
MacARTHUR
47TH ST S
55TH ST S
63RD ST S
71ST S
79TH S
WICHITA MID-CONTINENT AIRPORT
Mc CONNELL AIR FORCE BASE
PARK CITY
BEL AIRE
OAKLAWN

Second Reading Ordinances for May 10, 2011 (first read on May 3, 2011)

Proposed amendment to Section 4.12.020 of the Code of the City of Wichita providing for temporary permits to sell cereal malt beverage for consumption on the premises of a special event.

ORDINANCE NO. 49-002

An ordinance amending Section 4.12.020 of the code of the City of Wichita, Kansas, pertaining to licenses to sell cereal malt beverage and establishing a special event permit to sell cereal malt beverage within the City and repealing the original of said section.

Agenda Item No. II-17

City of Wichita
City Council Meeting
May 10, 2011

TO: Mayor and City Council

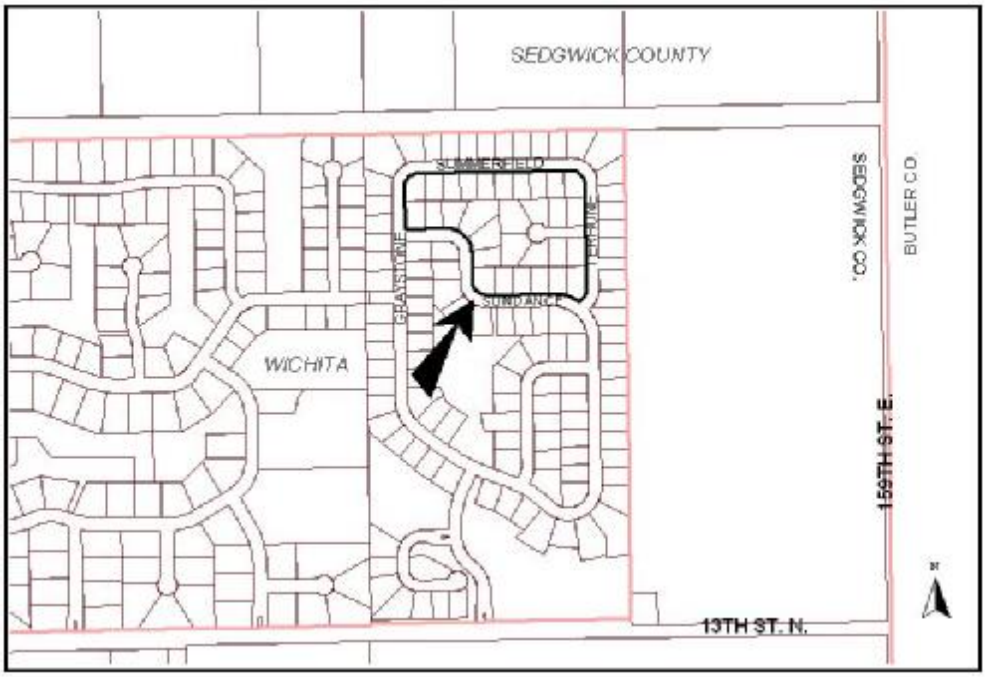
SUBJECT: SUB2011-00005 -- Plat of Stonebridge 3rd Addition located north of 13th Street North, west of 159th Street East. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve the plat.

MAPC Recommendation: Approve the plat. (13-0)



Background: The site, consisting of 26 lots on 10.5 acres, is a replat of a portion of the Stonebridge 2nd Addition. The site is located within Wichita and is zoned SF-5 Single-family Residential.

Analysis: The applicant has submitted 100 percent Petitions and a Certificate of Petitions for water, sewer, paving and drainage improvements. The applicant has submitted a Restrictive Covenant to provide for the ownership and maintenance of the reserves.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

Financial Considerations: There are no financial considerations associated with the plat.

Goal Impact: Approval of the plat will Ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

Legal Considerations: The Certificate of Petition, Restrictive Covenant and Resolutions have been approved as to form by the Law Department and will be recorded by the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the documents and plat, authorize the necessary signatures and adopt the Resolutions.

Attachments: Certificate of Petitions
Restrictive Covenant
Resolutions

132019

First Published in the Wichita Eagle on May 13, 2011

RESOLUTION NO. 11-110

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90294 (NORTH OF 13TH, WEST OF 159TH ST. EAST) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90294 (NORTH OF 13TH, WEST OF 159TH ST. EAST) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 07-281 adopted on May 1, 2007 and Resolution No. 11-040 adopted on March 22, 2011 are hereby rescinded.

SECTION 2. That it is necessary and in the public interest to construct Water Distribution System Number 448-90294 (north of 13th, west of 159th St. East).

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to be One Hundred Nine Thousand Dollars ($109,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after May 1, 2011, exclusive of the costs of temporary financing.

That in accordance with the provisions of K.S.A. 12-6a19, a benefit fee be assessed against the improvement district with respect to the improvement district's share of the cost of the existing water main, such benefit fee to be in the amount of Eighteen Thousand Eight Hundred Thirty-Three Dollars ($18,833).

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

STONEBRIDGE 2ND ADDITION
Lots 16 through 19, Block A
Lots 1 through 3, Block B
Lots 5 through 25, Block D
Lots 6 through 8, Block E
Lots 1 through 8, Block F

STONEBRIDGE 3RD ADDITION
Lots 1 through 12, Block A

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 16 through 19, Block A, Lots 1 through 3, Block B, Lots 5 through 25, Block D, Lots

6 through 8, Block E, and Lots 1 through 8, Block F, STONEBRIDGE 2ND ADDITION, shall each pay 1/51 of the total cost of the improvements, and Lots 1 through 12, Block A, STONEBRIDGE 3RD ADDITION, shall each pay 1/51 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended and K.S.A. 12-693.

SECTION 9. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of May, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

132019

First Published in the Wichita Eagle on May 13, 2011

RESOLUTION NO. 11-111

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90295 (WEST OF 159TH ST. EAST, NORTH OF 13TH) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90295 (WEST OF 159TH ST. EAST, NORTH OF 13TH) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 07-282 adopted on May 1, 2007 is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to construct Water Distribution System Number 448-90295 (west of 159th St. East, north of 13th).

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to be Seventy-Eight Thousand Dollars ($78,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after May 1, 2011, exclusive of the costs of temporary financing.

That in accordance with the provisions of K.S.A. 12-6a19, a benefit fee be assessed against the improvement district with respect to the improvement district's share of the cost of the existing water main, such benefit fee to be in the amount of Twelve Thousand Seven Hundred Eight Dollars ($12,708).

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

STONEBRIDGE 2ND ADDITION
Lots 4 through 23, Block B

STONEBRIDGE 3RD ADDITION
Lots 13 through 26, Block A

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 4 through 23, Block B, STONEBRIDGE 2ND ADDITION, shall each pay 1/34 of the total cost of the improvements, and Lots 13 through 26, Block A, STONEBRIDGE 3RD ADDITION, shall each pay 1/34 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the

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

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended and K.S.A. 12-693.

SECTION 9. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of May, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

APPROVED AS TO FORM:

_____
GARY E REBENSTORF
DIRECTOR OF LAW

132019

First Published in the Wichita Eagle on May 13, 2011

RESOLUTION NO. 11-112

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF LATERAL 2, MAIN 19, FOUR MILE CREEK SEWER (NORTH OF 13TH, WEST OF 159TH ST. EAST) 468-84147 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF CONSTRUCTING AND RESOLUTION AUTHORIZING
CONSTRUCTION OF LATERAL 2, MAIN 19, FOUR MILE CREEK SEWER (NORTH OF 13TH, WEST OF 159TH ST. EAST) 468-84147 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO- WIT:

SECTION 1. That Resolution No. 06-071 adopted on February 14, 2006, Resolution No. 07-285 adopted on May 1, 2007 and Resolution No. 11-041 adopted on March 22, 2011 are hereby rescinded.

SECTION 2. That it is necessary and in the public interest to construct Lateral 2, Main 19, Four Mile Creek Sewer (north of 13th, west of 159th St. East) 468-84147.

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for hereof is estimated to be Two Hundred Twelve Thousand Dollars ($212,000), exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after May 1, 2011 exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within
the improvement district described as follows:

STONEBRIDGE 2ND ADDITION
Lots 5 through 25, Block D
Lots 1 through 8, Block F

STONEBRIDGE 3RD ADDITION
Lots 1 through 16, Block A

SECTION 5. That the method of apportioning all costs of said improvements attributable to the owners of land liable for assessment shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 5 through 25 Block D, and Lots 1 through 8, Block F, STONEBRIDGE 2ND ADDITION shall each pay 1/45 of the total cost of the improvements, and Lots 1 through 16, Block A, STONEBRIDGE 3RD ADDITION shall each pay 1/45 of the

total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended and K.S.A. 12-693.

SECTION 9. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of May, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW
132019

First Published in the Wichita Eagle on May 13, 2011

RESOLUTION NO. 11-113

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF LATERAL 3, MAIN 19, FOUR MILE CREEK SEWER (NORTH OF 13TH, WEST OF 159TH ST. EAST) 468-84148 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF CONSTRUCTING AND RESOLUTION AUTHORIZING CONSTRUCTION OF LATERAL 3, MAIN 19, FOUR MILE CREEK SEWER (NORTH OF 13TH, WEST OF 159TH ST. EAST) 468-84148 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO- WIT:

SECTION 1. That Resolution No. 06-072 adopted on February 14, 2006, Resolution No. 07-219 adopted on April 3, 2007 and Resolution No. 07-286 adopted on May 1, 2007 are hereby rescinded.

SECTION 2. That it is necessary and in the public interest to construct Lateral 3, Main 19, Four Mile Creek Sewer (north of 13th, west of 159th St. East) 468-84148.

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for hereof is estimated to be One Hundred Thirty-Five Thousand Dollars ($135,000), exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after May 1, 2011 exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

STONEBRIDGE 2NDADDITION
Lots 8 through 23, Block B

STONEBRIDGE 3RD ADDITION
Lots 17 through 26, Block A

SECTION 5. That the method of apportioning all costs of said improvements attributable to the owners of land liable for assessment shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 8 through 23, block B, STONEBRIDGE 2ND ADDITION, shall each pay 1/26 of the total cost of the improvements, and Lots 17 through 26, Block A, STONEBRIDGE 3RD ADDITION, shall each pay 1/26 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be

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

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended and K.S.A. 12-693.

SECTION 9. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of May, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E REBENSTORF
DIRECTOR OF LAW

132019

First Published in the Wichita Eagle on May 13, 2011

RESOLUTION NO. 11-114

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING IMPROVING STORM WATER DRAIN NO. 371 (NORTH OF 13TH, EAST OF 143RD ST. EAST) 468-84734 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING STORM WATER DRAIN NO. 371 (NORTH OF 13TH, EAST OF 143RD ST. EAST) 468-84734 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 11-042, adopted on March 22, 2011 is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to improve Storm Water Drain No. 371 (north of 13th, east of 143rd St. East) 468-84734.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to be Three Hundred Nine Thousand Dollars ($309,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after May 1, 2011, exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

STONEBRIDGE 2ND ADDITION
Lots 16 through 19, Block A
Lots 1 through 23, Block B
Lots 5 through 25, Block D
Lots 6 through 8, Block E
Lots 1 through 8, Block F

STONEBRIDGE 3RD ADDITION
Lots 1 through 26, Block A

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis:

> The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 16 through 19, Block A, Lots 1 through 23, Block B, Lots 5 through 25, Block D, Lots 6 through 8, Block 3, and Lots 1 through 8, Block F, STONEBRIDGE 2ND ADDITION, shall each pay 1/85 of the total cost of the improvements, and Lots 1 through 26, Block A, STONEBRIDGE 3RD ADDITION, shall each pay 1/85 of the total of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq. as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of May, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

132019

First Published in the Wichita Eagle on May 13, 2011

RESOLUTION NO. 11-115

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON GRAYSTONE FROM THE NORTH LINE OF LOT 3, BLOCK B, SOUTH TO THE NORTH LINE OF LOT 4, BLOCK D; ON SUNDANCE FROM THE WEST LINE OF THE PLAT EAST TO THE WEST LINE OF GRAYSTONE; ON SUNDANCE FROM THE EAST LINE OF GRAYSTONE, EAST TO THE WEST LINE OF TERHUNE; ON TERHUNE FROM THE NORTH LINE OF LOT 1, BLOCK F, SOUTH TO THE NORTH LINE OF LOT 9, BLOCK F; AND ON RIDGEHURST FROM THE WEST LINE OF TERHUNE, WEST AND SOUTH TO THE NORTH LINE OF LOT 5, BLOCK E AND THAT SIDEWALK BE CONSTRUCTED ON ONE SIDE OF GRAYSTONE, SUNDANCE, TERHUNE AND RIDGEHURST (NORTH OF 13TH, WEST OF 159TH ST. EAST) 472-84592 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON GRAYSTONE FROM THE NORTH LINE OF LOT 3, BLOCK B, SOUTH TO THE NORTH LINE OF LOT 4, BLOCK D; ON SUNDANCE FROM THE WEST LINE OF THE PLAT EAST TO THE WEST LINE OF GRAYSTONE; ON SUNDANCE FROM THE EAST LINE OF GRAYSTONE, EAST TO THE WEST LINE OF TERHUNE; ON TERHUNE FROM THE NORTH LINE OF LOT 1, BLOCK F, SOUTH TO THE NORTH LINE OF LOT 9, BLOCK F; AND ON RIDGEHURST FROM THE WEST LINE OF TERHUNE, WEST AND SOUTH TO THE NORTH LINE OF LOT 5, BLOCK E AND THAT SIDEWALK BE CONSTRUCTED ON ONE SIDE OF GRAYSTONE, SUNDANCE, TERHUNE AND RIDGEHURST (NORTH OF 13TH, WEST OF 159TH ST. EAST) 472-84592 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 07-489 adopted on August 28, 2007 and Resolution No. 11-043 adopted on March 22, 2011 are hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on Graystone from the north line of Lot 3, Block B, south to the north line of Lot 4, Block D; on Sundance from the west line of the plat east to the west line of Graystone; on Sundance from the east line of Graystone, east to the west line of Terhune; on Terhune from the north line of Lot 1, Block F, south to the north line of Lot 9, Block F; and on Ridgehurst from the west line of Terhune, west and south to the north line of Lot 5, Block E and that sidewalk be constructed on one side of Graystone, Sundance, Terhune and Ridgehurst (north of 13th, west of 159th St. East) 472-84592.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to Five Hundred Eighty-Nine Thousand Dollars ($589,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after May 1, 2011 exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

STONEBRIDGE 2ND ADDITION
Lots 16 through 19, Block A
Lots 1 through 3, Block B
Lots 5 through 25, Block D
Lots 6 through 8, Block E
Lots 1 through 8, Block F

STONEBRIDGE 3RD ADDITION
Lots 1 through 12, Block A

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 16 through 19, Block A, Lots 1 through 3, Block B, Lots 5 through 25, Block D, Lots 6 through 8, Block E, and Lots 1 through 8, Block F, STONEBRIDGE 2ND ADDITION, shall each pay 1/51 of the total cost of the improvements, and Lots 1 through 12, Block A, STONEBRIDGE 3RD ADDITION, shall each pay 1/51 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of May, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

132019

First Published in the Wichita Eagle on May 13, 2011

RESOLUTION NO. 11-116

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON GRAYSTONE, FROM THE NORTH LINE OF LOT 3, BLOCK B, NORTH TO THE SOUTH LINE OF SUMMERFILD; ON SUMMERFIELD FROM THE WEST LINE OF GRAYSTONE, EAST TO THE EAST LINE OF TERHUNE, ON TERHUNE FROM THE SOUTH LINE OF SUMMERFIELD, SOUTH TO THE NORTH LINE OF LOT 1, BLOCK F, AND ON SUNDANCE, FROM THE EAST LINE OF TERHUNE EAST TO THE EAST LINE OF THE PLAT AND THAT SIDEWALK BE CONSTRUCTED ON ONE SIDE OF GRAYSTONE, SUMMERFIELD, TERHUNE, AND SUNDANCE (NORTH OF 13TH, WEST OF 159TH ST. EAST) 472-84593 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON GRAYSTONE, FROM THE NORTH LINE OF LOT 3, BLOCK B, NORTH TO THE SOUTH LINE OF SUMMERFILD; ON SUMMERFIELD FROM THE WEST LINE OF GRAYSTONE, EAST TO THE EAST LINE OF TERHUNE, ON TERHUNE FROM THE SOUTH LINE OF SUMMERFIELD, SOUTH TO THE NORTH LINE OF LOT 1, BLOCK F, AND ON SUNDANCE, FROM THE EAST LINE OF TERHUNE EAST TO THE EAST LINE OF THE PLAT AND THAT SIDEWALK BE CONSTRUCTED ON ONE SIDE OF GRAYSTONE, SUMMERFIELD, TERHUNE, AND SUNDANCE (NORTH OF 13TH, WEST OF 159TH ST. EAST) 472-84593 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 07-490 adopted on August 28, 2007 is hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on Graystone, from the north line of Lot 3, Block B, north to the south line of Summerfild; on Summerfield from the west line of Graystone, east to the east line of Terhune, on Terhune from the south line of Summerfield, south to the north line of Lot 1, Block F, and on Sundance, from the east line of Terhune east to the east line of the plat and that sidewalk be constructed on one side of Graystone, Summerfield, Terhune, and Sundance (north of 13th, west of 159th St. east) 472-84593.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to Three Hundred Seventy-Eight Thousand Dollars ($378,000) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after May 1, 2011 exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

STONEBRIDGE 2ND ADDITION
Lots 4 through 23, Block B

STONEBRIDGE 3RD ADDITION
Lots 13 through 26, Block A

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

The fractional shares provided for herein have been determined on the basis of equal shares being assessed to lots or parcels of substantially comparable size and/or value: Lots 4 through 23, Block B, STONEBRIDGE 2ND ADDITION, shall each pay 1/34 of the total cost of the improvements, and Lots 13 through 26, Block A, STONEBRIDGE 3RD ADDITION shall each pay 1/34 of the total cost of the improvements.

In the event all or part of the lots or parcels in the improvement district are replatted before assessments have been levied, the assessments against the replatted area shall be recalculated on the basis of the method of assessment set forth herein. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of May, 2011.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

CERTIFICATE OF PETITION

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

We, FLKS Land Development, LLC, LLC, a Kansas Limited Liability Company, owners of STONEBRIDGE 3RD ADDITION, Wichita, Sedgwick County, Kansas, do hereby certify that petition(s) for the following improvements have been submitted to the City Council of the City of Wichita, Kansas:

1. Sanitary Sewer Improvements
2. Water Line Improvements
3. Pavement Improvements
4. Storm Water Drain Improvements

As a result of the above-mentioned petition(s) for improvements, all lots or portions thereof within Stonebridge 3rd Addition, may be subject to special assessments assessed thereto for the cost of constructing the above-described improvements.

Signed this 14th day of April, 2011.

FLKS Land Development, LLC

By:_____
Steven R. Barrett, Member

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 14th day of April, 2011, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Steven R. Barrett as Member of FLKS Land Development LLC, a Kansas Limited Liability Company, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-13)

JUDITH M. TERHUNE
Notary Public - State of Kansas
My Appt. Expires 11-7-13

Approved as to form:

Gary E. Rebenstorf, City Attorney

RESTRICTIVE COVENANT

THIS DECLARATION made this 14th day of April, 2011, by FLKS Land Development, LLC, a Kansas Limited Liability Company, hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

STONEBRIDGE 3RD ADDITION
Lots 1 through 26, Block A

WHEREAS, Declarant is desirous in connection therewith that various provisions for the maintenance and responsibility for the maintenance be placed of record for Stonebridge 3rd Addition, Wichita, Sedgwick County, Kansas.

NOW, THEREFORE, Declarant hereby declares and covenants:

1. That Reserve "A" is hereby reserved for lakes, landscaping, open space, berms, sidewalks, drainage purposes, access purposes, and utilities as confined to easements.

Reserve "A" shall be owned and maintained by the homeowners association for the addition.

2. That a Homeowner's Association shall be formed and incorporated as a non-profit corporation under Kansas Statutes at the Declarant's sole cost. Reserve "A" as designated on the plat of Stonebridge 3rd Addition, shall be deeded to the Homeowner's Association upon its incorporation or within 30 days thereafter.

3. That the declaration of covenants and other provisions of the Homeowner's Association being formed shall provide specific pertinent language requiring that the Homeowner's Association shall include the first or any other subsequent phase or phases for the maintenance of any and all common areas contiguous to Reserve "A", Stonebridge 3rd Addition under the same scope of responsibility as the initial phase of development.

4. That Stonebridge 3rd Addition, being a re-plat of a part of Stonebridge 2nd Addition, will continue to share in the ownership and maintenance responsibilities of any such previously platted reserves.

5. That the owners hereby grant an irrevocable easement to whichever appropriate governing body or authority has jurisdiction, to enter upon the Reserves, as defined, for the purposes of maintaining such Reserves. This easement is conditioned upon the following event or events happening:

A. That the Declarant or the Homeowners Association, as may be appropriate, has failed to maintain the reserves in a reasonable and prudent manner.
and,

B. That the appropriate governing body has given written notice to the Declarant or the Homeowners Association and neither entity has responded in initiating corrective action within thirty (30) days of such notice. If the governing body has taken action to maintain the reserve under this covenant, the Declarant or Homeowners Association shall pay promptly the costs expended. If the costs are not paid within thirty (30) days of the rendering of an account, the costs shall be considered an assessment against all lots in Stonebridge 3rd Addition, and shall be considered a lien thereon and be treated in the same manner as a special assessment.

This covenant shall be binding on the owner, their heirs, or successors or assigns and is a covenant running with the land and is binding on all successors in Lots in STONEBRIDGE 3RD ADDITION, Wichita, Sedgwick County, Kansas.

The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.

EXECUTED the day and year first written.

FLKS Land Development, LLC

By:_____
Steven R. Barrett, Member

STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 14th day of April, 2011, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Steven R. Barrett as Member of FLKS Land Development LLC, a Kansas Limited Liability Company, personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same on behalf, and as the act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Judith M. Terhune
Notary Public

(My Appointment Expires: 11-7-13)

JUDITH M. TERHUNE
Notary Public - State of Kansas
My Appt Expires 11-7-13

Approved as to form:

Gary E. Rebenstorf, City Attorney

Agenda Item No. II-18

City of Wichita
City Council Meeting
May 10, 2011

To: Mayor and City Council

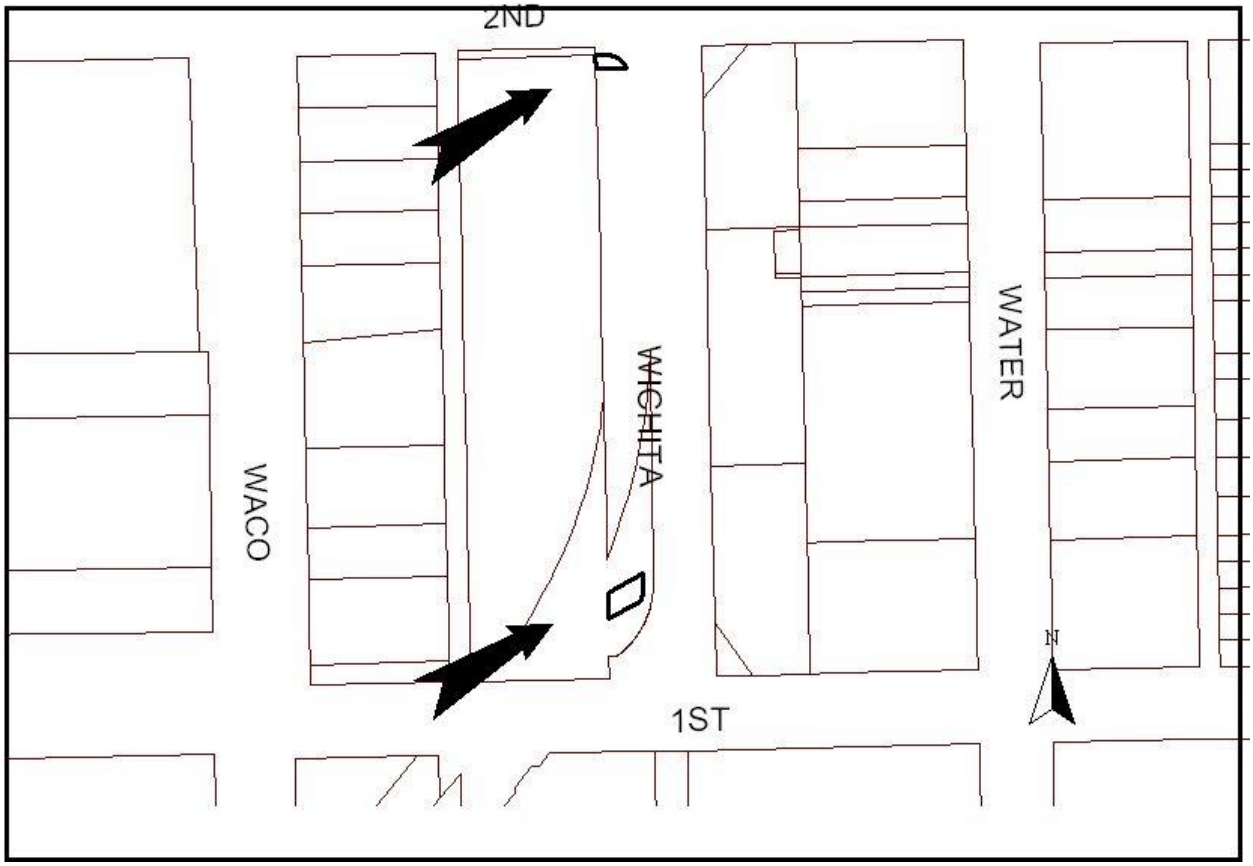
Subject: VAC2010-00033 - Request to vacate easements retained by a Vacation Order; generally located between 1st and 2nd Streets, on the west side of Wichita Street. (District VI)

Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Consent)

Staff Recommendation: Staff recommends approval of the vacation request.

MAPC Recommendation: The Metropolitan Area Planning Commission (MAPC) recommended approval of the vacation request.



Background: Vacation Order VAC2004-00066 (DOC#/FLM-PG: 28682576) recorded on June 13, 2005, vacated a portion of Wichita Street located between 1st and 2nd Streets. Portions of the vacated street were retained as easements, as shown on the vicinity map. The applicant, Cargill Meat Solutions, proposes to vacate those easements. There are no utilities in the described easements, with the exception of Verizon, which has cable in the easement. The applicant has provided a private easement for Verizon (DOC#/FLM – PG: 29212921) recorded on April 15, 2011.

Analysis: The MAPC voted (13-0-1) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

Financial Considerations: All improvements are to City standards and at the applicant's expense.

Goal Impact: The application supports the City's goal to Ensure Efficient Infrastructure.

Legal Considerations: A certified copy of the Vacation Order will be recorded with the Register of Deeds.

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission, to approve the Vacation Order and authorize the necessary signatures.

Attachments: No attachments are necessary for this vacation request.

City of Wichita
City Council Meeting
May 10, 2011

TO: Wichita Airport Authority

SUBJECT: 2100 Block Airport Road Improvements
Supplemental Agreement No. 1

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the supplemental agreement.

Background: On August 12, 2008, the Wichita Airport Authority approved the 2100 Block Airport Road Improvements contract which had several components: rehabilitating pavement, improving landscaping and parking lot construction for that section of Airport Road, planning sidewalk improvements and developing a landscape plan for portions of the Mid-Continent Airport central campus. A contract was approved with TranSystems in the amount of $52,000. The landscape plan is complete and elements of the landscaping and sidewalk improvements have been incorporated into this project.

Analysis: As the design progressed, it became apparent that there was significant need to include within the project lighting and security fence enhancements to address safety and security deficiencies within the project area. Additionally, a small extension to the street is proposed to be included in the project to directly connect Airport Road to the south rental parking lot and the FAA Air Traffic Control Tower driveway. This new segment of street will remove food and beverage delivery and rental car vehicle traffic from passing in front of the terminal, thus reducing vehicle/pedestrian conflicts and increasing safety in the congested area at the terminal.

Financial Considerations: Supplemental Agreement No. 1 with TranSystems in the amount of $26,040 has been prepared for the additional design work related to the above items. This cost is included in the approved project budget. The project is funded with General Obligation Bonds repaid with Airport revenue.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through improvements which will enhance the usefulness and safety of Airport facilities and better serve the tenants and customers of the Airport.

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

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the supplemental agreement and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 1.

SUPPLEMENTAL AGREEMENT NO. 1

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN

THE WICHITA AIRPORT AUTHORITY, "OWNER",

AND

TRANSYSTEMS, "CONSULTANT",

WITNESSETH:

WHEREAS, there now exists a Contract, dated August 12, 2008 between the two parties covering professional services to be provided by the CONSULTANT in conjunction with the construction of improvements to the 2100 Block of Airport Road Improvements.

WHEREAS, ARTICLE IV, B. of the referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the CONSULTANT provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. SCOPE OF SERVICES

The description of the improvements that the OWNER intends to construct and thereafter called the "PROJECT" as stated within ARTICLE I of the referenced Contract is hereby amended to include the following:

1) Develop three additional road reconstruction and extension concepts
2) Develop vertical and horizontal alignment, profiles and cross sections for the road extension and storm sewer
3) Survey for the road extension that is beyond the limits of the existing street system
4) Develop landscaping plans for the road extension
5) Develop lighting plans for the road extension
6) Develop sidewalk and berming adjacent to the road extension
7) Provide additional site landscaping and berming concepts
8) Replace the parking lot lighting, apron lighting and associated circuits
9) Visually inspect the pavements to identify the repair work needed.

B. PAYMENT PROVISIONS

The fee in ARTICLE IV, A3, shall be amended to include the following:

Payment to the CONSULTANT for the performance of the professional services as outlined in this Supplemental Agreement shall be made on a lump sum fee amount of $26,040.00. Reference Exhibit SA1-A for a detailed fee schedule.

C. SCHEDULE

The CONSULTANT shall complete and deliver to the OWNER the completed design documents as identified in Exhibit SA1-B.

D. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the OWNER and the CONSULTANT executes this Supplemental Agreement as of this _____ day of _____, 2011.

ATTEST:

By: _____
Karen Sublett, City Clerk

By: _____
Victor White, Director of Airports

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By: _____
Carl Brewer, President
"OWNER"

ATTEST:

_____

_____

_____

By: JEFFREY R. LACKEY, P.E.
Title: PROJECT MANAGER

By: BRETT A. LETKOWSKI
Title: SENIOR VICE PRESIDENT

APPROVED AS TO FORM: _____ Date: _____
Director of Law

RECEIVED
APR 22 2011
AIRPORT ENGINEERING

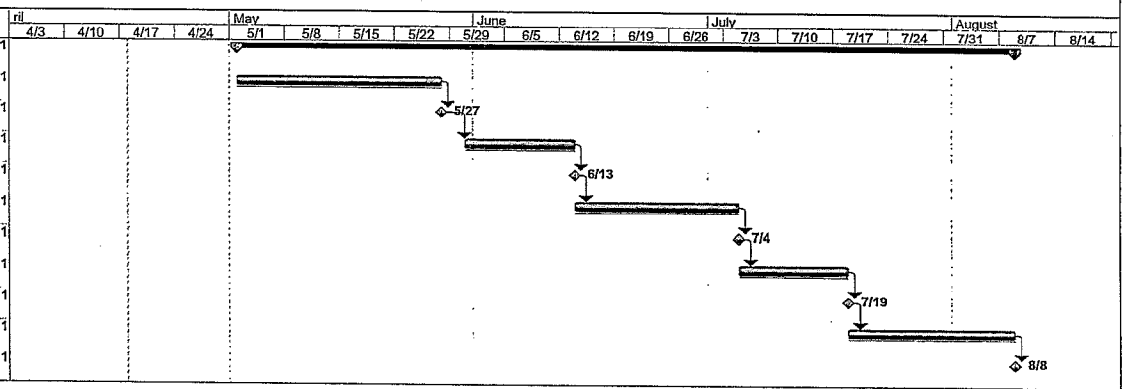
Airport Road Additional Fee
April 18, 2011
Exhibit A

	E3	E1	T3	Cost
TranSystems				
Revised Scope #1 - October 2010				
Development of 3 additional Airport Road reconstruction concepts beyond original patching scope	6	8	8	$2,050
Development of vertical alignment profile		4		$320
Development of cross sections for Airport Road Reconstruction		12		$960
Horizontal and vertical design of parking area west of Airport Road		4		$320
Walk project to update pavement patching areas with markings for survey	3	3		$645
Additional survey of south Airport Road area beyond original				$4,000
Additonal survey of parking area east of 2100 building and north of Airport Road for sidewalk				$2,460
TranSystems Total Scope Revision #1				$10,755
Revised Scope #2 - March 2011				
Development of horizontal and vertical alignments	2	12	8	$1,830
Development of cross sections for Airport Road Reconstruction	2	8	8	$1,510
Storm Sewer Design of reconstructed roadway	2	12	8	$1,830
Typical Sections		4	6	$770
Plan Review Meetings (2)	4			$540
TranSystems Total - Scope Revision #2				$6,480
Transystems Total Scope Revisions				**$17,235**
Law Kingdon - Scope Revision #1	6		9	$1,555
Law Kingdon - Scope Revision #2	8		20	$2,800
Law Kingdon - Total Scope Revision				**$4,355**
Johnson Engineering - Scope Revision #1	5		10	$1,500
Johnson Engineering - Scope Revision #2	12		18	$2,950
Johnson Engineering - Total Scope Revision				**$4,450**
TOTAL SCOPE REVISION #1				$13,810
TOTAL SCOPE REVISION #2				$12,230
TOTAL ADDITIONAL DESIGN FEE				**$26,040**

EXHIBIT SA1-A

Exhibit B - Schedule

ID		Task Name	Duration	Start	Finish
1		**Airport Road Final Design Phase - 2100 Block Extension**	**71 days**	**Mon 5/2/11**	**Mon 8/8/11**
2		Prepare preliminary plans - road extension	20 days	Mon 5/2/11	Fri 5/27/11
3		Submit preliminary road extension plans	0 days	Fri 5/27/11	Fri 5/27/11
4		Review period for WAA	10 days	Tue 5/31/11	Mon 6/13/11
5		Review meeting of preliminary roadway extension plans	0 days	Mon 6/13/11	Mon 6/13/11
6		Develop final check plans and specifications	15 days	Tue 6/14/11	Mon 7/4/11
7		Submit final check plans and specifications	0 days	Mon 7/4/11	Mon 7/4/11
8		Review period for WAA	10 days	Tue 7/5/11	Mon 7/18/11
9		Review meeting of final check plans and specifications	0 days	Tue 7/19/11	Tue 7/19/11
10		Develop final plans and specifications	15 days	Tue 7/19/11	Mon 8/8/11
11		Submit final plans and specifications	0 days	Mon 8/8/11	Mon 8/8/11



Project: Exhibit B - Schedule
Date: Mon 4/18/11

Task | Split | Progress | Milestone | Summary | Project Summary | External Tasks | External Milestone | Deadline

EXHIBIT SA1-B

City of Wichita
City Council Meeting
May 10, 2010

TO: Wichita Airport Authority

SUBJECT: Aviation Bulk Fuel Farm Rehabilitation
Supplemental Agreement No. 2

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the budget adjustment and Supplemental Agreement No. 2.

Background: On August 5, 2008, the Wichita Airport Authority (WAA) approved a contract with Burns & McDonnell for $48,503 to conduct a study of cost-effective and operationally-efficient alternatives to the general aviation bulk fuel farm operations on Mid-Continent Airport. The initial budget was established for $70,000 to cover the study and potential follow-on services the Airport may need to fully evaluate the issue. On January 12, 2010, Supplemental Agreement No. 1 was approved with Burns & McDonnell to design the necessary improvements to update the fuel farm to meet current codes and industry standards. At that time the budget was adjusted to $270,000 to cover the design services.

Analysis: With the evaluation complete and initial design finishing, it has been determined that concrete loading islands must be replaced and the security fencing and vehicle gate must be modified. Staff has prepared a supplemental agreement with Burns and McDonnell for these additional design services as well as bid phase services.

Financial Considerations: The supplemental agreement for the professional services is a not-to-exceed amount of $33,691. To accommodate this supplemental agreement, a budget adjustment of $30,000 is requested, bringing the total budget to $300,000. The project will be funded by General Obligation bonds repaid from Airport revenue. Once the construction bids are received a final budget adjustment will be requested.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through preserving and maintaining the Airport's infrastructure and assets in order to provide sufficient and economical Airport services for the aviation users of the community.

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

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the budget adjustment and the supplemental agreement and authorize necessary signatures.

Attachments: Supplemental Agreement No. 2.

SUPPLEMENTAL AGREEMENT NO. 2

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN

THE WICHITA AIRPORT AUTHORITY, "OWNER",

AND

BURNS & McDONNELL, "CONSULTANT",

WITNESSETH:

WHEREAS, there now exists a Contract, dated August 5, 2008 and Supplemental Agreement No. 1 dated January 12, 2010 between the two parties covering professional services to be provided by the CONSULTANT in conjunction with the construction of improvements to Wichita Mid-Continent Airport Aviation Fuel Farm.

WHEREAS, ARTICLE IV, B. of the referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the CONSULTANT provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. SCOPE OF SERVICES

The description of the improvements that the OWNER intends to construct and thereafter called the "PROJECT" as stated within ARTICLE I of the referenced Contract is hereby amended to include the following:

1) Additional design services to:

a) Replace the concrete loading islands and coordinate the replacement with the containment areas. Identify equipment to be relocated, stored and reinstalled after the loading island replacement is complete.

b) Integrate the Airport's fence and vehicle gate details and standards into the project and to modify fencing locations.

2) Bidding phase services:

a) Pre-Bid Meeting: Consultant shall conduct the pre-bid meeting at the Airport. Included with this meeting will be a site tour where the Consultant will attend and explain the project.

b) Bidding Period: Consultant shall be responsible to answer technical questions and develop addenda items.

c) Construction Cost Estimate: Provide a final construction cost estimate on Consultant letterhead signed by the project manager that will be considered the official Opinion of Probable Construction Cost.

B. PAYMENT PROVISIONS

The fee in ARTICLE IV, A3, shall be amended to include the following:

Payment to the CONSULTANT for the performance of the additional design services as outlined in this Supplemental Agreement shall be made on a lump sum basis of $9,300.00. Reference Exhibit SA2-1.

Payment to the CONSULTANT for the performance of the bid phase services as outlined in this Supplemental Agreement shall be made on a cost plus fixed basis with a not to exceed total amount of $24,390.89 having a fixed fee of $2,053.81. Reference SA2-2.

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the OWNER and the CONSULTANT executes this Supplemental Agreement as of this _____ day of _____, 2011.

ATTEST:

By: _____
Karen Sublett, City Clerk

By: _____
Victor White, Director of Airports

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By: _____
Carl Brewer, President
"OWNER"

ATTEST:

Burns & McDonnell
9400 Ward Parkway
Kansas City, Missouri 64114-3319

By: Patrick Bachtel

Title: PROJECT MANAGER

By: Karen S. Kelly

Title: ASSOC. VICE PRESIDENT

APPROVED AS TO FORM: _____ Date: _____
Director of Law

ATTCHMENTS: EXHIBITS SA2-1 & SA2-2 – Fee Summaries

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APR 27 2011
AIRPORTENGINEERING

DERIVATION OF CONSULTANT PROJECT COSTS
SUMMARY OF COSTS
Wichita Mid-Continent Airport
Fuel Farm Improvements - 2010
Wichita Mid-Continent Airport
Supplemental Agreement No. 2 - Fencing Modifications
April 18, 2011

1 **DIRECT SALARY COSTS:**

TITLE	HOURS	RATE/HOUR	COST ($)	
Project Manager	3.00	$39.67	$119.01	
Project Assistant	0.00	$18.00	$0.00	
Principal	0.00	$51.29	$0.00	
Supervisory / QC Engineer	0.00	$44.00	$0.00	
Sr. Engineer	16.00	$43.00	$688.00	
Jr. Engineer	0.00	$30.00	$0.00	
Sr. Architect	0.00	$41.89	$0.00	
Jr. Architect	0.00	$32.00	$0.00	
Sr. CADD	19.00	$23.43	$445.17	
Jr. CADD	0.00	$18.50	$0.00	
Scheduler	0.00	$41.89	$0.00	
Estimator	2.00	$38.00	$76.00	
Geotechnical Engineer	0.00	$43.44	$0.00	
Sr. Environmental Engineer	0.00	$44.98	$0.00	
Jr. Environmental Engineer	0.00	$30.00	$0.00	
Secretarial/Word Processing	0.00	$18.00	$0.00	
Subtotal =	40.00			
Total Direct Salary Costs			=	$1,328.18

2 **LABOR AND GENERAL ADMINISTRATIVE OVERHEAD:**

Direct Salary Costs @ Overhead Rate of	192.02%	=	$2,550.37

3 **SUBTOTAL:**

Items 1 and 2	=	$3,878.55

4 **PROFIT:**

Direct Salary Costs + Overhead @ Profit Rate of	5.00%	=	$193.93

5 **SUBTOTAL:**

Items 1, 2 and 4	=	$4,072.48

6 **OUT-OF-POCKET EXPENSES:**

a. Mileage (5 Trips)	0.00	Miles @	$0.500	/ Mile =	$0.00	
b. Lodging	0.00	Nights @	$100.00	/ Night =	$0.00	
c. Meals	0.00	Days @	$50.00	/ Day =	$0.00	
d. Computer CADD	19.00	Hours @	$7.00	/ Hour =	$133.00	
e. Computer Eng.	21.00	Hours @	$3.50	/ Hour =	$73.50	
f. Materials and Supplies				=	$21.02	
Total Out-of-Pocket Expenses					=	$227.52

DERIVATION OF CONSULTANT PROJECT COSTS
SUMMARY OF COSTS
Wichita Mid-Continent Airport
Fuel Farm Improvements - 2010
Wichita Mid-Continent Airport
Supplemental Agreement No. 2 - Fencing Modifications
April 18, 2011

7	**SUBTOTAL:**			
	Items 1, 2, 4 and 6	=	$4,300.00	
8	**SUBCONTRACT COSTS**			
	a. Not Applicable	=	$0.00	
			=	$0.00
9	**NOT-TO-EXCEED PROJECT DESIGN BUDGET:**			
	Items 1, 2, 4, 6 and 8		=	**$4,300.00**

Supplemental Agreement No. 2 - Fencing Modifications

DERIVATION OF CONSULTANT PROJECT COSTS
SUMMARY OF COSTS
Wichita Mid-Continent Airport
Fuel Farm Improvements - 2010
Wichita Mid-Continent Airport
Supplemental Agreement No. 2 - Replacement of Loading Islands
April 18, 2011

1 **DIRECT SALARY COSTS:**

TITLE	HOURS	RATE/HOUR	COST ($)	
Project Manager	2.00	$39.67	$79.34	
Project Assistant	0.00	$18.00	$0.00	
Principal	0.00	$51.29	$0.00	
Supervisory / QC Engineer	0.00	$44.00	$0.00	
Sr. Engineer	22.00	$43.00	$946.00	
Jr. Engineer	0.00	$30.00	$0.00	
Sr. Architect	0.00	$41.89	$0.00	
Jr. Architect	0.00	$32.00	$0.00	
Sr. CADD	19.00	$23.43	$445.17	
Jr. CADD	0.00	$18.50	$0.00	
Scheduler	0.00	$41.89	$0.00	
Estimator	2.00	$38.00	$76.00	
Geotechnical Engineer	0.00	$43.44	$0.00	
Sr. Environmental Engineer	0.00	$44.98	$0.00	
Jr. Environmental Engineer	0.00	$30.00	$0.00	
Secretarial/Word Processing	0.00	$18.00	$0.00	
Subtotal =	45.00			
Total Direct Salary Costs			=	$1,546.51

2 **LABOR AND GENERAL ADMINISTRATIVE OVERHEAD:**

Direct Salary Costs @ Overhead Rate of	192.02%	=	$2,969.61

3 **SUBTOTAL:**

Items 1 and 2	=	$4,516.12	

4 **PROFIT:**

Direct Salary Costs + Overhead @ Profit Rate of	5.00%	=	$225.81

5 **SUBTOTAL:**

Items 1, 2 and 4	=	$4,741.93	

6 **OUT-OF-POCKET EXPENSES:**

a. Mileage (5 Trips)	0.00	Miles @	$0.500	/ Mile =	$0.00	
b. Lodging	0.00	Nights @	$100.00	/ Night =	$0.00	
c. Meals	0.00	Days @	$50.00	/ Day =	$0.00	
d. Computer CADD	19.00	Hours @	$7.00	/ Hour =	$133.00	
e. Computer Eng.	26.00	Hours @	$3.50	/ Hour =	$91.00	
f. Materials and Supplies				=	$34.07	
Total Out-of-Pocket Expenses					=	$258.07

DERIVATION OF CONSULTANT PROJECT COSTS
SUMMARY OF COSTS
Wichita Mid-Continent Airport
Fuel Farm Improvements - 2010
Wichita Mid-Continent Airport
Supplemental Agreement No. 2 - Replacement of Loading Islands
April 18, 2011

7	**SUBTOTAL:**			
	Items 1, 2, 4 and 6	=	$5,000.00	
8	**SUBCONTRACT COSTS**			
	a. Not Applicable	=	$0.00	
			=	$0.00
9	**NOT-TO-EXCEED PROJECT DESIGN BUDGET:**			
	Items 1, 2, 4, 6 and 8		=	**$5,000.00**

Supplemental Agreement No. 2 - Replacement of Loading Islands

DERIVATION OF CONSULTANT PROJECT COSTS
SUMMARY OF COSTS
Wichita Airport Authority
Fuel Farm Improvements - 2010
Wichita Mid-Continent Airport
- Bidding Services
18-Apr-11

1 DIRECT SALARY COSTS:

TITLE	HOURS	RATE/HOUR	COST ($)
Project Manager	8.00	$42.09	$336.69
Project Assistant	4.00	$19.10	$76.38
Principal	1.00	$54.41	$54.41
Supervisory/QC Engineer	0.00	$46.68	$0.00
Sr. Engineer	116.00	$45.62	$5,291.77
Jr. Engineer	0.00	$31.83	$0.00
Sr. Architect	0.00	$44.44	$0.00
Jr. Architect	0.00	$33.95	$0.00
Sr. CADD	16.00	$24.86	$397.71
Jr. CADD	16.00	$19.63	$314.03
Scheduler	0.00	$44.44	$0.00
Estimator	0.00	$40.31	$0.00
Geotechnical Engineer	0.00	$46.08	$0.00
Sr. Environmental Engineer	0.00	$47.72	$0.00
Jr. Environmental Engineer	0.00	$31.83	$0.00
Secretarial/Word Processing	4.00	$19.10	$76.38
Subtotal =	165.00		

Total Direct Salary Costs = $6,547.38

2 LABOR AND GENERAL ADMINISTRATIVE OVERHEAD:
Direct Salary Costs @ Overhead Rate of 213.68% = $13,990.43

3 SUBTOTAL:
Items 1 and 2 = $20,537.81

4 PROFIT:
Direct Salary Costs + Overhead @ Profit Rate of 10.00% = $2,053.78

5 SUBTOTAL:
Items 1, 2 and 4 = $22,591.59

6 OUT-OF-POCKET EXPENSES:

a. Mileage (1 Trip)	450.00	Miles @	$0.500	/ Mile =	$225.00
b. Lodging	0.00	Nights @	$95.00	/ Night =	$0.00
c. Meals	1.00	Days @	$56.00	/ Day =	$56.00
d. Computer CADD	32.00	Hours @	$7.00	/ Hour =	$224.00
e. Computer Eng.	133.00	Hours @	$3.50	/ Hour =	$465.50
f. Materials and Supplies				=	$828.80

Total Out-of-Pocket Expenses = $1,799.30

DERIVATION OF CONSULTANT PROJECT COSTS
SUMMARY OF COSTS
Wichita Airport Authority
Fuel Farm Improvements - 2010
Wichita Mid-Continent Airport
- Bidding Services
18-Apr-11

7	**SUBTOTAL:**			
	Items 1, 2, 4 and 6	=	$24,390.89	
8	**SUBCONTRACT COSTS**			
	a. Not Applicable	=	$0.00	
			=	$0.00
9	**NOT-TO-EXCEED BUDGET:**			
	Items 1, 2, 4, 6 and 8		=	**$24,390.89**

- Bidding Services