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FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. December 20, 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 December 13, 2011

AWARDS AND PROCLAMATIONS

-- Special Music Presentation:

North High Madrigals

-- Service Awards:

Mark Ligons
Curtis Bowen

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. Clinton D Coen - The December 6th City Council meeting and respect for constituents.

II. CONSENT AGENDAS (ITEMS 1 THROUGH 24)

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

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

COUNCIL BUSINESS

III. UNFINISHED COUNCIL BUSINESS

1. Water Metering & Billing Improvement Plan.
(Deferred December 13, 2011)

RECOMMENDED ACTION: Approve the contract with ARCADIS US, Inc. in the amount of $196,100.

IV. NEW COUNCIL BUSINESS

1. Ordinance Calling for an Election Regarding Charter Ordinance 216.

RECOMMENDED ACTION: Council may authorize an election to determine if Charter Ordinance 216 should be voted on by the citizens of Wichita or the Council may determine not to call for an election, in which case, the charter ordinance would not take effect.

2. 21st and Maize Intersection Improvement. (District V)

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

3. Management/Development Services for Wichita Ice Center. (District IV)

RECOMMENDED ACTION: Close the public hearing and place the ordinance approve the agreement on first reading.

4. 2012 Grants Review Committee Appointments.

RECOMMENDED ACTION: Approve appointments for the 2012 Grants Review Committee and authorize the City Manager to appoint a replacement(s) in the event that an appointee is unable to serve.

5. Amendments to Chapters 3.30 of the City Code relating to Entertainment Establishments.

RECOMMENDED ACTION: Place the ordinances on first reading.

6. Ordinance amending Section 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.130, 3.49.140 and 3.49.160 of the Code of the City of Wichita, Kansas, pertaining to Wrecker Services and repealing the originals of Section 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.130, 3.49.140, 3.49.150, 3.49.160, 3.49.170, 3.49.180, 3.49.220 and 3.49.230. Contract between City of Wichita and Propertyroom.com for the storage and sale of impounded vehicles.

RECOMMENDED ACTION: Approve the proposed agreement between the City of Wichita and PropertyRoom.com/Copart Inc., declare an emergency and approve the ordinance amendments on first reading.

7. Concealed Carry of Firearms in City Buildings.

RECOMMENDED ACTION: There was no formal recommendation by the committee. Options were developed for consideration by the City Council.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

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

V. NON-CONSENT PLANNING AGENDA

None

HOUSING AGENDA

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

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

VI. NON-CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

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

VII. NON-CONSENT AIRPORT AGENDA

None

COUNCIL AGENDA

VIII. COUNCIL MEMBER AGENDA

None

IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

   RECOMMENDED ACTION: Approve the Appointments.

Adjournment

(ATTACHMENT 1 – CONSENT AGENDA ITEMS 1 THROUGH 24)

II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated December 19, 2011.

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

2. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	2011	(Consumption on Premises)
Dicie Nicklaus	Innovative Golf*	311 South Greenwich
Jose O Vasquez	El Capricho LLC*	612 West 33rd North

Renewal	2011	(Consumption on Premises)
J Larry Fugate	Pizza Hut of Southeast Kansas, Inc**	550 North West Street
J Larry Fugate	Pizza Hut of Southeast Kansas, Inc**	8977 West Central
Matthew Wickesberg	Hooters of Wichita**	3151 North Rock Road

Renewal	2011	(Consumption off Premises)
Dat Huynh	D & T Station***	895 South Woodlawn
Sally Jo Hermann	Dillons #96***	5500 East Harry Street
John A Mann	Walgreens #2751***	13534 West Maple
John A Mann	Walgreens #5769***	3333 East Central
John A Mann	Walgreens #6005***	2229 North Maize Road
John A Mann	Walgreens #6113***	1625 South Webb Road
John A Mann	Walgreens #6361***	1330 North Woodlawn
John A Mann	Walgreens #6363***	3770 North Woodlawn
Thuan Ngo	CT Happy Store***	2199 North Woodlawn

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

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

3. Preliminary Estimates: (See Attached)

   RECOMMENDED ACTION: Receive and file.

4. Statement of Costs:
   a. List of Statement of Costs. (See Attached)

   RECOMMENDED ACTION: Approve and file.

5. Agreements/Contracts:
   a. Relocation of Southern Star Central Gas Pipe Line, Kellogg/Webb Interchange. (District II)

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

6. Change Orders:
   a. Change Order No. 1 – CDBG Sidewalk Improvements Phase 1. (District I)
   b. Change Order No. 1 – CDBG Sidewalk Improvements Phase 2. (District III)

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

7. Property Acquisitions:
   a. Partial Acquisition of 2107 North 135th Street West for the 135th Street from 13th Street to 21st Street Improvement Project. (District V)
   b. Partial Acquisition of 400 East 49th Street for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project. (County)
   c. Partial Acquisition of 13909 West 21st Street for the 135th Street from 13th Street to 21st Street Improvement Project. (District V)

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

8. Minutes of Advisory Boards/Commissions

Wichita Airport Advisory Board, October 31, 2011
Joint Investment Committee, November 3, 2011
Board of Code Standards and Appeals, November 7, 2011

RECOMMENDED ACTION: Receive and file.

9. Repair or Removal of Dangerous and Unsafe Structures. (District IV)

Property Address	Council District
a. 2107 West Irving	IV

RECOMMENDED ACTION: Adopt the attached resolutions to schedule public hearings before the City Council on February 7, 2012 at 09:30 a.m. or as soon as possible thereafter, to consider condemnation of structures deemed dangerous and unsafe per Kansas State Statutes and local ordinances.

10. Report on Claims for November 2011.

RECOMMENDED ACTION: Receive and file.

11. Professional Legal Services - Workers' Compensation.

RECOMMENDED ACTION: Select the Law Office of Edward D. Heath, Jr. to provide workers' compensation professional legal services and authorize the necessary signatures to sign the Agreement for Professional Services.

12. Memorandum of Understanding - Sidewalk Replacement, Selected Parks.

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

13. General Obligation Bond and Note Sale.

RECOMMENDED ACTION: Adopt the resolution: 1) authorizing the general obligation bond and note sales; 2) approving the distribution to prospective bidders of the Preliminary Official Statement, subject to such minor revisions as may be determined necessary by the Director of Finance and Bond Counsel; 3) finding that such Preliminary Official Statement is in a form "deemed final" for the purpose of the Securities Exchange Commission's Rule 15c2-12(b)(l), subject to revision, amendment and completion in the final Official Statement; and, 4) authorizing publication and distribution of the Notice of Sale; and 5) authorizing staff, in consultation with Bond Counsel, to take such further action reasonably required to implement this Resolution.

14. Purchased ADA Paratransit Rides Contractor Agreements.

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

15. Reconstruction of Old Sanitary Sewers and Water Distribution Mains Replacement.

RECOMMENDED ACTION: Approve the projects, adopt the resolutions and authorize the necessary signatures.

16. 2012 Insurance Program.

RECOMMENDED ACTION: Receive, file and ratify the 2012 Insurance Program, subject to minor modifications and verification of coverage details.

17. Interlocal Agreements.

RECOMMENDED ACTION: Approve the Interlocal agreements.

18. Interdepartmental Development Tracking System Software Replacement Project.

RECOMMENDED ACTION: Approve the contract with Infor Global Solutions for additional Cashiering licenses and authorize the necessary signatures.

19. Budget Adjustments, 2011 Year-end.

RECOMMENDED ACTION: Approve year-end budget adjustments to facilitate fiscal year-end closing.

20. Second Reading Ordinances: (First Read December 13, 2011)
List of Second Reading Ordinances. (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

II. CONSENT PLANNING AGENDA ITEMS

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

21. *ZON2004-35 (DP-277 associated with CUP2004-30) – Extension of time to complete the platting requirement for the Bruce Brown Commercial Community Unit Plan and a zone change from SF-5 Single-family Residential ("SF-5") to LC Limited Commercial ("LC") on property generally located east of Greenwich Road and south of 21st Street North. (District II)

RECOMMENDED ACTION: Approve the request and establish December 20, 2013, as the new platting deadline.

22. *CUP2008-00015 AND ZON2008-00021 – Extension of time to complete the platting requirement for the Parker Addition Community Unit Plan and zone change from SF-5 Single-family Residential ("SF-5") to LC Limited Commercial ("LC") generally located on the northwest and southeast corners of Central Avenue and 127th Street East. (District II)

RECOMMENDED ACTION: Approve an extension of the platting deadline to July 22, 2012.

23. *A11-05 - Request by Jon Schrage of Medical Practice Association Properties, LLC to annex lands generally located north and east of Greenwich Road and K-96 Highway along with the annexation of K-96 Highway right-of-way from Greenwich Road to approximately one-third mile south of 21st Street North. (District II)

RECOMMENDED ACTION: Approve the annexation, declare that a public emergency exists requiring the final adoption and passage of the annexation ordinance on the date of its introduction, authorize the necessary signatures and instruct the City Clerk to publish the annexation ordinance.

24. *DER2011-07-Amendment of the City of Wichita Boundary Resolution.

RECOMMENDED ACTION: Approve the Amended Boundary Resolution 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.

None

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: Water Metering & Billing Improvement Plan

INITIATED BY: Public Works & Utilities Department

AGENDA: Unfinished Business

Recommendation: Approve the contract with ARCADIS US, Inc.

Background: Water and sewer customers have experienced inaccurate, untimely bills in the recent past, so the City is initiating a comprehensive review of the issues. The aim of the project is to identify short- and long-term solutions to problems with the meter equipment, Customer Information System (CIS), data extrapolation technologies, and the work processes used to convert meter reads into monthly bills. Because of the wide-ranging scope of the project, the selected consultant must possess expertise in meter infrastructure, CIS technology, and utility billing processes.

The City issued a Request for Proposals (RFP) in October, which resulted in three firms submitting proposals. Only two of the firms had expertise in all of the areas required to successfully complete the project, so those two companies were interviewed in November. A proposed contract with ARCADIS US, Inc. was presented to the Mayor and City Council on December 13, 2011.

While deliberating on December 13th about the contract with ARCADIS US, Inc, a representative of Johnson Controls requested the opportunity to submit a late proposal. The City Council decided to review the proposal and the staff review during the December 20th meeting. The Johnson Controls proposal was received on December 14th and includes the following:

- Preliminary Analysis - Johnson Controls will agree to do the preliminary analysis at no cost for the City of Wichita and all information as a result will be turned over to the City of Wichita.

- Following the preliminary analysis, the City may elect to perform an Investment Grade Audit (IGA) not to exceed $250,000.
  The following three scenarios can occur under the IGA.
    a. Proceed with the Performance contract and all engineering cost will fold into the Energy Performance Contract.
    b. If City elects not to proceed with the Performance Contract, Johnson Controls will provide a workshop of findings but no written report will be issued at no cost to the City.
    c. The City may elect to purchase the written IGA report that will not exceed $250,000.

- Johnson Controls project timeline
    a. Preliminary analysis 45 days from Dec 20, 2011 approval.
    b. IGA completion 120 days from Dec 20, 2011 approval.

Analysis: Details about the process for selecting professional services vendors and the proposal received from Johnson Controls are included below. After reviewing the Johnson Controls proposal and comparing it to the criteria established in the selection process, it is recommended that the City Council contract with the original firm recommended by the Selection Committee. The ARCADIS approach is superior and is more likely to produce the results sought by the RFP.

Selection Process

The City follows a standardized selection process to protect the City from unnecessary liability and to provide a predictable environment for companies to do business with the City. Contracting for professional services is outlined in Administrative Regulation 1.2. That policy states that "consultants interested in submitted proposals may register on the City's e-procurement system," which provides automatic notifications when RFPs are issued.

Projects costing more than $25,000 are reviewed by a Selection Committee comprising representatives from the City Manager's Office, Public Works & Utilities, Engineering, Purchasing, Finance, Law, and Planning. Submitting firms are shortlisted based on a matrix of criteria established in the RFP and are later assessed on the same criteria after project interviews. According to the Administrative Regulation, "preference will be given to local consultants when all other considerations are equal."

The selection process outlined in Administrative Regulation 1.2 was followed in selecting a contractor for the Water Metering & Billing Improvement Plan. The RFP was released on October 24, 2011 – it was sent by email, fax, and postal mail to 119 consultants that signed up for notifications through the e-Procurement site. Notice was also published in the *Wichita Eagle*. A pre-proposal meeting was held on October 31, 2011 to answer questions of potential submitting companies and to provide them with any data they needed to develop their proposals. Three proposals were received on the November 14, 2011 deadline.

PROPOSAL REVIEW DETAILS	
Selection Committee	**Criteria**
City Manager's Office	Approach to the Project
Finance	Methodology to accomplish the objectives
Law	Advantages of the proposed approach
Planning	
Purchasing	Ability to Conduct the Work
Public Works	Understanding of project objectives
Engineering	Knowledge of local situation
	Proposed Costs & Timeline
	Cost proposal
	Project schedule
	Credentials & Expertise
	Experience in the industry and with similar projects
	Quality of professional staff
	Examples of similar work

A Selection Committee was convened to review the proposals; it comprised representatives from the work teams outlined in Administrative Regulation 1.2. The committee shortlisted two firms on November 16, 2011, and interviews were held two weeks later to provide the firms enough time to prepare for the presentations. The same criteria were used to rate the firms as was included in the RFP, so the companies understood what factors are most important to the City. The committee unanimously recommended ARCADIS US, Inc. due to the expertise it brings for fixing meter problems, understanding CIS demands, and solving utility billing process issues.

Johnson Controls Proposal

The proposal from Johnson Controls was submitted outside of the City's standard selection process. The team from Johnson Controls provided a technical approach, proposal packet, and an offer letter on December 14th explaining its proposed scope. These proposal documents followed a meeting with City staff on December 13th and a follow-up phone conference the next day.

Johnson Controls would conduct a two-phase process, beginning with a free preliminary analysis of meter infrastructure that would last approximately 45 days. The City could then choose for a more in-depth Investment Grade Audit (IGA) that would identify recommendations for how to change out water meters.

The City would have three different options with the IGA once it is completed. It could elect not to proceed with the IGA recommendations. The City would then need to spend up to $250,000 to purchase it. Or, the City could enter into a performance contract with Johnson Controls, with the $250,000 cost of the report incorporated into the entire project amount. Either way, the City will need to pay up to $250,000 in order to obtain the final report.

PROPOSAL COMPARISON		
	Johnson Controls	**ARCADIS**
Cost & Timeline		
Timeline	120 days	150 days
Maximum Cost	$250,000	$196,100

The approach and experience presented by ARCADIS is the best match for the outcomes expected from this project. That team has superior qualifications that will allow the City to improve the customer billing experience by enhancing water meters, CIS technology, meter reading equipment, and utility billing processes.

Financial Considerations: The water metering and billing improvement plan would cost up to $196,100 if completed by ARCADIS US, Inc. The project would be paid for by the Water and Sewer Funds.

Goal Impact: This action affects the efficient infrastructure goal.

Legal Considerations: The ARCADIS US, Inc. contract has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the contract with ARCADIS US, Inc. in the amount of $196,100.

Attachments: Contract with Arcadis, Inc. for FP 130066 – Water Metering & Billing Improvement Plan for the City of Wichita.

CONTRACT
for
Water Metering & Billing Improvement Plan

THIS CONTRACT entered into this 20th day of December, 2011, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"**, and **ARCADIS U.S., Inc.**, Telephone Number (602) 241-1770 hereinafter called **"CONTRACTOR"**.

WITNESSETH:

WHEREAS, the **CITY** has solicited proposals for a Water Metering & Billing Improvement Plan (Formal Proposal – FP130066); and

WHEREAS, CONTRACTOR has submitted the proposal most beneficial to the **CITY** and is ready, willing, and able to provide the commodities and/or services required by the **CITY**.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Scope of Services. CONTRACTOR** shall provide to the **CITY** all those commodities and/or services specified in its response to Formal Proposal Number – FP130066, which are 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 – FP130066, shall be considered a part of this contract and is incorporated by reference herein.

2. **Compensation. CITY** agrees to pay to **CONTRACTOR** a not-to-exceed fee of $196,100 for the Water Metering & Billing Improvement Plan as per the proposal, plans, specifications, addenda and Contractor's proposal of FP130066 and as approved by the City Council on December 20, 2011. Monthly invoices will be provided to the **CITY** by the **CONTRACTOR** and will be based on the billing rates and labor hours expended on each task.

3. **Term.** The term of this contract shall be from December 14, 2011 through July 31, 2012. This contract is subject to cancellation by the **CITY**, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **CONTRACTOR**.

4. **Indemnification and Insurance.**

a. **CONTRACTOR** shall save and hold the CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of **CONTRACTOR**, its officers, agents, servants, or employees, occurring in the performance of its services under this Contract, or arising from any defect in the materials or workmanship of any product provided in the performance of this Contract.

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 (explosion, collapse and underground) hazards when applicable, Product/Completed operations, Broad Form Property Damage, and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	$500,000 each occurrence $500,000 each aggregate

Property Damage Liability	$500,000 each occurrence $500,000 each aggregate
Or	
Bodily Injury and Property Damage Liability (Combined Single Limit)	$500,000 each occurrence $500,000 each aggregate

2. 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	limits as set by statute
Employers Liability	$100,000 each accident $500,000 aggregate $100,000 occupational disease

The Insurance Certificate must contain the following:

A. Statement that the Contractural Liability includes the Liability of the City of Wichita assumed by the Contractor in the contract documents.

B. Cancellation – should any of the above polices be canceled before the expiration date thereof the **CONTRACTOR** will mail, in accordance with its policy, written notice to certificate holder.

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

6. **Changes to Scope**. At any time after execution of this Agreement, **CONTRACTOR** may request changes in ARCADIS Services consisting of additions, deletions, and revisions within the general scope of services being performed by **CONTRACTOR** under this Agreement and/or any applicable Work Authorizations. Whenever a change in the scope and/or time for performance of services occurs, or if the **CITY** has notified the **CONTRACTOR** of a change, the **CONTRACTOR** shall submit to the **CITY** within a reasonable time a written estimate of the changes in cost and/or schedule, with supporting calculations and pricing. Pricing shall be in accordance with the pricing structure of this Agreement.

7. **Termination**. The **CONTRACTOR** is entitled to terminate this agreement upon failure of the **CITY** to comply with any of the terms and conditions of this Agreement.

8. **Site Access**. During the term of this Agreement, the **CITY** shall grant to or cause to be made available to the **CONTRACTOR** reasonable and necessary nonexclusive access to any location as necessary for purpose of allowing the **CONTRACTOR** to perform the Services and fulfill its obligations under this Agreement. The **CITY** shall immediately notify the **CONTRACTOR** if the **CITY** is unable to obtain necessary access within a timely manner. Should the **CONTRACTOR** be obstructed or delayed in the commencement, performance or

completion of the Work, without fault on its part, by reason of not having full access to the location, and then the **CONTRACTOR** will be entitled to an adjustment in compensation and/or an extension in the completion time requirements.

9. **Compliance with Laws**. **CONTRACTOR** shall comply with all laws, statutes and ordinances which may pertain to the providing of services under this Contract.

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

11. **Non-Discrimination**. **CONTRACTOR** shall comply with all applicable requirements of the City of Wichita Revised Non-Discrimination and Equal Employment /Affirmative Action Program Requirements Statement for Contracts or Agreements attached hereto as Exhibit A.

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

13. **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.

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

15. **Representative's Authority to Contract**. By signing this contract, the representative of **CONTRACTOR** represents the he or she is duly authorized by **CONTRACTOR** to execute this contract, and that **CONTRACTOR** has agreed to be bound by all its provisions.

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

ATTEST:	**CITY OF WICHITA, KANSAS**
_____	_____
Karen Sublett City Clerk	Carl G. Brewer Mayor
APPROVED AS TO FORM:	**ARCADIS U.S., Inc.**
_____	_____
Gary E. Rebenstorf Director of Law	Stephen Davis Vice President

EXHIBIT A

REVISED NON_DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

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

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

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44_1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;

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

3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44_1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

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

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

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

1. The Contractor, supplier, contractor or subcontractor shall practice Non-Discrimination-_Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for

training, including apprenticeship. The contractor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

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

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

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

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

D. Exempted from these requirements are:

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

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

Agenda Item No. IV-1

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: Ordinance Calling for an Election Regarding Charter Ordinance 216

INITIATED BY: City Clerk

AGENDA: New Business

Recommendation: Council may authorize an election to determine if Charter Ordinance 216 should be voted on by the citizens of Wichita or the Council may determine not to call for an election, in which case, the charter ordinance would not take effect.

Background: On September 13, 2011, the City Council passed Charter Ordinance 216 which amended Section 1, of Charter Ordinance 213 regarding the distribution of guest tax revenues received by hotels within the City of Wichita.

The Kansas Constitution provides that a charter ordinance will be effective sixty days following its second publication, unless a petition, signed by ten percent of the electors who voted in the last election, is filed with the City Clerk. A petition was filed with the City Clerk on December 5, 2011. The Sedgwick County Election Office has verified that the petition contains the necessary signatures of qualified electors to require the Charter Ordinance to be placed on a ballot. (Exhibit A)

Analysis: Based on the petition received, the City Council has two options. In order to have Charter Ordinance 216 take effect, the City Council must pass an ordinance calling for the election and fixing the date of the election. Per the development agreement, costs of the election are to be paid by the developer If the City Council does not pass an ordinance calling for the election, Charter Ordinance 216 would not take effect.

Financial Considerations: None. The cost of the election is to be paid by the developer, based on the developer agreement.

Goal Impact: The election will allow guest tax revenues to be utilized to aid in economic development and revitalization of the downtown core area.

Legal Considerations: The ordinance calling for the election has been prepared and approved as to form by the Law Department.

Recommendations/Actions: Council may authorize an election to determine if Charter Ordinance 216 should be voted on by the citizens of Wichita or the Council may determine not to call for an election, in which case, the charter ordinance would not take effect.

Attachments: Mayor's Request for Declaration of Emergency, Certification of Election Commissioner and Proposed Ordinance.

ORDINANCE NO. 49-175

AN ORDINANCE SUBMITTING CHARTER ORDINANCE NO. 216 TO THE VOTERS OF THE CITY OF WICHITA PURSUANT TO ART. 12, §5 OF THE KANSAS CONSTITUTION, ESTABLISHING THE BALLOT QUESTION AND CALLING FOR A NON-PARTISAN SPECIAL ELECTION.

WHEREAS, on September 13, 2011, the Wichita City Council approved Charter Ordinance 216, regarding the collection and distribution of guest tax revenues;

WHEREAS, Charter Ordinance 216 was properly published in the Wichita Eagle on September 23, 2011 and September 30, 2011;

WHEREAS, on December 5, 2011, a petition was filed with the City Clerk, calling for an election regarding Charter Ordinance 216;

WHEREAS, on December 12, 2011 the Sedgwick County Elections Office verified that a sufficient number of signatures were contained on the petition filed with the City Clerk to require an election be held in order for Charter Ordinance 216 to become effective.

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

SECTION 1. **Text of Amendment.** Pursuant to Art 12, §5 of the Kansas Constitution, the following proposed amendment to Charter Ordinance 213, regarding the application and distribution of guest taxes, is hereby submitted to the voters of the City of Wichita for consideration at a special election to be held on February 28, 2011.

Section 1 of Charter Ordinance No. 174 of the City of Wichita, Kansas is hereby amended to read as follows:

"Revenue from the transient guest tax generated from facilities other than a hotel at 104 S. Broadway shall be expended in the priority as follows:

1st. To pay any obligations, including but not limited to bonds, leases or contracts resulting from or directly attributable to the construction or use of new facilities for convention or exhibition purposes, including but not limited to the Old Town Parking Garage, the Marriott Fairfield Inn and Suites Hotel at the corner of Dewey and Main Streets, the Century II Conference Center, and the Energy Complex, Century II Air Conditioning and Heating Equipment and East Bank Parking Garage serving Century II Expo Hall, and the Century II Conference Center.

2nd. To pay any deficit incurred in the operation or maintenance of such new facilities for convention or exhibition purposes.

3rd. Any funds remaining shall be held in reserve to pay any deficit incurred in the operation or maintenance of Century II, to establish a building fund for future facilities, to pay for extraordinary facility repairs or replacement and to fund attractions deemed to have advantage or interest to the City of Wichita.

4th. None of the revenue from said tax shall be expended for promotion of conventions and tourism facilities or activities for Sedgwick County outside the city limits of Wichita unless and until an equal transient guest tax is levied by the Board of County Commissioners of Sedgwick County, Kansas, and the City Council authorizes by resolution such expenditures.

<u>Revenue from the transient guest tax generated from a hotel at 104 S. Broadway shall be expended as follows: For the first 15 years of such hotel's</u>

operation, 75% of the revenues shall be rebated to the hotel owner in a single annual payment, and the remaining 25% shall be expended in accordance with priorities 1st through 4th, above. After the 15th year of such hotel's operation, all guest tax revenues generated there from shall be expended in accordance with priorities 1st through 4th, above. "

SECTION 2. **Ballot Question.** The ballot question shall read as follows:

Ballot Question:

SHALL CHARTER ORDINANCE 216 ENTITLED: "A CHARTER ORDINANCE AMENDING AND REPEALING SECTION 1 OF CHARTER ORDINANCE NO. 213, OF THE CITY OF WICHITA, KANSAS, WHICH AMENDED AND REPEALED SECTION 1 OF CHARTER ORDINANCE NO. 183 OF THE CITY OF WICHITA WHICH AMENDED AND REPEALED SECTION 1 OF CHARTER ORDINANCE NO. 174 OF THE CITY OF WICHITA, KANSAS PERTAINING TO THE APPLICATION OF REVENUES FROM THE TRANSIENT GUEST TAX" TAKE EFFECT?

YES ____ NO ____

SECTION 3. **Notice and Call of Election.**

A. Pursuant to Art. 12, §5 of the Constitution of the State of Kansas, the Wichita City Council hereby gives notice of and calls for a non partisan special election to be held in the City of Wichita, Kansas on February 28, 2012 to submit to the qualified voters of the City the question of whether City of Wichita Charter Ordinance No. 216 should take effect.

B. Such election shall be conducted by the Sedgwick County Election Commissioner and held in the manner and in accordance with the laws of the State of Kansas, including but not limited to K.S.A. 25- 2501 et. seq.

C. Only the qualified electors registered to vote under the laws of the State of Kansas, in the City of Wichita, Kansas, may vote on the question as set forth; and the question must be approved by a majority of the voters voting thereon at the election;

D. That the costs of the special election, pursuant to the Development Agreement approved by the City Council on September 13, 2011, are to be assessed to and paid for by the developer, Douglas Place, L.L.C.

SECTION 4. **Publication** The City Clerk is hereby directed to publish this ordinance once each week for three consecutive weeks in the official City newspaper.

PASSED by the governing body on this 20th day of December, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf
City Attorney

REQUEST FOR DECLARATION OF EMERGENCY

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit*, December 20, 2011, of an ordinance entitled:

ORDINANCE NO. 49-175

"AN ORDINANCE SUBMITTING CHARTER ORDINANCE NO. 216 TO THE VOTERS OF THE CITY OF WICHITA PURSUANT TO ART 12, §5 OF THE KANSAS CONSTITUTION, SETTING THE BALLOT QUESTION AND CALLING FOR AN ELECTION REGARDING THE PROPOSED CHARTER ORDINANCE."

The general nature of such emergency is that, in order to comply with constitutional mandates regarding the timing of the special election, the ordinance must take effect on first reading.

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

EXECUTED at Wichita, Kansas, on this 20th day of December, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf
Director of Law

Agenda Item No. IV-2

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: 21st and Maize Intersection Improvement (District V)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendation: Approve the design concept and project budget.

Background: The Capital Improvement Program (CIP) adopted by the City Council includes funding to improve the intersection of 21st and Maize. The District V Advisory Board held a neighborhood hearing for the project on November 7, 2011. The Board voted 6-2 to recommend approval of the project and to include a study of the installation of tubular markers along the center lane of 21st, east of Maize, to prohibit westbound left turns into McDonalds.

Analysis: The proposed improvement will provide dual left turn lanes at all four approaches to the intersection. Traffic will be maintained for the duration of the project. Left turn lanes will be restricted during construction as necessary. A study is being conducted of the tubular markers along 21st as requested by the District V Advisory Board. The results of the study will be presented to the City Council for consideration with the recommended action. Construction is planned to begin in the spring of 2012 and be substantially completed by November, 2012.

Financial Consideration: On August 24, 2010, the City Council approved $250,000 for the design of this project. The budget contained in the Proposed CIP for construction and right-of-way acquisition is $2,650,000 for a total budget of $2,900,000. The funding source is General Obligation Bonds.

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

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

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

Attachments: Map, CIP sheet and amending ordinance.

CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE
To Initiate Project: X
To Revise Project:

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	11/30/2011	21st and Maize Intersection

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	ARRA	TOTAL
Right of Way & Design				
Paving, grading & const.	$2,900,000			$2,900,000
Bridge & Culverts				
Drainage				
Sanitary Sewer				
Sidewalk				
Water				
Traffic Signals				
Totals	$2,900,000			$2,900,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

472-84924

13. Recommendation: Approve the design concept, approve the budget and place the amending ordinance on 1st reading

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

132019

Published in the Wichita Eagle on January 13, 2012

ORDINANCE NO. 49-176

AN ORDINANCE AMENDING ORDINANCE NO. **48-807** OF THE CITY OF WICHITA, KANSAS DECLARING THE **21ST AND MAIZE INTERSECTION (472-84924)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENT 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. **48-807** 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 the **21st and Maize Intersection (472-84924)** as a main trafficway in the following particulars:

The design and acquisition of right-of-way as necessary for a major traffic facility."

SECTION 2. SECTION 3 of Ordinance No. **48-807** is hereby amended to read as follows:

"SECTION 3. The cost of the above described improvements is estimated to be **Two Million Nine Hundred Thousand Dollars ($2,900,000)** 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. **48-807** 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 10th day of January, 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

119th ST WEST
13 TH ST NO
21st
MAIZE RD
TYLER
21st ST NO
13 TH ST NO
RIDGE

City of Wichita
City Council Meeting
December 20, 2011

To: Mayor and City Council

Subject: Management/Development Services for Wichita Ice Center (District IV).

Initiated By: Department of Park and Recreation

Agenda: New Business

Recommendation: Close the public hearing, and place the ordinance approving the management services and fitness center development agreement on first reading.

Background: The Wichita Ice Center was built in 1996 to fill the need for an ice rink facility in the Wichita area. Since the facility's opening, it has offered a variety of recreation, entertainment, and events. These include public and private skating lessons, figure skating, hockey for both youth and adult, and leisure skating. In March of 2011 the City entered into a management agreement with Genesis Health Club Management, LLC.

Analysis: Since the start of the management agreement with Genesis, the Staff from the City worked with Genesis staff to come up with a plan to further diversify recreational experiences and utilize the Ice Center. It was determined that the space on the second floor could be repurposed from a restaurant style area into additional locker rooms and more importantly, a fitness facility. Concept plans were developed and negotiations for replacement management services and fitness center development agreement began.

Included in the agreement are the provisions outlining Cash Basis Law. Genesis will construct, lien free, and operate a fitness center within the Facility. This may include, but is not limited to: locker rooms, fitness areas, special use rooms, and/or sports viewing areas with food and beverage. Genesis will select the contractor without normal public bid procedures, but has agreed to obtain at least three competitive bids for the work, and to provide an appropriate instrument of surety to secure completion of the work as required by Charter Ordinance No. 203. The form of Ordinance submitted herewith will initiate the project for City financing pursuant to Charter Ordinance No. 156 and the City's Home Rule powers, and will approve the management/development agreement allowing Genesis to make the contractor selection as described, pursuant to Charter Ordinance No. 203. The ordinance requires a 2/3 vote for passage. All elements of the fitness center upon construction, except fitness equipment, shall immediately be and become the property of the City. Genesis will allow public access of the fitness center through day fees and/or monthly dues.

Goal Impact: Approval of this contract will increase Quality of Life for the citizens of Wichita by providing high quality, diverse ice related activities and sports to the community.

Financial Consideration:
The City will provide taxable General Obligation Bonding in the amount of $750,000 amortized over ten years. Genesis Health Club, Inc. and Rodney Steven II will guarantee all debt payments for all Capital Funds expended to create the new fitness space on the second floor, but such guaranty obligations, as well as the payment obligation of Genesis Health Club Management, LLC, will be discharged and released as to future payments if the City opts not to exercise renewal options when the main term and first renewal term expire. Absent such an event of discharge and release, Genesis will provide the City with funds sufficient to make each scheduled payment of principal and interest on GO bonds. All plans and contracts require City approval prior to implementation.

Genesis, at their expense, will be allowed to place fitness equipment and maintain all equipment within the second floor of the Ice Center. As fees for managing the facility, Genesis will be allowed to keep 95% of all receipts from monthly dues, and 80% of all receipts from day fees. Remainder of fees will be made as payment to the City.

The amended agreement also allows for a new schedule of increase of management fees over the life of the agreement, ***however all fees stayed the same for years one to three and four and five as outlined in the original agreement***. The new schedule is as follows:

Genesis Compensation Chart	
Year	Amount
1	$ 42,000
2	$ 42,000
3	$ 42,000
4	$ 45,000
5	$ 45,000
6	$ 50,000
7	$ 50,000
8	$ 50,000
9	$ 50,000
10	$ 50,000
(if applicable) 11	$ 55,000
12	$ 55,000
13	$ 55,000
14	$ 55,000
15	$ 55,000

The Ice Center fitness facility will not be a Genesis facility. Current members of Genesis shall become members of the Ice Rink fitness facility in order to use the Ice Rink fitness facility. Genesis may offer free daily passes, but no more than four free passes to one person in a calendar year.

The new agreement allows for a 10 year term for the management of the facility with one 5-year renewal opportunity.

If the agreement terminates prior to the final bond payment because the City has declined to renew the agreement, Genesis will be released from payment of any further scheduled debt service obligations. If Genesis fails to renew they will pay the City a sum equal to the aggregate amount of all remaining scheduled debt service payments.

Legal Consideration: The Law Department has reviewed and approved the contract as to form.

Recommendation/Actions: It is recommended that the City Council close the public hearing, and place the ordinance approving the agreement on first reading.

Attachment: Professional Management Services Contract; Ordinance.

Professional Management Services And Fitness Center Development Agreement

This Agreement is made by and between Genesis Health Clubs Management LLC , a Kansas limited liability company, "Genesis" and the City of Wichita, a Kansas municipal corporation "City", hereinafter collectively referred to as the Parties.

City is the owner of the Wichita Ice Center, located at 505 W. Maple St. in Wichita, Kansas, hereinafter referred to as the "Facility".

City desires to retain a management company/developer to develop and construct a fitness center within the Facility and to operate and manage the Facility in order to benefit the public's recreational opportunities, to minimize City's operating costs and to maximize the use of the Facility.

Genesis operates and manages recreational and fitness facilities throughout the state of Kansas and desires to manage the facility according to the terms and conditions set forth in this Agreement.

Therefore, in consideration of the mutual promises, terms, and conditions contained in this Agreement, the Parties hereby contract and agree as follows:

Section One
Scope of Services

1.1 Subject to all policies and guidelines that City may establish from time to time and with consideration of Genesis input; Genesis shall provide the following management services in compliance with all applicable Federal, State, and Municipal laws and regulations:

1) Operate and maintain the Facility, and the Facility's equipment, material and supplies and programs.
2) Fully staff the Facility with employees of Genesis, including a full time manager acceptable to the City, and supervise their conduct and performance in the operation of the Facility.
3) Collect all gross revenues generated by Facility, pay all operating expenses of the Facility and maintain all financial records pertaining to the operation of the facility.

1.2 City agrees to allow Genesis management and oversight of capital improvements contingent upon prior review and approval of procurement bid practices by the Purchasing Manager, review and approval of plans and specifications by Public Works and subject to City code enforcement.

1.3 Genesis will construct, lien free, and operate a fitness center within the Facility. This may include, but not be limited to; locker rooms, fitness areas, special use rooms, and/or sports viewing area with food and beverages. All elements of the fitness center upon construction, except fitness equipment, shall immediately be and become the property of the City. Genesis will allow public access of the fitness center through day fees and/or monthly dues. These fees will be set by Genesis in consultation with the City. Subject to 1.1 above, the policies, procedures and operations of the fitness center will be the responsibility of Genesis.

1) Genesis shall remodel the Facility to accommodate the Fitness facility. Such remodeling, and the design and construction of the improvements, will be subject to

the approval of the City. The budget for the remodeling, design and construction of the improvements shall, when approved, be added to this Agreement as Exhibit A. Genesis will obtain at least three competitive bids for the construction and remodeling work related to the fitness center, and shall provide an appropriate instrument of surety (such as a surety bond or letter of credit) to secure completion of the work, in accordance with Charter Ordinance No. 203 of the City.

2) The City shall provide general obligation bond financing in the amount of $750,000, exclusive of the costs of interest on borrowed money, for the remodeling of the Facility, which shall be completed lien-free, and the Facility shall at all times remain the property of the City. The bonds will be amortized over a ten-year term. Genesis will provide the City with funds sufficient to make each scheduled payment of principal and interest on the City general obligation bonds, which payment by Genesis shall be made at least ten days prior to the date of the scheduled City debt service payment to which it corresponds. If the agreement terminates prior to final payment of the bonds because the City has declined to renew the agreement under Section 2.1 below, Genesis will be released from payment of any further scheduled debt service obligations after the date of termination. However, if Genesis fails to renew this Agreement for any reason, Genesis shall, within ten days of the termination date, pay the City a sum equal to the aggregate amount of all the remaining scheduled debt service payments. Genesis will also procure and furnish to the City, in forms acceptable to the City, and prior to the disbursement of any City funds, guaranties of the aforementioned Genesis payment obligations, executed by Genesis Health Club, Inc., and by Rodney Steven II personally.
3) As a fee for managing the fitness facility; Genesis will retain ninety five percent (95%) of all receipts from monthly dues, and eighty percent (80%) of all receipts from day fees. The remainder of the receipts will be made as a payment to the City within thirty (30) days from last day of the month. Receipts from monthly dues and day fees will not be treated as revenues of the Facility for purposes of the Facility budget or for determining any performance based incentive compensation due to Genesis for Facility management.
4) Genesis will provide, at Genesis's sole expense, fitness equipment for the fitness center, and will also be solely responsible for payments of all costs of the fitness center (including, but not limited to any property tax assessed on the Facility as a result of this agreement or the fitness center's operations within the Facility, as well as the fitness center's costs for payroll, payroll taxes, employee insurance and retirement, supplies and allocable utility expenses) on a full recourse basis, and such costs shall not be treatable nor budgeted as operating expenses of the Facility, nor shall they be payable from the operating account referenced in Section 6.1.
5) All improvements, except equipment, will become part of the Facility and remain with the Facility at the end of this Agreement.
6) Genesis will keep a separate accounting of all receipts from memberships and day fees received at the fitness center.
7) The Facility shall not be a Genesis facility and current members of Genesis shall become members the Ice Rink fitness facility in order to use the Ice Rink fitness facility. Genesis may offer free daily passes to the Ice Rink fitness facility as a marketing tool. However, no individual shall receive more than four free passes per calendar year

Section Two
Term of Agreement

2.1 Subject to the requirements and limitations of the Kansas Cash Basis and Budget Laws, and the sufficiency of annual appropriations properly available to fund this agreement at the beginning of each year of any term, the initial term of this agreement shall be ten (10) years with one (1) renewal option of five (5) years. Each renewal option will automatically be deemed exercised at the end of the preceding term unless either party notifies the other party in writing within ninety (90) days prior to the end of the preceding term, of its intent not to renew the Agreement for the next renewal option. Termination shall be effective at the end of the initial term or at the end of any renewal term, if written notice per this Section is provided to either party provided, however, that earlier termination due to uncured defaults may occur as provided in Section Thirteen. Termination shall also occur at the beginning of any year of any term if there are not then sufficient funds on hand and properly appropriated to support the City's financial obligations under the agreement during that year, unless Genesis shall at the time agree to allow the City to defer payments on an unsecured, "moral obligation" basis, payable at such time as the City may have sufficient funds properly appropriated for such purposes.

Section Three
Compensation

3.1.1 Subject to the requirements and limitations of the Kansas Cash Basis and Budget Laws, and the sufficiency of annual appropriations properly available for such purposes, the City shall pay Genesis, as full compensation for services provided the following: forty-two thousand and no/100 dollars ($42,000) per year for the first three (3) years of this Agreement. The amount of compensation will increase to forty-five thousand and no/100 dollars ($45,000) per year in year four (4) and in year five (5) of this agreement. The amount of compensation will increase to fifty thousand and no/100 dollars ($50,000) per year in years six (6) thru ten (10) and fifty five thousand and no/100 dollars ($55,000) per year in each of the renewal terms. This amount is payable in equal monthly installments paid on the first day of each month during the term thereof. If applicable, the first and last payments shall be prorated. For its services in relation to the management of the fitness center, Genesis will also retain the portions of monthly dues and day pass revenues specified in Section 1.3, above.

3.2 Performance based incentive compensation shall be made as described in Exhibit B attached.

Section Four
Operation of the Facility

4.1 Subject to the policies and guidelines established by City, Genesis shall be responsible and have complete authority over the day to day operation of the Facility.

4.2 Genesis' operational duties and responsibilities shall include, but not be limited to, opening and closing the Facility, collecting and depositing all gross revenues generated by the Facility, hiring, firing, and supervising all employees and contractors, food, beverage, vending and pro-shop operations, payroll and accounting services, maintenance and repairs, ticketing, marketing, promotions, acquisition and maintenance of any required licenses, security and janitorial services.

4.3 Genesis shall, in compliance with City's policies and guidelines, establish and adjust the days and hours of operation and all rates and charges for the use and rental of the Facility.

4.4 City shall provide Genesis with all office space and Facility access reasonably necessary for the performance of Genesis' operational duties and responsibilities.

4.5 Genesis shall coordinate and conduct periodic advisory group meetings as necessary involving existing and future stakeholder representatives. Information from these meetings will be shared with the City and used as program and policy development tools.

4.6 Genesis shall comply with the Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements outlined in Exhibit C.

Section Five
Operating Budget

5.1 Genesis shall in accordance with City's schedule, prepare and submit for City's approval a line item budget for the Facility (exclusive of the fitness center). The Budget shall include, but not be limited to, the following detailed projections:

Gross Revenues by department sources
Operating expenses by department
Administrative and general expenses
Travel expenses
Marketing, advertising and promotion expenses
Energy costs; and
Repairs and maintenance

Each such budget shall be prepared and presented in equal or greater detail as shown on Exhibit D attached hereto.

5.2 It is understood that Genesis shall have an approved budget prior to the first day of each calendar year. Genesis shall use all reasonable efforts not to exceed or encumber any funds in excess of the approved budget.

Section Six
Bank Accounts

6.1 Gross revenues shall include all revenues of every kind derived from the use and operation of the Facility, except for receipts from monthly dues or day passes collected for the use of the fitness center, which shall be governed by Section 1.3, above. Genesis shall maintain and have control over an operating account for the Facility. Genesis shall deposit all gross revenues in the operating account within one (1) business day of receipt. Genesis shall use the operating account for payment of all operating expenses.

6.2 Operating expenses shall include all expenses itemized herein and in the approved operating budget, but shall not include any costs relating to the operation of the fitness center. All operating expenses of the Facility shall be paid from the operating account and include documentation of the expense. Genesis shall provide an accounting of all expenses paid on a monthly basis to City and provide any and all documentation supporting these expenditures.

6.3 At all times during the term of this Agreement, and subject to annual appropriation by the City Council, City shall be ultimately responsible for providing funds necessary to pay all

valid operating expenses in accordance with City's routine accounting procedures. Concurrent with the commencement of a prior management agreement between the parties, the City provided initial funding for the operating account in the amount of $100,000. The City shall not be required to provide additional funding. However, under no circumstances shall Genesis be liable for the payment of operating expenses and/or shall Genesis be obligated to fund the operation of the Facility (except for the fitness center) pending reimbursement by City. At the termination or expiration of this Agreement, and any extension thereof, City shall be entitled to return of the entire balance of the operating account after payment of all approved outstanding expenses. The Parties anticipate seasonal variation in both revenue and expenses for the Facility. To that end, the parties agree that a reserve balance held in the operating account serves that option to draw down on a monthly basis, after payment by Genesis of that month's expenses, any balance in the operating account exceeding $100,000. The funds of this monthly draw down will be held in an account managed by the City. Failure of Genesis at any time to meet actual Facility operating expense from the current operating account balance shall be a default of this Agreement.

Section Seven
Accounting

7.1 Genesis shall submit to City, within thirty (30) days after the end of each month, GAAP standard financial reports for the Facility including a balance sheet and statement of revenues and expenditures (budget to actual) for the current month and year to date. Genesis will also provide to City a statement of cash flows and a copy of the general ledger. City shall promptly advise Genesis of any objection to each monthly report.

7.2 Upon initiation of this Agreement and as often as may be reasonably required by City, City and Genesis shall together conduct inventories of all assets, equipment, and expendable supplies of the Facility.

7.3 The City reserves the right with proper notice to review the detailed supporting financial documentation.

7.4 Genesis shall meet with City on a quarterly basis to review the operational/financial performance information.

Section Eight
Contract Authority

8.1 Genesis shall not without City's prior approval:

1) Enter into any vendor, service or user/rental occupancy contracts for the Facility that have a term longer than one (1) year, or

2) Enter into any contracts for purchase of goods, equipment or services for the Facility that are in excess of two thousand five hundred dollars ($2,500).

Section Nine
Repairs and Maintenance

9.1 Except for repairs, maintenance and equipment servicing related to the fitness center (which Genesis shall pay for from its own funds), all routine and minor repairs,

maintenance and equipment servicing shall be the responsibility of Genesis as an operating expense of the Facility. Genesis shall obtain approval from City for all such expenses in excess of two thousand five hundred dollars ($2,500). Genesis shall be responsible for assuring that all repairs, replacements and maintenance shall be of a quality and class at least equal to the original work.

9.2 If Genesis is unable to contact City after using all reasonable efforts to do so; Genesis may make emergency repairs without City's prior consent. In such an event, Genesis shall promptly notify City and City shall reimburse Genesis for the full amount of such emergency repairs (except for any such repairs that relate to the fitness center). An emergency repair is defined as a repair of a condition which if not performed immediately creates an imminent danger to persons, property, or an unsafe condition at the Facility threatening persons or property.

9.3 Genesis, in accordance with the operating budget, shall be responsible for purchasing all expendable supplies for the operation of the Facility.

9.4 City shall be responsible for replacement of all major components or systems to the Facility. These include, but are not limited to, roof replacement or repairs, HVAC unit replacement or repairs, ice making equipment, major ice maintenance equipment, plumbing, and electrical. These expenditures will not come out of the Operating Budget of the Facility.

Section Ten
Employees

10.1 All personnel employed at the Facility shall be employees of Genesis and not of City. Genesis shall select the number, function, qualifications, compensation and benefits of its employees and shall control the terms and conditions of their employment. Except for employee compensation for employees working in the fitness center, all employee compensation, including payroll, taxes, insurance and employer contributions for the benefit of Facility employees which Genesis makes to its Internal Revenue Code Section 401(k) retirement plan, shall be Facility operating expenses.

Section Eleven
Personal Property

11.1 Ownership of the equipment shall remain with the party who supplied same and each party shall cooperate in the redelivery of said equipment in good working order and condition, reasonable wear and tear excepted, upon the termination of this Agreement.

Article 12
Insurance

12.1 Except as otherwise provided herein, and except for the cost of insurance allocable to the fitness center, the cost of all insurance required to be carried hereunder by either party shall be an operating expense of the Facility. Genesis will make every reasonable effort to include Facility in the Genesis master policy for the other facilities in its management portfolio.

12.2 City shall carry real and personal property Insurance on the Facility (including contents, loss of income and other additional perils) against loss or damage in such amounts as may be determined by City.

12.3 Genesis shall carry the following minimum insurance, in the name of Genesis with City listed as additional insured:

1) Commercial general liability insurance insuring against claims for injury, death or property damage occurring on, in or about the Facility with single limit, aggregate and excess liability coverage in commercially reasonable amounts and with deductible limits established by the City.
2) Worker's Compensation in a statutory amount and Employers Liability Insurance in an equal sum on all personnel employed by Genesis at the Facility, including the fitness center, during the term of this Agreement.
3) Employee Theft Insurance with limits and deductible amounts approved by City.

12.4 Genesis shall provide City with a certification of the above required coverages prior to commencement of the Agreement. All policies required of Genesis shall be insured by companies authorized to do business in the State of Kansas.

Section Thirteen
Default

13.1 When a party fails to timely make any payment due hereunder or breaches any of the material terms hereof, such party shall be in default.

13.2 If a default occurs, the non-defaulting party must notify the defaulting party in writing by certified mail or hand delivered letter within ten (10) days the nature of the default. The defaulting party shall have fifteen (15) days from receipt of the written notice to remedy the default, unless the default presents a danger to the Facility, the public, employees of Genesis, or any other danger. Such defaults that present a danger to the Facility, the public, employees of Genesis or any other danger, must be corrected within twenty-four (24) hours.

13.3 Upon failure of the defaulting party to remedy the default within the time prescribed the non-defaulting party may terminate this Agreement.

13.4 Upon termination of this Agreement the non-defaulting party may pursue all remedies available to it under the terms hereof and under any applicable law.

Section Fourteen
Applicable Law

14.1 This Agreement shall be governed by the laws of the State of Kansas and wherever required shall be construed and interpreted to comply with the cash basis and budget law of the State of Kansas. Venue for any action or proceeding brought by either party to this agreement shall be in Wichita, Kansas. The prevailing party in any such proceeding shall be entitled to recover its costs and reasonable attorney fees including collection costs. No legal proceeding arising out of this Agreement shall be brought by either party more than three (3) years after the cause of action has occurred.

Article Fifteen
Indemnification

15.1 Each party shall indemnify and hold harmless the other party, its directors, officers, employees, agents, successor, and assigns from all damages, costs, expenses and liabilities, including reasonable attorney's fees and disbursements incurred in connection with the indemnifying party's failure to perform its obligations and duties under this Agreement.

Article Sixteen
Other Provisions

16.1 Notices to the parties shall be deemed to have been given when mailed by certified mail, commercial carrier, or personal delivery to the parties at the following addresses:

City of Wichita Park and Recreation Department City Hall 11th Floor 455 N. Main Wichita, KS 67202	Genesis Health Clubs Management LLC Attn. Rodney Steven II 6100 E. Central STE 3 Wichita, KS 67208

16.2 This Agreement, including all Exhibits, constitutes the entire understanding between the parties relating to the rights herein granted and the obligation herein assumed and correctly sets forth the rights, duties, and obligations of each party to the other as of the date of this Agreement. Any prior Agreements, promises, negotiations or representations regarding the subject matter of this Agreement not expressly set forth in this Agreement are of no force or effect. No alteration or variation of any provision of this Agreement shall be valid unless reduced to writing and signed by both parties.

16.3 This Agreement shall benefit and bind the successors, affiliates and assigns of the party. No course of dealing between the parties and no failure to exercise any right granted, or provision included by this Agreement shall be construed as a waiver of the right to enforce the terms of this Agreement as written.

16.4 This Agreement shall not be assigned by either party without the other's prior written consent.

16.5 If any provision of this Agreement is determined to be invalid, illegal or unenforceable in any respect as written, such provision shall be automatically modified to the minimum extent necessary to make it enforceable and the provision as so modified shall be enforced, without invalidating the Agreement as a whole.

16.6 Each party is a valid and legally existing entity and each of the undersigned hereby state that he/she has full authority to enter into this Agreement and hereby accepts this Agreement on behalf of the entities identified below.

16.7 This Agreement may be executed in any number of counterparts, including fax or facsimile transmission or scanned and emailed, and each counterpart shall be deemed to be an original instrument, all such counterparts together shall constitute one (1) instrument.

16.8 This Agreement supersedes any other Agreement between Genesis and the City for the operation of the Facility.

16.9 The effective date of this Agreement is the date of execution by the last party to sign.

The Remainder of this Page Intentionally Left Blank

City of Wichita

By: _____
Carl Brewer, Mayor

Date: _____

Attest:

_____
Karen Sublett, City Clerk

Genesis Health Club Management, LLC

By: _____
Rodney Steven II: President

Date: _____

Approved as to form:

_____
Gary Rebenstorf, City Attorney

Exhibit A
Capital Improvements

Exhibit B
Performance Based Incentive Compensation

Subject to the requirements and limitations of the Kansas Cash Basis and Budget Laws, and the sufficiency of annual appropriations properly available for such purposes, the City will pay Genesis performance based incentive compensation each year based on the prior year's annual statement of revenues less expenses as referenced in Section 7.1 above if the performance measure targets are met. This incentive payment will occur on about March 1 of the following year.

Performance measures will be two (2) items, net revenue and attendee numbers. The target performance measure for annual net revenue is $10,000. The target performance measure for annual attendance will be measured on public and group skating. During the first year of this agreement an accurate attendance count shall be conducted and established as the attendance target. These performance targets shall increase 2% annually during each year of this agreement.

If these targets are met, City agrees to:

1. Pay Genesis 10% of the net income for any amount of net income up to $10,000.
2. Pay Genesis an additional 20% of the net income for any amount of net income over $10,000.

Exhibit C

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

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

A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

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

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

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

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

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

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

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations,

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

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

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

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

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

D. Exempted from these requirements are:

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

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

Exhibit D

Budget Detail

Wichita Ice Center
Proposed Budget for
2011

Revenues				
Public Skating Admissions		$ 152,500		
Adult Hockey Revenue		$ 178,686		
Youth Hockey Revenue		$ 9,793		
Contract Ice Revenue		$ 185,725		
Program Misc. Revenue		$ 529,772		
	Total Revenues		**$**	**1,056,476**
Expenses				
Cost of Goods Sold		$ 214,998		
Payroll and Expenses		$ 378,129		
Management Contract		$ 42,000		
Travel and Entertainment		$ 2,378		
Repairs		$ 39,500		
Utilities		$ 227,454		
Marketing		$ 7,000		
Program Expenses		$ 3,994		
Building and Maintenance		$ 34,800		
Supplies		$ 45,027		
Other Misc.		$ 51,642		
	Total Expenses		**$**	**1,046,922**
	Net Income		**$**	**9,554**

(Published in The Wichita Eagle on January 13, 2012)

ORDINANCE NO. 49-179

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS (THE "CITY"), APPROVING CERTAIN PLANNED CONSTRUCTION, APPROVING AND AUTHORIZING THE EXECUTION OF A PROFESSIONAL MANAGEMENT SERVICES AND FITNESS CENTER DEVELOPMENT AGREEMENT BETWEEN THE CITY AND GENESIS HEALTH CLUBS, LLC REGARDING MANAGEMENT OF THE CITY'S ICE CENTER FACILITY AND DEVELOPMENT OF A FITNESS CENTER THEREIN, ALL PURSUANT TO CHARTER ORDINANCE NO. 203, AND AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY TO PAY THE COSTS THEREOF, AND THE ISSUANCE OF TEMPORARY IMPROVEMENT NOTES OF THE CITY FROM TIME TO TIME AS FUNDS ARE NEEDED FOR SUCH PURPOSES.

WHEREAS, in conjunction with this ordinance, the City of Wichita (the "City") has approved Genesis Health Clubs, LLC (the "Developer") to serve as manager of the City's Ice Center and as developer in connection with the construction of a fitness center and related improvements within the said Ice Center, and is now considering allowing construction of such fitness center and related improvements by a contractor to be selected by the Developer, through solicitation of at least three competitive bids, but otherwise without public bid; and,

WHEREAS, the Developer will furnish adequate sureties for the full and faithful completion of the said improvements; and

WHEREAS**,** Charter Ordinance No. 203 of the City requires that, prior to commencement of construction of the improvements, the Governing Body of the City must conduct a public hearing to consider whether to implement the subsection of Charter Ordinance No. 203 that allows for development agreements, in the context of these specific improvements, and must adopt, by 2/3

vote of its members, an Ordinance approving the construction under the provisions of Charter Ordinance No. 203; and

WHEREAS, the Governing Body of the City, pursuant to the requirements of Charter Ordinance No. 203, has conducted a public hearing on December 20, 2011, to hear and consider public comment on the question of whether to implement the provisions of Charter Ordinance No. 203 to approve the construction of the subject improvements under the provisions of Charter Ordinance No. 203 and the proposed Agreement; and

WHEREAS, under the authority of Charter Ordinance No. 156 and 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 economic welfare of the City and its inhabitants, that general obligation bonds of the City in an amount not to exceed $750,000, exclusive of the costs of interest on borrowed money (the "Bonds") be authorized and issued for the purpose of paying costs associated with the construction of the subject improvements, 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 AS FOLLOWS:

Section 1. Authorization of Agreement . The City is hereby authorized to enter into the Professional Management Services and Fitness Center Development Agreement (the "Agreement"), by and between the City and Genesis Health Clubs, LLC, in substantially the form presented by City Staff for consideration prior to the public hearing of December 20, 2011, together with such revisions and modifications as the Governing Body has directed, following the conclusion of such public hearing.

Section 2.Approval of Construction of the Improvements by the Developer. The Governing Body hereby approves the construction of the fitness center and related improvements, as provided for in the Agreement, under the provisions of Charter Ordinance No. 203, and further requires the Developer to provide an appropriate instrument of surety to secure completion of the work in compliance with Charter Ordinance No. 203.

Section 3. Execution of Documents. The Mayor of the City is hereby authorized and directed to execute the Agreement in substantially the form approved by the Governing Body with such additional minor corrections thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof, and City Staff shall deliver the Agreement for and on behalf of and as the act and deed of the City.

Section 4. Authorization of Bonds. 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 Charter Ordinance No. 156 of the City of Wichita and Article 12, Section 5 of the Kansas Constitution in an amount not to exceed $750,000, exclusive of the costs of interest on borrowed money, for the purpose of paying costs associated with the construction of the fitness center and related improvements. 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 5. Authorization of Temporary Notes. It is hereby further authorized, ordered and directed that in order to temporarily finance the costs of the subject improvements 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 $750,000, 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 subject improvements. 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, Charter Ordinance No. 156 of the City of Wichita 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 6. Further Authority. The City shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such further action as necessary to carry out and give effect to the transactions contemplated by this Ordinance, the Agreement, and such other documents as are contemplated by the Agreement in connection with the construction of the subject improvements.

Section 7. Effective Date. This Ordinance shall take effect and be in full force from and after its adoption by vote of 2/3 of the members of 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 10th day of January, 2012, with no less than 2/3 of the members voting in favor thereof.

CITY OF WICHITA, KANSAS

By_____
Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

(SEAL)

Approved as to Form:

_____

Gary E. Rebenstorf, City Attorney

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: 2012 Grants Review Committee Appointments

INITIATED BY: Housing and Community Services Department

AGENDA: New Business

Recommendation: Approve appointments for the 2012 Grants Review Committee and authorize the City Manager to appoint a replacement(s) in the event that an appointee is unable to serve.

Background: On March 28, 2000, the City Council approved a change in the composition of the Grants Review Committee (GRC) when the Human Services Advisory Board and the Citizen Participation Organization were disbanded. Since then the Grants Review Committee has included 12 members from the following areas: four District Advisory Boards; one United Way; one Sedgwick County; one USD 259; two Wichita Independent Neighborhood Association; one Wichita State University; one large business and one small business. On December 7, 2010 the City Council expanded membership on the GRC, to include representatives from Districts 2 and 5.

Analysis: The Grants Review Committee has responsibility for reviewing proposals received for Public Services projects which have included Women's Services, Summer Youth Employment, and Youth Recreation & Enrichment. The GRC also reviews funding applications received for HOME Investment Partnerships projects for Community Housing Development Organizations (CHDOs). In the past the GRC has reviewed applications for Emergency Shelter Grant funding however the U.S. Department of Housing and Urban Development (HUD) is changing the nature of this program. It will be known as the Emergency Solutions Grant although program details have not been announced. The GRC will hold at least one public hearing to allow for oral presentations and feedback from the public. Following the review and public hearing, the GRC will make funding recommendations to the City Manager for presentation to the City Council. Nominations for the 2012 Grants Review Committee have been received in accordance with the representation schedule listed above. A list of the nominees is attached.

Financial Considerations: The Grants Review Committee serves without remuneration.

Goal Impact: Decisions made by the Grants Review Committee will impact Economic Vitality and Affordable Living, Quality of Life and Core Area and Neighborhood goals.

Legal Considerations: The Law Department has approved the Grants Review Committee appointment process.

Recommendation/Action: It is recommended that the City Council approve the appointments to the 2012 Grants Review Committee and authorize the City Manager to appoint a replacement(s), in the event that an appointee is unable to serve.

Attachments: List of Grants Review Committee nominations.

2012 GRANTS REVIEW COMMITTEE
NOMINEE LIST

Small Business (1)
Ken Bender
Pro Max America LLC

Large Business (1)
_____

District Advisory Boards (6)

I	Brandon James
II	David Babich
III	_____
IV	Craig Goebel
V	_____
VI	_____

Sedgwick County (1)
_____

United Way (1)
Patrick Hanrahan

USD #259 (1)
_____

Wichita State University (1)
_____

Wichita Independent Neighborhoods (2)
_____
_____

Agenda Item No. IV-5

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council Members

SUBJECT: Amendments to Chapters 3.30 of the City Code relating to Entertainment Establishments

INITIATED BY: Police Department

AGENDA: New Business

Recommendation: Place ordinance amendments on first reading.

Background: In 2009, the City Council approved substantial changes to the licensing of drinking establishments and clubs within the City. Part of this change called for abolishing dance hall and cabaret licensing in favor of a single entertainment license. Though these changes have enhanced public safety in the community, the entertainment license has placed a burden on "non-club" entities such as art galleries and coffee shops who generally want to promote live entertainment in a non-club environment.

Analysis: City staff took part in several meetings with proprietors who operated art galleries, coffee shops and, in one instance, a music only venue. In August, the Police Department authored and distributed a survey to art galleries and coffee shops to gain ideas as to how the proprietors would like to see the entertainment ordinance changed. As a result of this communication, City staff revised the ordinance to further define the different types of venues such as art galleries, coffee shops and music stores which are businesses that do not engage in full time club operations. In addition, hours of operation and allowed activities were modified for these types of businesses to aid their business models.

Financial Consideration: The proposed amendment reduces the fee for an entertainment establishment license for art galleries, coffee shop or music store venues to $50 for an annual license.

Goal Impact: Quality of Life. The proposed ordinance amendments promote cultural arts by allowing a greater variety of venues to become licensed as entertainment establishments within the community, while providing Safe and Secure neighborhoods.

Legal Consideration: The ordinance amendments have been drafted and reviewed by the Law Department and are approved as to form.

Recommendation/Action: It is recommended that the City Council place the ordinance amendments on first reading.

Attachment: Proposed ordinance amendments.

First Published in The Wichita Eagle on _____

DELINEATED 9/08/2011

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTIONS 3.30.020 AND 3.30.060 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE DEFINITION OF ENTERTAINMENT ESTABLISHMENTS AND THE FEES FOR LICENSING CERTAIN TYPES OF SUCH ESTABLISHMENTS AND REPEALING THE ORIGINALS OF SECTIONS 3.30.020 AND 3.30.060 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

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

SECTION 1. Section 3.30.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Definitions.** The following words, as used in this Chapter, have the meanings set forth below:

"Alcoholic beverage" means any alcoholic liquor or any cereal malt beverage as those terms are defined by Sections 4.04.010(b) and 4.04.010(h) of the Code of the City of Wichita and amendments thereto.

"Art" or "fine art" means works that are visual in nature, including, but not limited to, paintings, drawings, watercolors, graphics, sculptures, prints, ceramics, textiles and photos which are created by an artist to display or sell and produced or intended primarily for aesthetic purposes rather than utility.

"Art gallery" means any establishment whose primary purpose is to exhibit and/or offer for sale works of fine art or precious/semi-precious metals. For the purposes of this chapter, such an establishment will have a legal capacity

not to exceed 200 people and will not be licensed to sell any alcoholic beverage on a permanent basis. In the event that temporary alcoholic beverage sales are conducted on the premises of an art gallery, such sales shall conform with all applicable state and city laws regulating the same.

'Ambient music' means low-level, background music, which is inaudible from any portion of the exterior of the premises. Ambient music does not include music played by a disc jockey, 'DJ' or music that is used for karaoke or other live performances. Ambient music may include music played by a jukebox, when such music is inaudible from any portion of the exterior of the premises.

'Chief of Police' means the Chief of the Wichita Police Department or his/her designee.

"Coffee shop" means any establishment whose primary purpose is to serve coffee or teas along with food items. For the purposes of this chapter, such an establishment will have a legal capacity not to exceed 100 people and will not be licensed to sell any alcoholic beverage on a permanent basis. In the event that temporary alcoholic beverage sales are conducted on the premises of a coffee shop, such sales shall conform with all applicable state and city laws regulating the same.

'Entertainment' means any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business, to which the public is invited or allowed to watch, listen, or participate, or is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing patrons, including, but not limited to any of the following:

(a) Dancing by patron(s) to live or recorded music.

(b) The presentation of music played on sound equipment operated by an agent or contractor of the establishment, commonly known as 'disc jockey' or 'DJ, or

(c) The presentation of live music whether amplified or un-amplified, or

(d) The presentation of music videos, music concerts or other similar forms of musical entertainment from any source, or

(e) Any amusement or event such as live music or other live performance which is knowingly permitted by any Entertainment Establishment, including, but not limited to, presentations by single or multiple performers, such as hypnotists, pantomimes, comedians, dance acts, concerts, dances, live bands, karaoke or other live music.

'Entertainment Establishment(s)' means any event center or any person or entity which provides entertainment as defined by this chapter, or any person or entity which provides a venue for any such entertainment. Such term shall not include book readings, storytelling, the playing of ambient music, or other similar activities for which no fee is charged.

'Entertainment License' means a license obtained from the City, pursuant to the provisions of this Chapter, for the purposes of operating an Entertainment Establishment.

‘Event Center’ means premises which are frequently rented out for public or private activities that are not repeated on a weekly basis, and which are not open to the public on a daily basis at times other than when an event is scheduled.

‘Health Officer’ means the Director of Environmental Services or his/her designee.

‘License’ means the authority to conduct the business of an entertainment establishment within the city limits.

‘Licensee’ means any person to whom a current license has been issued under this Chapter authorizing such person to conduct the business of an entertainment establishment within the city limits.

‘Loitering’ means remaining idle in essentially one location, to be dilatory, to tarry, to dawdle and shall include, but not be limited to, standing around, hanging out, sitting, kneeling, sauntering or prowling.

‘Manager’ means a person, regardless of the job title or description, who is operating the establishment or who has discretionary powers to organize, direct, carry on, or control the operations of an Entertainment Establishment or teen club. Authority to engage in one or more of the following functions is prima facie evidence that a person is a Manager of the Entertainment Establishment or teen club:

(a) Hire or terminate employees; or

(b) Contract for the purchase of furniture, equipment, or supplies, except for the occasional replenishment of stock; or

(c) Disburse funds of the business, except for the receipt of regularly replaced items of stock; or

(d) Make or participate in making policy decisions regarding operations of the Establishment.

'Music' as used in this Chapter shall not apply to radios or ambient music.

"Music store venue" shall mean any establishment that sells musical instruments, offers lessons or open jam session opportunities to musicians. For the purposes of this chapter, such an establishment will have a legal capacity not to exceed 100 people and will not be licensed to sell any alcoholic beverage on a permanent basis. In the event that temporary alcoholic beverage sales are conducted on the premises of a music store venue, such sales shall conform with all applicable state and city laws regulating the same.

"Nonprofit dance" means any dance held by a fraternal, social, school, church or other nonprofit organization which is merely incidental to its principal purpose and where the general public is not solicited or permitted.

'Non-profit organization' means an organization or institution organized under Internal Revenue Code Section 501(c)(3) and recognized as a public charity or private foundation established for a religious, charitable, scientific, literary or public safety purpose.

'Person' means any individual, owner, operator, corporation, partnership, or association.

‘Photo identification’ means a valid driver’s license, non-driver identification card, government issued identification card or a current school identification card which contains the individual’s photograph.

‘Premises’ means any place where an entertainment establishment is operated or maintained and includes all hallways, bathrooms, parking areas, and other adjacent portions of the premises, which are under the control of the licensee or which are utilized by the licensee and are accessible to the public during operating hours .

‘Responsible Person’ means any person who is any of the following:

A. The person who owns the Entertainment Establishment or teen club; or

B. The person in charge of the Entertainment Establishment or teen club; or

C. The person using the Entertainment Establishment or teen club under a special arrangement, contract or rental agreement; or

D. The Entertainment Establishment’s manager, on-site supervisor, or other employee who is responsible for the operation of the establishment;

‘Superintendent’ means the Superintendent of the Office of Central Inspection or his or her designee.

‘Teen Club’ is any building or part or other enclosed place where a teen dance is held or teen dancing is permitted, not including:

a. an accredited public or private school or college;

b. property owned or controlled by the federal, state, or local government;

c. a facility operated by an organization which has been recognized as exempt from federal income taxation when teen dancing is but an occasional activity incidental to the facility's primary purposes.

SECTION 2. Section 3.30.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**License--Fees.** A. For any entertainment establishment or teen club other than those types of establishments set forth in subsection (b), the following license fees shall be paid:

For one day . . . . . $ 25.00

For one month or less $100.00

For six months or less $275.00

For one year or less . . . . . $400.00.

B. For any establishment offering entertainment that is regulated by this chapter and is an art gallery, coffee shop or music store venue as those terms are defined in Section 3.30.020, an annual license fee of $50.00 shall be paid."

SECTION 3. The originals of Sections 3.30.020 and 3.30.060 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 4. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on January 13, 2011

12/14/2011

ORDINANCE NO. 49-177

AN ORDINANCE AMENDING SECTIONS 3.30.020, 3.30.060 AND 3.30.070 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE DEFINITION OF ENTERTAINMENT ESTABLISHMENTS, THE FEES FOR LICENSING CERTAIN TYPES OF SUCH ESTABLISHMENTS AND AND THE HOURS OF OPERATION THEREOF AND REPEALING THE ORIGINALS OF SECTIONS 3.30.020 AND 3.30.060 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

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

SECTION 1. Section 3.30.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Definitions.** The following words, as used in this Chapter, have the meanings set forth below:

"Alcoholic beverage" means any alcoholic liquor or any cereal malt beverage as those terms are defined by Sections 4.04.010(b) and 4.04.010(h) of the Code of the City of Wichita and amendments thereto.

"Art" or "fine art" means works that are visual in nature, including, but not limited to, paintings, drawings, watercolors, graphics, sculptures, prints, ceramics, textiles and photos which are created by an artist to display or sell and produced or intended primarily for aesthetic purposes rather than utility.

"Art gallery" means any establishment whose primary purpose is to exhibit and/or offer for sale works of fine art or precious/semi-precious metals. For the purposes of this chapter, such an establishment will have a legal capacity

not to exceed 200 people and will not be licensed to sell any alcoholic beverage on a permanent basis. In the event that temporary alcoholic beverage sales are conducted on the premises of an art gallery, such sales shall conform with all applicable state and city laws regulating the same.

'Ambient music' means low-level, background music, which is inaudible from any portion of the exterior of the premises. Ambient music does not include music played by a disc jockey, 'DJ' or music that is used for karaoke or other live performances. Ambient music may include music played by a jukebox, when such music is inaudible from any portion of the exterior of the premises.

'Chief of Police' means the Chief of the Wichita Police Department or his/her designee.

"Coffee shop" means any establishment whose primary purpose is to serve coffee or teas along with food items. For the purposes of this chapter, such an establishment will have a legal capacity not to exceed 100 people and will not be licensed to sell any alcoholic beverage on a permanent basis. In the event that temporary alcoholic beverage sales are conducted on the premises of a coffee shop, such sales shall conform with all applicable state and city laws regulating the same.

'Entertainment' means any single event, a series of events, or an ongoing activity or business, occurring alone or as part of another business, to which the public is invited or allowed to watch, listen, or participate, or is conducted for the purposes of holding the attention of, gaining the attention of, or diverting or amusing patrons, including, but not limited to any of the following:

(a) Dancing by patron(s) to live or recorded music.

(b) The presentation of music played on sound equipment operated by an agent or contractor of the establishment, commonly known as 'disc jockey' or 'DJ, or

(c) The presentation of live music whether amplified or un-amplified, or

(d) The presentation of music videos, music concerts or other similar forms of musical entertainment from any source, or

(e) Any amusement or event such as live music or other live performance which is knowingly permitted by any Entertainment Establishment, including, but not limited to, presentations by single or multiple performers, such as hypnotists, pantomimes, comedians, dance acts, concerts, dances, live bands, karaoke or other live music.

'Entertainment Establishment(s)' means any event center or any person or entity which provides entertainment as defined by this chapter, or any person or entity which provides a venue for any such entertainment. Such term shall not include book readings, storytelling, the playing of ambient music, or other similar activities for which no fee is charged.

'Entertainment License' means a license obtained from the City, pursuant to the provisions of this Chapter, for the purposes of operating an Entertainment Establishment.

‘Event Center’ means premises which are frequently rented out for public or private activities that are not repeated on a weekly basis, and which are not open to the public on a daily basis at times other than when an event is scheduled.

‘Health Officer’ means the Director of Environmental Services or his/her designee.

‘License’ means the authority to conduct the business of an entertainment establishment within the city limits.

‘Licensee’ means any person to whom a current license has been issued under this Chapter authorizing such person to conduct the business of an entertainment establishment within the city limits.

‘Loitering’ means remaining idle in essentially one location, to be dilatory, to tarry, to dawdle and shall include, but not be limited to, standing around, hanging out, sitting, kneeling, sauntering or prowling.

‘Manager’ means a person, regardless of the job title or description, who is operating the establishment or who has discretionary powers to organize, direct, carry on, or control the operations of an Entertainment Establishment or teen club. Authority to engage in one or more of the following functions is prima facie evidence that a person is a Manager of the Entertainment Establishment or teen club:

(a) Hire or terminate employees; or

(b) Contract for the purchase of furniture, equipment, or supplies, except for the occasional replenishment of stock; or

(c) Disburse funds of the business, except for the receipt of regularly replaced items of stock; or

(d) Make or participate in making policy decisions regarding operations of the Establishment.

‘Music’ as used in this Chapter shall not apply to radios or ambient music.

“Music Store/Music Only venue” shall mean any establishment that sells musical instruments or offers music lessons or offers open jam session opportunities to musicians. For the purposes of this chapter, such an establishment will have a legal capacity not to exceed 100 people and will not be licensed to sell any alcoholic beverage on a permanent basis. In the event that temporary alcoholic beverage sales are conducted on the premises of a music store/music only venue, such sales shall conform with all applicable state and city laws regulating the same.

"Nonprofit dance" means any dance held by a fraternal, social, school, church or other nonprofit organization which is merely incidental to its principal purpose and where the general public is not solicited or permitted.

‘Non-profit organization’ means an organization or institution organized under Internal Revenue Code Section 501(c)(3) and recognized as a public charity or private foundation established for a religious, charitable, scientific, literary or public safety purpose.

‘Person’ means any individual, owner, operator, corporation, partnership, or association.

‘Photo identification’ means a valid driver’s license, non-driver identification card, government issued identification card or a current school identification card which contains the individual’s photograph.

‘Premises’ means any place where an entertainment establishment is operated or maintained and includes all hallways, bathrooms, parking areas, and other adjacent portions of the premises, which are under the control of the licensee or which are utilized by the licensee and are accessible to the public during operating hours .

‘Responsible Person’ means any person who is any of the following:

A. The person who owns the Entertainment Establishment or teen club; or

B. The person in charge of the Entertainment Establishment or teen club; or

C. The person using the Entertainment Establishment or teen club under a special arrangement, contract or rental agreement; or

D. The Entertainment Establishment’s manager, on-site supervisor, or other employee who is responsible for the operation of the establishment;

‘Superintendent’ means the Superintendent of the Office of Central Inspection or his or her designee.

‘Teen Club’ is any building or part or other enclosed place where a teen dance is held or teen dancing is permitted, not including:

a. an accredited public or private school or college;

b. property owned or controlled by the federal, state, or local government;

c. a facility operated by an organization which has been recognized as exempt from federal income taxation when teen dancing is but an occasional activity incidental to the facility's primary purposes.

SECTION 2. Section 3.30.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**License--Fees.** A. For any entertainment establishment or teen club other than those types of establishments set forth in subsection (b), the following license fees shall be paid:

For one day . . . . . $ 25.00

For one month or less $100.00

For six months or less $275.00

For one year or less . . . . . $400.00.

B. For any establishment offering entertainment that is regulated by this chapter and is an art gallery, coffee shop or music store/music only venue as those terms are defined in Section 3.30.020, an annual license fee of $50.00 shall be paid."

SECTION 3. Section 3.30.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**3.30.070. Hours of operation.** (a) It is unlawful for any licensee, owner, manager, or responsible person of a teen club to permit or allow entertainment between the hours of midnight and noon. No person, except an employee, shall be on the licensed

premises of a teen club and the premises shall be closed between the hours of 12:30 a.m. and 7:00 a.m.

(b) Other than those types of establishments set forth in subsection (d), it shall be unlawful for any licensee, owner, manager or responsible party of an entertainment establishment to permit or allow entertainment between the hours of two a.m. and noon. No person, except an employee, shall be on the licensed premises of an entertainment establishment and the premises shall be closed between the hours of 2:30 a.m. and 7:00 a.m.

(c) For the purposes of this section, employee shall be defined as an individual who is employed by, works on or upon the licensed premises and receives financial compensation from the licensee.

(d) For any establishment offering entertainment that is regulated by this chapter and is an art gallery, coffee shop or music store/music only venue as those terms are defined in Section 3.30.020, it shall be unlawful for any licensee, owner, manager or responsible party of such an establishment to permit or allow entertainment between the hours of two a.m. and noon. Provided, however, music student recitals, music lessons, or closed recording sessions may be conducted at anytime the premises are open. Such premises shall be closed between the hours of 2:30 a.m. and 5:00 a.m."

SECTION 4. The originals of Sections 3.30.020, 3.30.060 and 3.30.070 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 5. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of January 2012.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council Members

SUBJECT: Ordinance amending Section 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.110, 3.49.130, 3.49.140 and 3.49.160 of the Code of the City of Wichita, Kansas, pertaining to Wrecker Services and repealing the originals of Section 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.29.110, 3.49.120, 3.49.130, 3.49.140, 3.49.150, 3.49.160, 3.49.170, 3.49.180, 3.49.220 and 3.49.230 and authorizing Purchasing Manager to negotiate one year extension/modification of existing contract between City of Wichita and Propertyroom.com.

INITIATED BY: Wichita Police Department

AGENDA: New Business

Recommendation: Approve the Mayor's Request for Declaration of Emergency and pass the ordinance amending Sections 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.110. 3.49.130, 3.49.140 and 3.49.160 of the Code of the City of Wichita, on a single reading to be effective January 1, 2012. Authorize the Purchasing Manager to negotiate extension/modification of the existing contract between City of Wichita and Propertyroom.com. for the storage and sale of police impounded vehicles.

Background: Currently, wrecker services are licensed by the City of Wichita to perform emergency towing services. Emergency tows are those requested by the Police Department, including wrecked or disabled vehicles, and vehicles impounded by the Police Department. In both cases, a towing rotation has been established, and licensed wrecker services are called sequentially whenever an emergency tow is necessary. Fees for emergency tows are established by ordinance, and wreckers are licensed for six month periods. The licensing period for emergency wreckers ends December 31, 2011.

On August 24, 2010, a Request for Proposal (RFP) was sent out for the purpose of obtaining a towing service and an on-line auction service to handle all ***Police initiated impounds***. The goals of the RFP were to enhance customer service by utilizing one lot for citizens to pick up their vehicle and to reduce Police Department staffing requirements for the release and sale of these vehicles. During this process, three proposals were received. Upon review of the proposals by the staff screening selection committee, Wichita LLC was selected and negotiations began in late 2010. The parties were unable to reach a mutual agreement regarding the terms of a contract for towing and storage of impounded vehicles. As a result, negotiations began with an alternate bidder and an alternative solution was reached with PropertyRoom.com and Copart Inc. Under this proposal, City staff will tow vehicles to a single lot operated by Copart Inc. Unclaimed vehicles will be sold by on-line auctions. This option fulfills the goal of having one impound lot, which will enhance customer service and accountability as well as addressing the staffing issues experienced by the Police Department. The City has an existing contract with Propertyroom.com for the disposition of unclaimed property seized by the Wichita Police Department.

In addition to impound tows, staff began research options to address many issues that had arisen regarding non-impound, emergency tows.

Analysis: Based on the RFP and subsequent negotiations, staff has proposed ordinance revisions that would modify both the current practice for police impound tows, and for other emergency tows. The proposed changes would utilize City staff to provide impounding tow services, and would include the use of contracted providers for a single impound lot, and for online auctions of unclaimed, impounded vehicles. In addition, licensing requirements for emergency wrecker services would be modified, in response to concerns express by towing companies.

The proposed amendments for emergency, non-impound tows include:

- Modify the existing rotation tow process for emergency wrecker services related to traffic accidents. Citizens would be provided with a list of licensed wrecker services, and allowed to choose a wrecker service from approved companies. If no company is selected, or the company selected is unavailable, SPIDER dispatchers will contact the next wrecker on the rotation list.
- Allow wrecking companies to establish their own emergency towing fees.
- Reduce required insurance levels.
- Reduce vehicle storage requirements.
- Reduce the number and size of wreckers required to participate on the rotation tow list.

These amendments address a number of concerns continually expressed by the tow companies regarding rate restrictions and excessive regulation by the City.

By changing the impound tow process and entering into a contract with PropertyRoom.com and Copart Inc. the City of Wichita would enhance customer service and accountability by:

- Towing vehicles to one location rather than multiple lots dispersed throughout the city.
- Minimizing tow fees to the citizens that are being affected by these tows.
- Maintaining consistency regarding the overall process of towing, impounding and releasing of vehicles.
- Initiating the process of on-line vehicle auctions.
- Increasing the level of "care and custody" of citizens' vehicles and personal property by means of photographs, thereby reducing the number of damage and theft claims.

This agreement would further benefit the City of Wichita by:

- Reducing the amount of administrative work regarding fiscal affairs tracking and documentation caused by dealing with multiple vendors.
- Reducing the time needed for staff to monitor sales of impounded vehicles that go to auction on multiple lots.
- Generating revenue through the proceeds obtained from vehicle auctions to supplement police resources
- Reducing, if not completely eliminating, the cost of payouts to private tow companies for damages caused by human error, a policy which exists under the current system.

Section 2.64.020(j) authorizes the Purchasing Manager to purchase supplies, services and equipment from contracts which have been awarded, subject to public bidding and approved by the proper governmental entities authority. PropertyRoom.com has a contract award with the National Joint Powers Alliance and an existing contract with the City which may be modified to include storage and sale of impound vehicles without reissuing a request for proposals for bids. The proposed contract extension or modification will be for the term of one year.

Financial Considerations: Under the current ordinance, the City of Wichita receives 5% of emergency wrecker service revenues, less any charges or refunds due the towing companies. This amount has averaged $14,667 annually in the last five years. The proposed procedure would instead utilize City Fleet employees and equipment for impound tows. Fleet would utilize existing staff and equipment and supplement these resources with five additional staff and one additional tow truck. From a cost

accounting standpoint, these marginal operating costs would total an estimated $284,346. However, concurrent with the consideration of this function, Fleet has been studying staffing levels and ways to restructure. Currently, Fleet is operating with 9 vacant, but authorized positions. By filling these vacant positions (and staying within the overall authorized funding levels and staffing levels in the 2012 Adopted Budget) Fleet operations would have the necessary staff to handle impound tows. During the 2012 Revised budget process staff would review the estimated turnover savings budgeted in the Fleet Fund, however, no expenditures increases or staff increases would ~~need to~~ be necessary if Fleet absorbs this function.

Based on an analysis of past tows, 98% of the time there has been no more than two tows per hour. Over the last four years, an average of 2,300 vehicles ~~is~~ ***were*** impounded annually. An estimated 650 annually are unclaimed and auctioned. Fleet capacity would include six trucks and three drivers most times, although staffing could be supplemented with other Fleet staff as necessary. In addition, filling additional authorized Fleet positions would enhance available staffing to be utilized to supplement maintenance activities when not engaged in towing.

In addition, in exchange for operating an impound lot, an estimated $49,500 annually would be paid to Copart, Inc for storage charges. Online auctions would be conducted by PropertyRoom.com. A fee of 12.5% of all auction proceeds from unclaimed vehicles would be paid, totaling an estimated $40,625 based on an average auction price of $500 per vehicle. In addition, storage charges paid for unclaimed, auctioned vehicles would total an estimated $146,250 annually. From a cost accounting standpoint, the total annual costs are estimated at $520,721. However, the only unbudgeted costs associated with this proposal would be the auction and storage fees, estimated to total $236,375.

	Cost Accounting Model	Compared to 2012 Budget
Tow Revenue	$188,907	$188,907
Storage Charges	$99,000	$99,000
Auction Revenue	$325,000	$325,000
Total Revenue	**$612,907**	**$612,907**
Fleet staff and marginal costs	$284,346	$0
Storage Charges	$49,500	$49,500
Auction & Lot costs	$186,875	$186,875
Total Expenditures	**$520,721**	**$236,375**
Net Revenue	**$92,186**	**$376,532**

Revenue from towing ($188,907) and storage fees ($99,000) on claimed vehicles would be an estimated $287,907. Revenue of $325,000 is estimated from unclaimed (auctioned) vehicles. Total revenues are estimated at $612,907, or $92,186 more than estimated cost accounting expenditures. On a budgeted basis, net revenues would exceed amounts included in the 2012 Adopted Budget by $376,532. Revenues could be lower if impound towing activity is less than historical averages. Likewise, auction proceeds are likely to be materially higher, based on online auction experience selling City surplus vehicles, as well as PropertyRoom.com experience with online auctions of impounded vehicles in other jurisdictions. Any revenue generated from this venture could be utilized to offset or supplement police resources.

Goal Impact: The ordinances and contract will provide for Safe and Secure community by streamlining and improving the impound process.

Legal Considerations: The ordinance amendments have been drafted and approved as to form by the Law Department. The modification of the existing contract with Propertyroom.com to contract for the storage and sale of vehicles will be reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the proposed agreement between the City of Wichita and PropertyRoom.com/Copart Inc., declare an emergency and approve the ordinance amendments on first reading.

Attachments: Declaration of Emergency, delineated and clean copies of the proposed ordinance.

First Published in The Wichita Eagle on December 23, 2011

12/12/2011

ORDINANCE NO. 49-174

AN ORDINANCE AMENDING SECTIONS 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.110, 3.49.130, 3.49.140, AND 3.49.160 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO WRECKER SERVICES AND REPEALING THE ORIGINALS OF SECTIONS 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.110, 3.49.120, 3.49.130, 3.49.140, 3.49.150, 3.49.160, 3.49.170, 3.49.180, 3.49.220 AND 3.49.230.

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

SECTION 1. Section 3.49.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Definitions.** Unless otherwise specified in this Chapter, the following terms, as used in this Chapter, mean as follows:

'Accident' means any occurrence which renders a vehicle wrecked or disabled as defined in this Section.

'Authorized public agency' means an officer of the police department, the Sedgwick County Sheriff's Office, the Kansas Highway Patrol, an employee for the Sedgwick County or City Fire Department or a dispatcher for the Special Police Information Data Entry and Retrieval Unit (SPIDER) of the police department.

‘Chief of Police’ means the Chief of Police for the City of Wichita and his or her designee.

‘Dispatched service call’ means an occasion when the dispatcher for the Special Police Information Data Entry and Retrieval Unit (SPIDER) of the Wichita Police Department calls a licensed emergency wrecker at the request of the owner or person in charge of a wrecked or disabled vehicle or at the request of a law enforcement officer to remove a vehicle because it is wrecked or disabled.

‘Emergency wrecker company’ means a person who owns, controls, or has a financial interest in an emergency wrecker service.

‘Emergency wrecker service’ means the business of towing wrecked vehicles from the streets of the City upon request of an authorized public agency, except owner preference requests.

‘Licensee’ means a person licensed to engage in emergency wrecker service.

‘Motor vehicle’ means every vehicle which is self-propelled, and which has a vehicle identification number.

‘Owner’ means any person who holds the legal title of a vehicle or who has the legal right of possession thereof, or the legal right of control of a vehicle.

‘Street’ means any street, alley, avenue, lane, public place, square or highway within the corporate limits of the City.

‘Vehicle’ means every device in, upon or by which any person or property is or may be transported or drawn upon a street, which has a vehicle identification

number, except devices moved by human power or used exclusively upon stationary rails or tracks.

'Vehicle Identification Number' means an identifying number, serial number, engine number, transmission number or other distinguishing number or mark, placed on a vehicle, engine, transmission or other essential part by its manufacturer or by authority of the division of vehicles or Kansas Highway Patrol or in accordance with the laws of another state or county.

'Wrecked vehicle' means any vehicle that has been damaged as the result of colliding with another vehicle or object so as to reasonably necessitate that such vehicle be removed by a wrecker.

'Wrecker' means any motor vehicle designed to be used primarily for removing wrecked or disabled vehicles upon any street.

'Wrecker rotation list' means a list of licensed wrecker companies, maintained by the Chief of Police, as provided for in this Chapter."

SECTION 2. Section 3.49.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**License—Required—Nontransferable—Expiration date—Location.**

No persons may engage in emergency wrecker service inside the City without first obtaining an emergency wrecker company license from the City. Only one license may be issued to each emergency wrecker company. A license is not assignable or transferable. Emergency wrecker company licenses shall be for a twelve-month period. The license issued to an emergency wrecker company

authorizes the licensee and all its bona fide employees to engage in emergency wrecker service."

SECTION 3. Section 3.49.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"License—Application—Fees—Renewal. (a) A person desiring to engage in emergency wrecker service in the City shall file with the City's Treasurer a written application upon a form provided for that purpose, which must be signed by the applicant or the applicant's authorized agent. The following information is required in the application:

(1) Business name, address and telephone number of the emergency wrecker company;

(2) Number and types of wreckers to be operated;

(3) Vehicle identification number of each wrecker;

(4) The location of the facilities to be owned or leased by the applicant for the purpose of operating the emergency wrecker service;

(5) The name, address and telephone number of the owner of the emergency wrecker company;

(6) An agreement that the applicant will participate in the wrecker rotation list;

(7) Proof that the applicant has secured the payment of compensation to the applicant's employees as set forth in K.S.A. 44-532(b) and amendments thereto.

(8) A maximum fee schedule for standard towing, heavy duty towing, storage and special operations.

(9) A copy of the wrecker service's certificate of public service from the Kansas Corporation Commission.

(b) A fee of $25.00 for processing the initial application or any renewals thereof must be submitted with the application; this fee accompanying the applicant shall not be refundable.

(c) Every license issued pursuant to this Chapter shall terminate at the expiration of twelve months from the date of issuance, unless sooner revoked, and must be renewed before operation of an emergency wrecker service is allowed to continue. Anyone desiring to renew a license shall follow the procedures in subsection (a) of this Section for an initial application.

(d) Failure to submit fees with the annual application will result in utilizing the last schedule of fees submitted."

SECTION 4. Section 3.49.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**License—Issuance—Storage facilities.**

The City Treasurer shall, after approval from the Chief of Police, issue a license to participate in the emergency wrecker service to applicants complying with the provisions of this Chapter and shall issue an emergency wrecker license. No license authorizing emergency wrecker service shall be issued unless the following requirements are met:

(a) Vehicles. Each applicant, in order to secure a license under this Chapter, must own and/or lease the following vehicles in the following numbers and be equipped as follows:

(1) Three wreckers; two wreckers shall not be less than one ton in size, shall be equipped with a power-operated winch line and boom with a factory-rated lifting capacity of not less than 5,000 pounds, single line capacity, shall carry as standard equipment a two-way radio or mobile or cellular phone, dolly, cycle sling or trailer, tow bar, safety chains, fire extinguisher, wrecking bar, broom and shovel, and shall be clearly and permanently marked with the name and address of the licensee on each side of the vehicle;

(2) One wrecker, not less than two and one-half tons in size, equipped with a power winch, winch line and boom, having 12 to 16 ton single or double line capacity, in addition to the equipment listed in subsection (a) of this Section.

(b) Storage Facilities. Each applicant, in order to be licensed under this Chapter, must own and/or lease facilities for the storage of vehicles having the following space and equipment requirements:

(1) Storage. Vehicle storage space must be provided at a location which is within the corporate limits of the City and in compliance with applicable zoning ordinances. Such space must have a capacity for storing at least 50 vehicles excluding bicycles and motorcycles. This

storage space must be fenced and secured from unauthorized entry. This space must also be kept accessible to vehicles, in conformance with all health and zoning ordinances and lighted in accordance with the requirements of the police department. This storage space must be available for receiving towed vehicles on a 24-hour, seven-day-per-week basis, however, the licensee shall not be required to release vehicles from the storage area between the hours of 7:00 p.m. and 7:00 a.m.;

(c) In order to be licensed under this Chapter, each licensee shall maintain and pay the premiums for the following insurance policy or policies:

(1) Public liability insurance indemnifying the public generally against damages arising out of the operation of emergency wrecker service. Such policy or policies of insurance shall be in an amount of at least $100,000.00 for one person in one accident, $300,000.00 for injury or death to two or more persons in any one accident, and $50,000.00 for loss to property in any one accident, In the insurance certificate, the insurance company must state that the City will be given written notice if the policy is canceled or changed within ten days prior to the effective date thereof. The applicant shall file certificates of insurance with the City Treasurer;

(2) Garage keeper's minimum liability policy covering fire, theft or damage to or loss of property while in tow or otherwise in the care, custody and control of the licensee. Such policy or policies of insurance shall be in an amount of at least $75,000 per occurrence. In the

insurance certificate, the insurance company must state that the City will be given written notice if the policy is canceled or changed within ten days prior to the effective date thereof. The applicant shall file certificates of insurance with the City Clerk."

SECTION 5. Section 3.49.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**License—Suspension.** (a) The Chief of Police or the City Council, upon five days' written notice to the licensee, shall have the authority to suspend an emergency wrecker company license for a period not to exceed five days for one or more of the following reasons:

(1) Failure of the licensee to maintain such licensee's wrecker or equipment in a good and safe working condition;

(2) Violation by the licensee or an employee of the licensee of a provision of this Chapter;

(3) Failure of the licensee to maintain the required liability and worker's compensation insurance policies as required by this Chapter;

(4) Obtaining the license by fraudulent conduct or false statements;

(5) The wrecker or towing service assessed fees in excess of those submitted with the licensee's application;

(6) The wrecker or towing service consistently refuses to respond to requests for service by the police department or consistently

fails to answer telephone calls from the police department at the telephone number supplied by the business for towing services;

(7) The wrecker or towing service responds to the scene of an accident, emergency, or impoundment situation, when not specifically called to do so, and solicits wrecker or towing business;

(8) The City of Wichita is not satisfied with the general services of the owner and/or employees or with the cooperation it has received from such wrecker or towing service or other justifiable cause~~.~~.

(9) The wrecker or towing service fails to have a valid certificate of public service issued from the Kansas Corporation Commission.

(b) A licensee may appeal such an order suspending an emergency wrecking service license to the City Council. Such appeal must be in writing and must be filed with the City Clerk within ten days from the date of such order of suspension. The order of suspension shall be stayed during the pendency of any such appeal."

SECTION 6. Section 3.49.080 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**License—Revocation.** (a) The City Council, upon five days' written notice to the licensee shall have the authority to revoke an emergency wrecker company license for one or more of the following reasons:

(1) The making of a false statement as to a material matter in an application for a license or license renewal;

(2) Violation of any of the provisions of this Chapter by the licensee or any employee of the licensee;

(3) Suspension of the licensee's emergency wrecker company license three times within a twenty-four-month period~~;~~.

(b) Any appeal taken from an order of revocation shall suspend the order of revocation during the pendency of such appeal. In case of the revocation of a license of any licensee, no new license shall be issued to such person or to any other person acting for or on such person's behalf, for a period of six months after the revocation becomes effective."

SECTION 7. Section 3.49.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Appeal from refusal to issue or renew, suspension or revocation of a license.** (a) If the City Treasurer refuses to issue or renew a license under this Chapter, or the Chief of Police suspends a license under this Chapter, such action is final unless the applicant or licensee, within ten days after the date of the suspension or refusal to renew a license, files a written appeal with the City Council setting forth specific grounds for the appeal. The City Council shall, within 30 days, grant a hearing to consider the action and may sustain, reverse or modify the action appealed.

(b) The City Treasurer may revoke a license as provided in this Chapter, except that no license shall be revoked except by order of the City

Council, and only then at a hearing provided for such purposes, and the licensee shall receive at least five days' notice prior to such hearing."

SECTION 8. Section 3.49.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Powers and duties of Chief of Police.** In addition to the powers and duties prescribed elsewhere in this Chapter, the Chief of Police is authorized to:

(a) Enforce all provisions of this Chapter;

(b) Adopt rules and regulations, after reasonable notice to the licensees, not inconsistent with the provisions of this Chapter, with respect to the investigation of applicants and other matters incidental or appropriate to his powers and duties as may be necessary for the proper enforcement of the provisions of this Chapter;

(c) Conduct, when appropriate, periodic investigations of emergency wrecker companies throughout the City;

(d) Keep records of service adequacy and responsiveness of licensees and provide these records to the City Treasurer upon request.

(e) Ensure that wrecker fee schedules are accessible to the public by posting the schedule on the police and/or City website, having the fee schedule available for review upon request of officers at accident scenes and posted at Wichita Police Department substations."

SECTION 9. Section 3.49.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Emergency Wrecker Dispatched Service Call Procedures. (a) The Chief of Police shall establish a list consisting of emergency wrecker companies licensed under this Chapter.

(b) The wrecker list shall contain the name, address, phone number and towing rates for each emergency wrecker company licensed by the City of Wichita.

(c) When a law enforcement officer determines that emergency wrecker services are required to remove a wrecked or disabled vehicle, the owner or person in charge of the wrecked or disabled vehicle will be provided the list of licensed wreckers.

(d) The owner or person in charge of the vehicle's choice of wrecker service company will be relayed to SPIDER, by the law enforcement officer so that a dispatched service call may be made.

(e) When an emergency wrecker is needed, the need will be immediately made known to the dispatcher for Special Police Information Data Entry and Retrieval Unit (SPIDER). On receiving the first communication, the dispatcher at the SPIDER unit must call the ~~first~~ emergency wrecker company chosen by the owner or person in charge of such vehicle, if so designated. If the driver or person in charge of the vehicle fails to designate or choose an Emergency Wrecker Service, or the Emergency Wrecker Service chosen is not

available for dispatch, the SPIDER dispatcher will contact the next Emergency Wrecker Service on the rotation list. In the event the first company called has no wrecker available, then the dispatcher at the SPIDER unit shall call the company which appears next on the list or, in the event the first wrecker service company called fails or is unable to respond within 30 minutes under nominal conditions, then the dispatcher shall call the next wrecker company appearing on the list A call to a specific location for a single accident shall be considered as one call and only one company will be called; provided, however, that if necessary, additional companies may be called."

SECTION 10. Section 3.49.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Fees for emergency wrecker service.** (a) Only emergency wrecker companies licensed by the City of Wichita shall be subject to these regulations governing fees to be charged by emergency wrecker services.

(b) A wrecker service shall submit a schedule of towing fees with the annual application for licensing.

(c) Failure to submit fee schedules with the annual application will result in utilizing the last fee schedule submitted.

(d) Wrecker services may lower rates at any time and may raise rates for non-City of Wichita calls at any time.

(e) Wrecker services may not charge rates in excess of those filed with their licensing application for rotation tows.

SECTION 11. Section 3.49.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Requirements and operating procedures for emergency wrecker service.** (a) An emergency wrecker company licensee shall comply with the following requirements and procedures;

(1) Maintain 24-hour wrecker service;

(2) Arrive at the accident or to the place designated by the dispatcher at the special police information data entry and retrieval unit (SPIDER) within a reasonable time after having been notified to do so, such response time not to exceed 45 minutes;

(3) Deliver, in every instance, the wrecked or disabled vehicle to its storage facility;

(4) When directed by an officer at the scene of an accident, temporarily remove vehicles which are creating a traffic hazard to a side street or other place as may be directed by the officer;

(5) Report to the City's licensing agent all changes in emergency wreckers and equipment used in the licensee's emergency wrecker service;

(6) Completely remove from the site of an accident all resulting wreckage, debris, reasonable amounts of automotive fluids which are dropped or spilled, and any and all other reasonable amounts of injurious substances dropped upon the highway from such vehicle

including all broken glass, which remains in the street, but excluding truck or vehicle cargoes, before leaving the site. In the event two or more wreckers are called to the same accident, both operators shall be equally responsible for the removal of debris from the right-of-way;

(7) Not permit the use of a wrecker by another licensee;

(8) The licensee shall not permit an individual to drive a wrecker unless the individual holds a valid driver's license;

(9) The licensee and its employees shall not assess or collect fees or charges in excess of those filed with its licensing application.

(10) The licensee and its employees shall not prohibit or refuse to allow the owner, operator or person in possession of the vehicle, who has proof of title or registration, to retrieve any medicine, medical supplies or governmental-issued documents regarding identification from an impounded or towed vehicle;

(11) Have all wreckers clearly and permanently marked with the name and address of the licensee on both doors of the vehicle;

(12) Carry in all vehicles owned or leased by the licensee a copy of the licensee’s schedules of fees;

(13) Shall at all times comply with K.S.A. 8-1103 and amendments thereto.”

SECTION 12. Section 3.49.160 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Compliance with State Law.** All vehicles towed pursuant to this chapter shall be disposed of and/or released in accordance with the provisions of K.S.A. 8-1101, et seq."

SECTION 13. The originals of Sections 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.120, 3.49.130, 3.49.140, 3.49.150, 3.49.160, 3.49.170, 3.49.180, 3.49.220 AND 3.49.230 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 14. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective January 1, 2012 and upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 20th day of December, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

First Published in The Wichita Eagle on _____

DELINEATED 12/12/2011

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTIONS 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.110, 3.49.130, 3.49.140, AND 3.49.160 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO WRECKER SERVICES AND REPEALING THE ORIGINALS OF SECTIONS 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.110, 3.49.120, 3.49.130, 3.49.140, 3.49.150, 3.49.160, 3.49.170, 3.49.180, 3.49.220 AND 3.49.230.

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

SECTION 1. Section 3.49.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Definitions.** Unless otherwise specified in this Chapter, the following terms, as used in this Chapter, mean as follows:

'Accident' means any occurrence which renders a vehicle wrecked or disabled as defined in this Section.

'Authorized public agency' means an officer of the police department, the Sedgwick County Sheriff's Office, the Kansas Highway Patrol, an employee for the Sedgwick County or City Fire Department or a dispatcher for the Special Police Information Data Entry and Retrieval Unit (SPIDER) of the police department.

‘Chief of Police’ means the Chief of Police for the City of Wichita and his or her designee.

~~"Combination vehicle" means any vehicle containing more than one unit connected together by hitch or hitches including but not limited to semi-trailer truck units.~~

~~"Disabled vehicle" means any vehicle which has been rendered unsafe to be driven as a result of some occurrence other than a wreck, including, but not limited to, mechanical failures or breakdowns, fire, vandalism, or any vehicle which is in a safe driving condition, but the owner is not present, able or permitted to drive, so as to reasonably necessitate that such vehicle be removed by a wrecker, including vehicles which are determined to be abandoned by an authorized public agency.~~

‘~~Rotation~~’ “Dispatched service call’ means an occasion when the dispatcher for the Special Police Information Data Entry and Retrieval Unit (SPIDER) of the Wichita Police Department calls a~~n~~ licensed emergency wrecker ~~from the rotation list~~ at the request of the owner or person in charge of a wrecked or disabled vehicle or at the request of a law enforcement officer to remove a vehicle because it is wrecked or disabled ~~or to remove a vehicle which may otherwise be ordered towed in by an authorized public agency because of constituting a traffic hazard or for other police purposes, including cases involving arrest or accident~~.

‘Emergency wrecker company’ means a person who owns, controls, or has a financial interest in an emergency wrecker service.

‘Emergency wrecker service’ means the business of towing wrecked vehicles from the streets of the City upon request of an authorized public agency, except owner preference requests~~, including abandoned vehicles, wrecked or disabled vehicles, and vehicles which may otherwise be ordered towed by an authorized public agency, and the storing of such vehicles~~.

~~"Impounded vehicle" means any wrecked or disabled vehicle or any other vehicle which has been towed by order of an authorized public agency and which is not to be released except by authority of an authorized public agency.~~

‘Licensee’ means a person licensed to engage in emergency wrecker service.

‘Motor vehicle’ means every vehicle which is self-propelled, and which has a vehicle identification number.

‘Owner’ means any person who holds the legal title of a vehicle or who has the legal right of possession thereof, or the legal right of control of a vehicle.

~~‘Owner preference request’ means a request directly from the owner or person in charge of a wrecked or disabled vehicle to any tow-in service company or such request relayed by an authorized public agency for services of a designated tow-in service company, whether licensed under this Chapter or not, to remove a vehicle to a specific designated area.~~

‘Street’ means any street, alley, avenue, lane, public place, square or highway within the corporate limits of the City.

‘Vehicle’ means every device in, upon or by which any person or property is or may be transported or drawn upon a street, which has a vehicle identification

number, except devices moved by human power or used exclusively upon stationary rails or tracks.

'Vehicle Identification Number' means an identifying number, serial number, engine number, transmission number or other distinguishing number or mark, placed on a vehicle, engine, transmission or other essential part by its manufacturer or by authority of the division of vehicles or Kansas Highway Patrol or in accordance with the laws of another state or county.

'Wrecked vehicle' means any vehicle that has been damaged as the result of ~~overfuming or~~ colliding with another vehicle or object so as to reasonably necessitate that such vehicle be removed by a wrecker.

'Wrecker' means any motor vehicle designed to be used primarily for removing wrecked or disabled vehicles upon any street.

'Wrecker rotation list' means a list of licensed wrecker companies, maintained by the Chief of Police, as provided for in this Chapter."

SECTION 2. Section 3.49.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**License—Required—Nontransferable—Expiration date—Location.**

No persons may engage in emergency wrecker service inside the City without first obtaining an emergency wrecker company license from the City. Only one license may be issued to each emergency wrecker company. A license is not assignable or transferable. Emergency wrecker company licenses shall be for a ~~six~~twelve-month period. The license issued to an emergency wrecker company authorizes the licensee and all its bona fide employees to engage in emergency

wrecker service. ~~Any person engaging in emergency wrecker services inside the City shall operate from a single location inside the City.~~"

SECTION 3. Section 3.49.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"License—Application—Fees—Renewal. (a) A person desiring to engage in emergency wrecker service in the City shall file with the City's ~~licensing agent~~ Treasurer a written application upon a form provided for that purpose, which must be signed by the applicant or the applicant's authorized agent. The following information is required in the application:

(1) Business name, address and telephone number of the emergency wrecker company;

(2) Number and types of wreckers to be operated;

(3) Vehicle identification number of each wrecker;

(4) The location of the facilities to be owned or leased by the applicant for the purpose of operating the emergency wrecker service~~, including the location of primary and secondary storage facilities~~;

(5) The name, address and telephone number of the owner of the emergency wrecker company;

(6) An agreement that the applicant will participate in the wrecker rotation list;

(7) Proof that the applicant has secured the payment of compensation to the applicant's employees as set forth in K.S.A. 44-532(b) and amendments thereto.

(8) A maximum fee schedule for standard towing, heavy duty towing, storage and special operations.

(9) A copy of the wrecker service's certificate of public service from the Kansas Corporation Commission.

(b) A fee of $25.00 for processing the initial application or any renewals thereof must be submitted with the application; this fee accompanying the applicant shall not be refundable.

(c) Every license issued pursuant to this Chapter shall terminate at the expiration of ~~six~~ twelve months from the date of issuance, unless sooner revoked, and must be renewed before operation of an emergency wrecker service is allowed to continue. Anyone desiring to renew a license shall follow the procedures in subsection (a) of this Section for an initial application.

(d) Failure to submit fees with the annual application will result in utilizing the last schedule of fees submitted."

SECTION 4. Section 3.49.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**License—Issuance~~—Inspection sticker—~~Storage facilities.**

The City~~'s licensing agent~~ Treasurer shall, after approval from the Chief of Police, issue a license to participate in the emergency wrecker service to applicants complying with the provisions of this Chapter and shall issue an emergency wrecker ~~inspection sticker approving each vehicle~~ license. ~~The emergency wrecker inspection sticker must be affixed securely to the inside upper left-hand corner of the windshield of the inspected wrecker.~~ No license

authorizing ~~participation in the~~ emergency wrecker service ~~and no inspection sticker approving the operation of an emergency wrecker on the streets of the City~~ shall be issued unless the following requirements are met:

~~(1)~~ (a) Vehicles. Each applicant, in order to secure a license under this Chapter, must own and/or lease the following vehicles in the following numbers and be equipped as follows:

~~(a)~~ (1) ~~Five~~ three wreckers; ~~each~~ two wreckers shall not be less than one ton in size, shall be equipped with a power-operated winch line and boom with a factory-rated lifting capacity of not less than 5,000 pounds, single line capacity, shall carry as standard equipment a two-way radio or mobile or cellular phone, dolly, cycle sling or trailer, tow bar, safety chains, fire extinguisher, wrecking bar, broom and shovel, and shall be clearly and permanently marked with the name and address of the licensee on each side of the vehicle;

~~(b)~~ (2) One wrecker, not less than two and one-half tons in size, equipped with a power winch, winch line and boom, having 12 to 16 ton single or double line capacity, in addition to the equipment listed in subsection (a) of this Section.

~~(c) Wreckers shall not be leased from other wrecking companies which participate in the emergency wrecker rotation list.~~

~~(2)~~ (b) Storage Facilities. Each applicant, in order to be licensed under this Chapter, must own and/or lease facilities for the storage of vehicles having the following space and equipment requirements:

~~(a)~~ (1) ~~Primary~~ Storage. Vehicle storage space must be provided at a location which is within the corporate limits of the City and in compliance with applicable zoning ordinances. Such space must have a capacity for storing at least ~~35~~ 50 vehicles excluding bicycles and motorcycles. This storage space must be fenced and secured from unauthorized entry. This space must also be kept accessible to vehicles, in conformance with all health and zoning ordinances and lighted in accordance with the requirements of the police department. This storage space must be available for receiving towed vehicles on a 24-hour, seven-day-per-week basis, however, the licensee shall not be required to release vehicles from the storage area between the hours of 7:00 p.m. and 7:00 a.m.;

~~(b) Secondary Storage. Additional vehicle storage space must be provided for 200 vehicles at a location or locations within one mile of the limits of the City. Such location or locations must be in compliance with applicable zoning ordinances and will be lighted in accordance with the requirements of the police department. This space must further be kept fenced and secured from unauthorized entry, in conformance with all health ordinances and accessible to vehicles. Secondary storage as required in this Section may be at the same location as the primary storage, it being the intent of this Chapter that space be provided for a total of 235 vehicles, excluding bicycles and motorcycles and that storage for 35 of such vehicles be in the corporate limits of the City.~~

~~(3)~~ (c) In order to be licensed under this Chapter, each licensee shall maintain and pay the premiums for the following insurance policy or policies:

~~(a)~~ (1) Public liability insurance indemnifying the public generally against damages arising out of the operation of emergency wrecker service. ~~The licensee shall be responsible for entering the City on such policy or policies of insurance as a named insured.~~ Such policy or policies of insurance shall be in an amount of at least ~~$500,000.00~~ $100,000.00 for one person in one accident, ~~$500,000.00~~ $300,000.00 for injury or death to two or more persons in any one accident, and ~~$500,000.00~~ $50,000.00 for loss to property ~~damage~~ in any one accident, ~~and a minimum aggregate limit of $1,000,000.00. This coverage can be provided as a combined single limit.~~ In the insurance certificate, the insurance company must state that the City will be given written notice if the policy is canceled or changed within ten days prior to the effective date thereof. The applicant shall file certificates of insurance with the City ~~clerk~~ Treasurer;

~~(b)~~ (2) Garage keeper's minimum liability policy covering fire, theft or damage to or loss of property while in tow or otherwise in the care, custody and control of the licensee. ~~The licensee shall be responsible for entering the City on such policy or policies of insurance as a named insured.~~ Such policy or policies of insurance shall be in an amount of at least ~~$100,000.00 for each individual claim up to a maximum aggregate limit of $200,000.00~~ $75,000 per occurrence. In the insurance certificate, the insurance company must state that the City will be given written notice

if the policy is canceled or changed within ten days prior to the effective date thereof. The applicant shall file certificates of insurance with the City Clerk.

~~(c) Each policy required herein shall contain an endorsement providing for ten days written notice to the Chief of Police of the City prior to any material change therein or cancellation thereof.~~"

SECTION 5. Section 3.49.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**License—Suspension.** (a) The Chief of Police or the City ~~c~~Council, upon five days' written notice to the licensee, shall have the authority to suspend an emergency wrecker company license for a period not to exceed five days for one or more of the following reasons:

(1) Failure of the licensee to maintain such licensee's wrecker or equipment in a good and safe working condition;

(2) Violation by the licensee or an employee of the licensee of a provision of this Chapter;

~~(3) Violation by an emergency wrecker driver of a provision of the motor vehicle or traffic laws of this state or City while in the scope of his employment in the emergency wrecker service;~~

~~(4) Failure of the licensee to comply with the terms and conditions of the City's nondiscrimination and equal opportunity plan;~~

~~(5)~~ (3) Failure of the licensee to maintain the required liability and worker's compensation insurance policies as required by this Chapter;

~~(6)~~ (4) Obtaining the license by fraudulent conduct or false statements;

~~(7)~~ (5) The wrecker or towing service ~~violated the fee and charge schedule by overcharge~~ assessed fees in excess of those submitted with the licensee's application;

~~(8)~~ (6) The wrecker or towing service consistently refuses to respond to requests for service by the police department or consistently fails to answer telephone calls from the police department at the telephone number supplied by the business for towing services;

~~(9)~~ (7) The wrecker or towing service responds to the scene of an accident, emergency, or impoundment situation, when not specifically called to do so, and solicits wrecker or towing business;

~~(10)~~ (8) The City of Wichita is not satisfied with the general services of the owner and/or employees or with the cooperation it has received from such wrecker or towing service or other justifiable cause~~.~~.

(9) The wrecker or towing service fails to have a valid certificate of public service issued from the Kansas Corporation Commission.

(b) A licensee may appeal such an order suspending an emergency wrecking service license to the City ~~c~~Council. Such appeal must be in writing and must be filed with the City ~~c~~Clerk within ten days from the date of such order of suspension. The order of suspension shall be stayed during the pendency of any such appeal."

SECTION 6. Section 3.49.080 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**License—Revocation.** (a) The City ~~c~~Council, upon five days' written notice to the licensee shall have the authority to revoke an emergency wrecker company license for one or more of the following reasons:

(1) The making of a false statement as to a material matter in an application for a license or license renewal;

~~(2) Failure of the licensee or any employee of the licensee to comply with the fee schedule provided in this Chapter;~~

~~(3)~~ (2) Violation of any of the provisions of this Chapter by the licensee or any employee of the licensee;

~~(4)~~ (3) Suspension of the licensee's emergency wrecker company license three times within a ~~twelve~~ twenty-four-month period~~;~~.

~~(5) Failure of the licensee to comply with Section 3.49.230 of this Code and amendments thereto, relating to nondiscrimination.~~

(b) Any appeal taken from an order of revocation shall suspend the order of revocation during the pendency of such appeal. In case of the revocation of a license of any licensee, no new license shall be issued to such person or to any other person acting for or on such person's behalf, for a period of six months after the revocation becomes effective."

SECTION 7. Section 3.49.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Appeal from refusal to issue or renew, suspension or revocation of a license.** (a) If the City ~~t~~Treasurer refuses to issue or renew a license under this Chapter, or the Chief of Police suspends a license under this Chapter, such action is final unless the applicant or licensee, within ten days after the date of the suspension or refusal to renew a license, files a written appeal with the City ~~commission~~ Council setting forth specific grounds for the appeal. The City ~~commission~~ Council shall, within 30 days, grant a hearing to consider the action and may sustain, reverse or modify the action appealed.

(b) The City ~~t~~Treasurer may revoke a license as provided in this Chapter, except that no license shall be revoked except by order of the City ~~commission~~ Council, and only then at a hearing provided for such purposes, and the licensee shall receive at least five days' notice prior to such hearing."

SECTION 8. Section 3.49.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Powers and duties of Chief of Police.** In addition to the powers and duties prescribed elsewhere in this Chapter, the Chief of Police is authorized to:

~~(1)~~ (a) Enforce all provisions of this Chapter;

~~(2)~~ (b) Adopt rules and regulations, after reasonable notice to the licensees, not inconsistent with the provisions of this Chapter, with respect to the investigation of applicants and other matters incidental or appropriate to his

powers and duties as may be necessary for the proper enforcement of the provisions of this Chapter;

~~(3)~~ (c) Conduct, when appropriate, periodic investigations of emergency wrecker companies throughout the City;

~~(4)~~ (d) Keep records of service adequacy and responsiveness of licensees and provide these records to the City ~~t~~Treasurer upon request.

(e) Ensure that wrecker fee schedules are accessible to the public by posting the schedule on the police and/or City website, having the fee schedule available for review upon request of officers at accident scenes and posted at Wichita Police Department substations."

SECTION 9. Section 3.49.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

~~Wrecker rotation list procedure~~. Emergency Wrecker Dispatched Service Call Procedures (a) The Chief of Police shall establish a ~~wrecker rotation~~ list consisting of emergency wrecker companies licensed under this Chapter.

(b) The wrecker list shall contain the name, address, phone number and towing rates for each emergency wrecker company licensed by the City of Wichita.

(c) When a law enforcement officer determines that emergency wrecker services are required to remove a wrecked or disabled vehicle, the owner or person in charge of the wrecked or disabled vehicle will be provided the list of licensed wreckers.

(d) The owner or person in charge of the vehicle's choice of wrecker service company will be relayed to SPIDER, by the law enforcement officer so that a dispatched service call may be made.

~~(b)~~ (e) ~~Emergency wrecker service shall be provided on a rotating basis from the wrecker rotation list.~~ When an emergency wrecker is needed, the need will be immediately made known to the dispatcher for Special Police Information Data Entry and Retrieval Unit (SPIDER). On receiving the first communication, the dispatcher at the SPIDER unit must call the ~~first~~ emergency wrecker company ~~on the rotation list to remove the vehicle to such emergency wrecker company's storage area or to a specific place designated~~ chosen by the owner or person in charge of such vehicle, if so designated. ~~On each succeeding communication, the next emergency wrecker company on the list must be called and a proper notation of each call must be made on the master rotation list.~~ If the driver or person in charge of the vehicle fails to designate or choose an Emergency Wrecker Service, or the Emergency Wrecker Service chosen is not available for dispatch, the SPIDER dispatcher will contact the next Emergency Wrecker Service on the rotation list. In the event the first company called has no wrecker available, then the dispatcher at the SPIDER unit shall call the company which appears next on the list or, in the event the first wrecker service company called fails or is unable to respond within 30 minutes under nominal conditions, then the dispatcher shall call the next wrecker company appearing on the list ~~and, in the event of a failure of any wrecker company to fail to respond or fail to respond within 30 minutes, then no charge may be made for such call.~~ A call to a specific location for a single

accident shall be considered as one call and only one company will be called; provided, however, that if necessary, additional companies may be called."

SECTION 10. Section 3.49.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Fees for emergency wrecker service.** (a) ~~Licensed emergency wrecker companies shall charge the following fees for services rendered under this Chapter:~~ Only emergency wrecker companies licensed by the City of Wichita shall be subject to these regulations governing fees to be charged by emergency wrecker services.

~~(1) Towage. Where a wrecker that is less than two and one-half tons is requested, there shall be a maximum charge of $80.00 per wrecker for towing a vehicle from one point to another location within the corporate limits of the City, as designated by the owner of the vehicle or by the police department at the place where the tow originated. Where a two-and-one-half-ton wrecker or larger is requested, the maximum charge shall be $120.00 per wrecker. For towing combination vehicles, the maximum charge shall be $220.00 per wrecker. In addition, mileage at the rate of $3.50 per mile from the point of hookup for each mile any vehicle is towed within the City may be charged, except that where a two-and-one-half-ton wrecker is requested, a rate of $5.15 per mile may be charged. Mileage for heavy duty towing, as set out in subsections 5, 6 and 7 shall be allowed at a rate of $5.15 per mile. Towing shall be by way of~~

~~the most reasonable direct route between the point of the tow's origination and its destination.~~

~~Any additional charges for winching, dollies, wheel lift or rollbacks or other services not normally incident to towing wrecked or disabled vehicles shall be allowed only when the additional charge is:~~

~~a. Reasonably necessary to retrieve a wrecked vehicle which is off the road or overturned;~~

~~b. to protect the wrecked or disabled vehicle from reasonably foreseeable additional damage should the device not be used; or~~

~~c. at the request of or permission of the owner or operator.~~

~~d. Waiting Time. Waiting time, when required by a police officer in charge at the scene of an accident, shall be $18.00 per quarter hour or any part thereof after the wrecker has been at the scene of the accident 30 minutes.~~

~~e. Specialized Towing. For up-righting any overturned vehicle other than a motorcycle or bicycle, the maximum charge shall be $43.00.~~

~~f. Dolly Services: For dolly use in towing wrecked motor vehicles: the maximum charge is $43.00 in addition to the tow service charge. A dolly fee may only be charged if a dolly is necessary and actually used to tow the vehicle.~~

~~g. Winching. An additional charge of $25.00 for each quarter hour or any part thereof may be charged when a wrecker that is less than two and one-half tons is used for winching. An additional $35.00 for each quarter hour or any part thereof may be charged when a wrecker that is two and one-half tons or larger is used for winching.~~

~~h. Heavy Duty Towing: When requested by a law enforcement officer, when a two ton or greater tractor is necessary for towing, the towage fee shall be $125.00. An additional fee of $125.00 per hour may be charged for winching.~~

~~i. Heavy Duty Towing/Tractor and Trailer. When requested by a law enforcement officer, when a tractor and trailer is necessary for towing, the towage fee shall be $250.00. An additional fee of $200.00 per hour may be charged if a car hauler is used. An additional fee of $250.00 may be charged for winching of the vehicle.~~

~~j. Heavy Duty Towing Landoll Specialized Trailer. When requested by a law enforcement officer, when a Landoll Specialized Trailer under 28,000 pounds is necessary for towing, the towage fee shall be $125.00. For a Landoll Specialized Trailer over 28,000 pounds the towage fee shall be $150.00. For large motor coaches and tour busses, the towage fee shall be $175.00.~~

~~k. Processing Fee. A fee of $15.00 per vehicle shall be assessed to offset costs of notification to vehicle owners of released vehicles by the Wichita Police Department. Such fee shall be collected by the wrecker service and paid to the Wichita Police Department.~~

~~l. Fuel Surcharge. A fee of seven percent of the towing fee set forth in (a)(1), excluding fees for mileage, may be assessed to offset increased cost of fuel. The fuel surcharge provisions and mileage shall be reviewed annually by the Chief of Police. Such review shall occur during January of each year. Any~~

~~recommended increase or decrease in the fee by the Chief of Police must be approved by the City manager.~~

~~m. Lot Fee. A fee of $15.00 per vehicle may be charged by the wrecker company to offset costs of releasing vehicles.~~

~~n. A $12.00 one-time fee may be charged for tarping a vehicle with broken windows or a vehicle otherwise open to the weather.~~

~~o. No other charges are to be levied against vehicles towed under this Section without the written authorization of the Chief of Police, or at the request of the vehicle's owner.~~

~~p. Licensees shall provide to each owner or other authorized person an itemized bill indicating the amount for each service provided.~~

~~(b) With the exception of the first 24 hours a vehicle is on a licensee's lot, the licensee shall be paid $20.00 for each 24-hour period or portion thereof, for storage at the licensee's facility. Subject to the availability of space, vehicles which are towed by the licensee and which are operable shall be stored at the licensee's primary facility for a period of 24 hours. Vehicles which because of particular damage or because of their condition may be further damaged by exposure to inclement weather must be covered with a waterproof protective covering so that damage from inclement weather is minimized. Vehicles which have been rendered inoperable may be taken directly to the licensee's secondary storage at the discretion of the licensee~~

(b) A wrecker service shall submit a schedule of towing fees with the annual application for licensing.

(c) Failure to submit fee schedules with the annual application will result in utilizing the last fee schedule submitted.

(d) Wrecker services may lower rates at any time and may raise rates for non-City of Wichita calls at any time.

(e) Wrecker services may not charge rates in excess of those filed with their licensing application for rotation tows.

SECTION 11. Section 3.49.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Requirements and operating procedures for emergency wrecker service.** (a) An emergency wrecker company licensee shall comply with the following requirements and procedures;

(1) Maintain 24-hour wrecker service;

(2) Arrive at the accident or to the place designated by the dispatcher at the special police information data entry and retrieval unit (SPIDER) within a reasonable time after having been notified to do so, such response time not to exceed 45 minutes;

(3) Deliver, in every instance, the wrecked or disabled vehicle to its storage facility ~~as provided in Section 3.49.130, and amendments thereto~~;

(4) When directed by an officer at the scene of an accident, temporarily remove vehicles which are creating a traffic hazard to a side street or other place as may be directed by the officer;

(5) Report to the City's licensing agent all changes in emergency wreckers and equipment used in the licensee's emergency wrecker service ~~and render all additional vehicles for inspection by the Chief of Police. A wrecker without a valid emergency wrecker inspection sticker is not allowed to participate in the wrecker rotation list~~;

(6) Completely remove from the site of an accident all resulting wreckage, debris, reasonable amounts of automotive fluids which are dropped or spilled, and any and all other reasonable amounts of injurious substances dropped upon the highway from such vehicle including all broken glass, which remains in the street, but excluding truck or vehicle cargoes, before leaving the site. In the event two or more wreckers are called to the same accident, both operators shall be equally responsible for the removal of debris from the right-of-way;

(7) Not permit the use of a wrecker by another licensee;

(8) The licensee shall not permit an individual to drive a wrecker unless the individual holds a valid driver's license;

(9) The licensee and its employees shall not assess or collect fees or charges in excess of those ~~set forth in Section 3.49.130~~ filed with its licensing application.

(10) The licensee and its employees shall not prohibit or refuse to allow the owner, operator or person in possession of the vehicle, who has proof of title or registration, to retrieve any medicine, medical supplies

or governmental-issued documents regarding identification from an impounded or towed vehicle;

(11) Have all wreckers clearly and permanently marked with the name and address of the licensee on both doors of the vehicle;

~~(12) All wrecker drivers of the licensee shall wear shirts identifying the licensee's company name;~~

~~(13) The licensee shall, upon request by a vehicle owner, disclose the name and address of its insurance carrier;~~

~~(14)~~ (12) Carry in all vehicles owned or leased by the licensee ~~"Wrecker Operator Receipt Books" which shall contain forms that shall be filled out and signed by an authorized public agency at the scene of an impound. The form will authorize the licensee or the licensee's agent or employee to tow the vehicle, will contain a space to be marked by the authorized public agency indicating whether the vehicle shall be held as evidence in a criminal matter, and will state that the licensee assumes liability for the vehicle being towed along with any and all property contained therein. Such forms shall be subject to prior approval by the City's licensing agent and it shall be the responsibility of the licensee to provide such forms~~ a copy of the licensee's schedules of fees;

~~(15)~~ (13) Shall at all times comply with K.S.A. 8-1103 and amendments thereto;

~~(16) Release of Vehicles. Impounded vehicles may be retrieved from the licensee only upon a showing by the person attempting to retrieve~~

~~the vehicle that he or she is the owner thereof or is the authorized agent of the owner, and proof of valid registration is presented to the licensee. In no case may a vehicle be released that has been held as evidence in a criminal matter without prior authority from the police department;~~

~~(17) Impound Hearing Procedure. If the owner of any impounded vehicle shall request a hearing pursuant to Section 11.97.040 of this Code or amendment thereto, the owner shall contact the municipal court who will schedule the hearing. Pending such hearing, the owner may retrieve the impounded vehicle as set forth in subsection (c) of Section 11.97.040 and amendments thereto. If after hearing, the court finds no factual basis for the impoundment of said vehicle, the licensee shall return any money paid for the impoundment to the owner or person having lawful custody of the vehicle, and the charges incurred by the licensee may be deducted from the fees due the City from the licensee pursuant to Section 3.49.170 of this Code and any amendments thereto. If after hearing the court determines that the vehicle was lawfully towed, then the licensee may retain the payment made to retrieve the vehicle.~~ "

SECTION 12. Section 3.49.160 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"~~**Sale of impounded vehicles.** Vehicles towed or stored under emergency wrecker service (including impounded vehicles not claimed after release by the police department), and which remain unclaimed for a period of 60 days, will be sold at public sales to the highest bidder, not less often than three~~

~~times each calendar year, at a sale conducted by the police department. Legal advertising expenses for this sale will be paid for by the City. Each licensee under this Chapter will provide a suitable location for the sale and, if necessary, transport vehicles to such location and, further, shall pay the auctioneer. If the total proceeds of any such sales are in an amount greater than the total towing and storage charges of all vehicles sold, the difference in such amount shall be retained by the City. The City shall not be responsible for unpaid towing and storage charges except as provided from proceeds of the sale of such vehicles at auction. The City shall not be responsible for unpaid towing and storage charges of such claimed vehicles except that the licensee shall not be required to release such vehicles until unpaid towing and storage charges against such vehicles are satisfied, and until the City, as to impounded vehicles, through its police department authorizes the release of such vehicles~~

Compliance with State Law. All vehicles towed pursuant to this chapter shall be disposed of and/or released in accordance with the provisions of K.S.A. 8-1101, et seq."

SECTION 13. The originals of Sections 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.120, 3.49.130, 3.49.140, 3.49.150, 3.49.160, 3.49.170, 3.49.180, 3.49.220 AND 3.49.230 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 14. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective January 1, 2012 and upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 201__.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

REQUEST FOR DECLARATION OF EMERGENCY

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit*, December 20, 2011, of an ordinance entitled:

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTIONS 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.130, 3.49.140, AND 3.49.160 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO WRECKER SERVICES AND REPEALING THE ORIGINALS OF SECTIONS 3.49.010, 3.49.020, 3.49.030, 3.49.040, 3.49.070, 3.49.080, 3.49.090, 3.49.100, 3.49.130, 3.49.140, 3.49.150, 3.49.160, 3.49.170, 3.49.180, 3.49.220 AND 3.49.230.

The general nature of such emergency is that, in order to insure proper licensing of wrecker services and insure uninterrupted continued services of wreckers on the City of Wichita's emergency rotation list, passage of the ordinance prior to January 1, 2012 is required.

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

EXECUTED at Wichita, Kansas, on this 20th day of December, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary E. Rebenstorf
Director of Law

EMERGENCY AND POLICE IMPOUND TOWS

The City's current process for handling emergency Police tows and impound tows has been in place since 1978. Private tow companies now handle Police impounds. The current system has created a great deal of frustration for all parties involved: towing companies, the City and citizens with impounded vehicles. Staff issued an RFP last year, and is recommending revising the Police impound towing system. Under the revised ordinances proposed by Staff, City equipment would be used for towing Police impounds, and a contracted provider would operate an impound lot and provide an on-line auction for unclaimed impound vehicles.

Issues and Concerns with the Current Emergency Towing Ordinances

Towing Companies:

- the rates in the ordinance are too low, are not flexible, and are not adjustable based on market conditions (for example for higher fuel prices).
- the current model of using a rotation system of all licensed companies does nothing to discourage providers that provide poor service.
- the current ordinance includes too much regulation regarding towing and impounding procedures.

Customers:

- lack of accountability regarding damage or theft claims from impounded vehicles.
- multiple towing companies and impound lots are confusing.
- tow charges are unfair and too high.

City Staff:

- impounded vehicle auctions are held at multiple lots, increasing staff time and issues in monitoring sales.
- multiple towing companies increases staff time on administration work, to track and document vehicles.
- lack of accountability for theft and damage claims usually results in these claims being directed towards the City.
- auctions often occur infrequently, do not use best practices (on-line auction services) to maximize proceeds from unclaimed vehicles, and are perceived as lacking transparency.
- the "care and custody" requirements for an impounded vehicle are complicated with multiple vendors and multiple lots.
- the City is responsible for costs due to "human error" by the current towing procedure, which has reached over $17,000 in 2011.

As a result of the August 2010 RFP, lengthy and comprehensive discussions were held with many of the current towing providers (which responded to the RFP as a consortium). Ultimately these discussions were not fruitful, due in part to lack of agreement and conflicting information concerning:

- potential strategies to mitigate damage claims, including digital photos
- utilization of online auction services for unclaimed vehicles
- degree of financial profitability of lot operations
- maintaining current pricing levels

After initial discussion failed, Staff explored revisions to the current ordinance, and a new model for providing Police impound towing and storage services. This model addresses many of the concerns raised in the past by towing companies, citizens and Staff. The proposed ordinances would allow the City to operate a tow service for Police impound tows. This will greatly reduce administrative and Staff issues with the current arrangement, and will allow service issues to be managed and addressed more efficiently. In addition, the City can operate a tow service without changing the cost structure currently in place.

Thus, Staff proposes to contract with PropertyRoom.com and Copart, Inc. to operate a single impound lot and to utilize online auction services for unclaimed vehicles. This will enhance customer service and accountability. In addition, it will simplify administrative functions for the Police Department, and enhance the care and custody requirements (including the safeguarding of personal property) of impounding vehicles. Finally, by maximizing the auction proceeds from unclaimed vehicles, this alternative will be financially viable for the City at the current rate level.

In addition to impound changes, the proposed ordinance would eliminate price setting for other Police-related tows, and allow tow companies to charge a market rate. Licensing requirements would be relaxed, by reducing the insurance requirements, the vehicle storage lot size requirement and the number and size of wreckers required. These changes should address much of the current tow companies' frustration with the current ordinance.

Three options were considered; Staff recommends the proposed ordinance revisions. The option of maintaining the current ordinance is not feasible, given the level of frustration and issues by all parties concerned. However, maintaining the current structure would maintain the current City revenue of approximately $15,000 annually. A second option is contracting with the consortium of current towing providers. This would significantly increase customer rates, leave unresolved many of the City and customer issues, and only marginally increase City revenues, to an estimated $19,000 annually. A third option (recommended by staff) is for the City to provide impound towing, and a vendor to provide impound lot services, under a rate structure identical to the current charges. This would provide revenue to the City estimated at $92,186 annually.

SUMMARY OF IMPOUND AND TOWING OPTIONS

	Wichita Impound LLC	PropertyRoom.Com	Current
Estimated Towing Bills	**$216,834**	**$188,907**	
Towing bills are based 1,650 tows. The Wichita Impound LLC estimate uses increased fees as proposed by the consortium. The PropertyRoom.com proposal is based on the current fees.			
Estimated Storage Charges	**$173,250**	**$99,000**	
Wichita Impound, LLC is based on three days average storage, at $35 per day. PropertyRoom.com is based on three days average storage at $20 per day.			
Estimated City Towing Costs		**($284,346)**	
Estimated City Storage Costs		**($49,500)**	
Estimated City towing costs are based on supplementing current staff to provide 24 hour coverage. In addition, the City would pay $10 per day (three days average) storage fee on each impounded vehicle.			
Net City Revenue From Towing	**$19,504**	**($45,939)**	
Wichita Impound, LLC would provide the City 5% of towing and storage revenues.			
Gross Auction Revenue			
Number of vehicles auctioned	650	650	
Average revenue per vehicle	400	500	
Gross Auction Revenue	**$260,000**	**$325,000**	
Gross auction revenue assumes 650 unclaimed vehicles. Wichita Impound LLC estimates revenue of $400 per vehicle; PropertyRoom.com is based on $500 per vehicle, although in other jurisdictions as much as $1,100 per vehicle is generated.			
Auction Fees			
Tow Service Cost Recovery	($74,425)		
Storage Fee Cost Recovery	($159,250)	($146,250)	
Auction Service Fees	($43,875)	($40,625)	
Total Auction Fees	**($277,550)**	**($186,875)**	
Wichita Impound, LLC would deduct towing costs (estimated based on an average cost of $115 each), plus storage cost of $245 per vehicle. PropertyRoom.com includes storage costs of $225 per vehicle. Auction fee costs from Wichita Impound, LLC including a $30 vehicle fee, a $12.50 auction fee and other administrative costs (estimated at $25 per vehicle). PropertyRoom.com auction fee includes a commission of 12.5% of the price of each sold vehicle.			
Net Revenue From Auction	**($17,550)**	**$138,125**	
Net City Revenue From Auction	$0	**$138,125**	
Wichita Impound, LLC would provide the City 5% of net storage revenues, to the extent those net revenues are positive.			
Net City Margin	**$19,504**	**$92,186**	**$14,667**

EMERGENCY TOWING FEES AND CHARGES

Charges for emergency tows (both impound tows and other emergency tows) are set by City Code. These fees were most recently set on May 13, 2008. The current fees are shown below (Current Fees column). In addition, during negotiations with Wichita Impound, LLC, as part of their proposal the consortium proposed a new rate schedule (included in the table in the Wichita Impound, LLC column). The staff proposal assumes a continuation of the current fee schedule for Police impound tows, but no set fee schedule for other emergency tows (Staff Proposal column). The current ordinance outlines a number of fees for specific services. The most significant fees are compared below, and an estimate of an average tow bill under each proposal is included.

	Current Fees	Wichita Impound LLC	Staff Proposal
Police Impound Tows			
Regular Vehicle Tow	$80	$90	$80
Mileage Charge	$3.50	$3.75	$3.50
Storage Fees (per day)	$20	$35	$20
Lot Fee	$15	$20	$0
Waiting Time (per qtr hour)	$18	$20	$18
Fuel Surcharge (% of tow charges)	7%	7%*	7%
Estimated average price per tow**	$198.05	$261.42	$183.05
Other Ancillary Charges			
Large Vehicle Tow	$120	$350 / per hour	$120
Overturned Vehicle	$43	$45	$43
Winching Small Vehicle (per qtr hour)	$25	$25	$25
Storage Fees—Large vehicle (per day)	$20	$50	$20
Landoll Use	$150	$250 / per hour	$150
Other Emergency Tows			
Regular Vehicle Tow	$80	$90	Market price
Mileage Charge	$3.50	$3.75	Market price
Impound Storage Fees (per day)	$20	$35	Market price
Lot Fee	$15	$20	Market price
Waiting Time	$18/qtr Hour	$20/qtr Hour	Market price
Fuel Surcharge (% of tow charges)	7%	7%*	Market price
Estimated average price per tow**	$198.05	$261.42	$183.05

Notes:
** The Wichita Impound, LLC proposal would adjust the fuel surcharge by .5% for every 20 cent change in price per gallon of fuel from a $3.10 benchmark*
***Estimated average price per tow is based on a 10 mile tow, with three days of storage.*

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: Concealed Carry of Firearms in City Buildings

INITIATED BY: Police Department

AGENDA: New Business

Recommendation: The Police Department was tasked to gather information on the topic of carrying concealed firearms in City buildings and to identify options for the City Council.

Background: The State Personal and Family Protection Act (KSA 75-7c1 et seq, hereinafter "the law") provides that persons may be licensed by the state to carry concealed firearms. KSA 75-7c10 lists certain circumstances in which licensees may be prohibited from carrying concealed firearms. Section (a) of the law permits restrictions in 16 types of locations, if posted with prescribed signage. Section (b)(1) allows employers to restrict concealed carry by their employees. Section (b)(2) allows Cities and other entities to restrict concealed carry in their buildings if posted. Section (e) restricts concealed carry where prohibited by federal law.

Currently, the City utilizes Section (b)(2) to take an across-the-board approach to prohibiting concealed carry in all City buildings regardless of whether other restrictions may also apply. The law does not specify a process by which cities determine whether or not to apply Section (b)(2) restrictions. Presently, the vehicle for implementing the City of Wichita's restrictions is the City's Administrative Regulation 5.5., section L., which prohibits bringing a number of dangerous items into City buildings including firearms.

Information regarding this subject was presented to the City Council during a workshop on October 25, 2011.

Analysis: There are approximately 390 City-owned buildings and 10 different departments that control these buildings. A committee comprised of representatives of the 10 departments and the Law Department held three meetings to discuss concerns and identify criteria to be used. The committee found as one option, that by applying various provisions of the law, concealed carry could be allowed at 111 locations and could be prohibited in 279 buildings. At the conclusion of this process, the committee determined that the three apparent options available to the Council were to: (1) maintain the status quo; (2) apply the criteria devised by the committee; or (3) develop its own criteria

Financial Considerations: None

Goal Impact: To provide a Safe and Secure environment for employees and visitors to City buildings.

Legal Considerations: No ordinance amendments are required.

Recommendations/Actions: There was no formal recommendation by the committee. Options were developed for consideration by the City Council.

Attachments: Copy of KSA 75-7c10
Copy of Administrative Regulation 5.5, section L, with prohibited items list

75-7c10. Same; restrictions on carrying concealed handgun on certain property; exceptions; penalties for violations. (a) Provided that the premises are conspicuously posted in accordance with rules and regulations adopted by the attorney general as premises where carrying a concealed handgun is prohibited, no license issued pursuant to or recognized by this act shall authorize the licensee to carry a concealed handgun into the building of:

(1) Any place where an activity declared a common nuisance by K.S.A. 22-3901, and amendments thereto, is maintained;

(2) any police, sheriff or highway patrol station;

(3) any detention facility, prison or jail;

(4) any courthouse, except that nothing in this section would preclude a judge from carrying a concealed handgun or determining who may carry a concealed handgun in the judge's courtroom;

(5) any polling place on the day an election is held;

(6) any state office;

(7) any facility hosting an athletic event not related to or involving firearms which is sponsored by a private or public elementary or secondary school or any private or public institution of postsecondary education;

(8) any facility hosting a professional athletic event not related to or involving firearms;

(9) any drinking establishment as defined by K.S.A. 41-2601, and amendments thereto;

(10) any elementary or secondary school, attendance center, administrative office, services center or other facility;

(11) any community college, college or university ;

(12) any child exchange and visitation center provided for in K.S.A. 75-720, and amendments thereto;

(13) any community mental health center organized pursuant to K.S.A. 19-4001 et seq., and amendments thereto; any mental health clinic organized pursuant to K.S.A. 65-211 et seq., and amendments thereto; any psychiatric hospital licensed under K.S.A. 75-3307b, and amendments thereto; or a state psychiatric hospital, as follows: Larned state hospital, Osawatomie state hospital or Rainbow mental health facility;

(14) any public library operated by the state;

(15) any day care home or group day care home, as defined in Kansas administrative regulation 28-4-113, or any preschool or childcare center, as defined in Kansas administrative regulation 28-4-420; or

(16) any place of worship.

(b) Nothing in this act shall be construed to prevent:

(1) Any public or private employer from restricting or prohibiting by personnel policies persons licensed under this act from carrying a concealed handgun while on the premises of the employer's business or while engaged in the duties of the person's employment by the employer, except that no employer may prohibit possession of a handgun in a private means of conveyance, even if parked on the employer's premises; or

(2) any private business or city, county or political subdivision from restricting or prohibiting persons licensed or recognized under this act from carrying a concealed handgun within a building or buildings of such entity, provided that the premises are posted in accordance with rules and regulations adopted by the attorney general pursuant to subsection (f), as premises where carrying a concealed handgun is prohibited.

(c) (1) It shall be a violation of this section to carry a concealed handgun in violation of any restriction or prohibition allowed by subsection (a) or (b) if the premises are posted in accordance with rules and regulations adopted by the attorney general pursuant to subsection (f). Any person who violates this section shall be guilty of a misdemeanor punishable by a fine of: (A) Not more than $50 for the first offense; or (B) not more than $100 for the second offense. Any third or subsequent offense is a class B misdemeanor.

(2) Notwithstanding the provisions of subsection (a) or (b), it is not a violation of this section for the United States attorney for the district of Kansas, the attorney general, any district attorney or county attorney, any assistant United States attorney if authorized by the United States attorney for the district of Kansas, any assistant attorney general if authorized by the attorney general, or any assistant district attorney or assistant county attorney if authorized by the district attorney or county attorney by whom such assistant is employed, to possess a handgun within any of the buildings described in subsection (a) or (b), subject to any restrictions or prohibitions imposed in any courtroom by the chief judge of the judicial district. The provisions of this paragraph shall not apply to any person who is not in compliance with K.S.A. 2010 Supp. 75-7c19, and amendments thereto.

(d) For the purposes of this section, "building" shall not include any structure, or any area of any structure, designated for the parking of motor vehicles.

(e) Nothing in this act shall be construed to authorize the carrying or possession of a handgun where prohibited by federal law.

(f) The attorney general shall adopt rules and regulations prescribing the location, content, size and other characteristics of signs to be posted on premises where carrying a concealed handgun is prohibited pursuant to subsections (a) and (b). Such regulations shall prescribe, at a minimum, that:

(1) The signs be posted at all exterior entrances to the prohibited buildings;

(2) they be posted at eye level of adults using the entrance and not more than 12 inches to the right or left of such entrance;

(3) the signs not be obstructed or altered in any way; and

(4) signs which become illegible for any reason be immediately replaced.

City Hall Security Procedures

Current Revision: August 2, 2010 Last Revision: June 28, 2010

Purpose

In order to maintain a secure environment for Wichita City Hall and other city facilities, the Security Section of the Wichita Police Department with approval from the City Manager, has been given the authority to control access to City Hall and to provide security and safety services for the building, other City facilities and their occupants. The following procedures have been established to accomplish this objective.

L. Prohibited Items

1. Except as provided elsewhere in this regulation, no person is permitted to bring any dangerous or illegal item or substance into City buildings. Such items or substances are described on the attached list of prohibited items.
2. Properly identified on-duty law enforcement, fire and medical personnel may bring in such prohibited items as are reasonably required for the performance of their official duties while at City Hall.
3. In accordance with 18 USC 926C and KSA 21-4201, as affected by the Kansas Personal and Family Protection Act, sections 10 (a) (7) and (a) (18), retired law Enforcement personnel and firearms licensees are prohibited from carrying firearms in City Hall or any other location where a meeting of the governing body is being conducted.
4. Persons to whom City building access has been properly granted may bring in some minor prohibited items provided such items are essential for the ordinary performance of their official duties or functions. However, no non-law enforcement person is permitted to bring in any weapons or hazardous materials without the specific authorization of the security supervisor.

PROHIBITED ITEMS

No person, without authorization, may bring any of the following items into City Hall:

A. All weapons including, but not limited to the following:

- Firearms, firearms components, guns of all types, ammunition
- Knives, swords, daggers, ice picks, awls, straight razors, cutting and puncturing tools, cutting

and piercing instruments & devices, pry tools

- Axes, hatchets, cleavers and similar items
- Crossbows, bows and arrows, spears, harpoons
- Explosives, incendiary devices, gunpowder, flares, fireworks, gas torches
- Mace, tear gas, chemical weapons, noxious gases, smoke generating devices
- Clubs, batons, club-like items, brass knuckles, chains (non-jewelry), whips, impact weapons
- Stun guns, Tasers, electrical weapons
- Throwing stars, numchuks, martial arts weapons
- Tools or non-weapon items containing weapon components
- Components and replicas of the above items

B. All destructive, caustic or hazardous chemicals, gases, liquids, devices and materials including, but not limited to:

- Liquid bleach, ammonia, lye
- Acids, batteries containing acid
- Gasoline, kerosene, propane, fuels, solvents
- Paint, including spray paint and paint markers

C. Biological agents
D. Radioactive materials
E. Illegal drugs and drug paraphernalia
F. Illegal items of any nature
G. Alcohol and alcoholic beverages
H. Animals other than working canines and service animals
I. Lock-picking tools and handcuff keys

Statements of Cost:

PAVING

a. Paving on Candlewood, Candlewood Court and sidewalk to serve Avalon Park 3rd Additions (north of 37th Street North, east of Tyler). Total Cost - $373,275.35 (plus idle fund interest - $234.45, plus temporary note interest - $590.20. Financing to be issued at this time - $374,100.00 (766260/472-84221/490-278).

b. Paving on City View, City View Circle and Jayson to serve The Woods Addition (east of 151st Street West, north of Maple). Total Cost - $187,685.92 [plus idle fund interest – $299.96, plus temporary note interest - $114.12. Financing to be issued at this time - $188,100.00. (766262/472-84360/490-280).

c. Paving on 119th Court West to and including the turnaround and hammerheads to serve Koker Addition (north of Central, west of 119th Street West). Total Cost - $140,402.45 (plus idle fund interest - $65.66, plus temporary note interest - $231.89). Financing to be issued at this time - $140,700.00. (766258/472-84380/490-276).

d. Paving on Victor from Hillside to the east line of Parkstone Addition; Rutan from Douglas to 1st Street; parking on the south side of 1st Street from the west line of Parkstone Addition (north of Douglas, east of Hillside). Total Cost - $2,474,917.68 (plus idle fund interest - $5,567.45, plus temporary note interest - $25,014.87). Financing to be issued at this time - $2,505,500.00. (766166/472-84571/490-184).

e. Paving on Left Turn Lane on Maize Road (southbound), Decel Lane on Maize Road (northbound), and two drives off of 37th Street North (westbound traffic) to serve Stonebridge Commercial Addition (south of 37th Street North, east of Maize). Total Cost - $288,984.71 (plus idle fund interest – $402.50, plus temporary note interest - $1,812.79). Financing to be issued at this time - $291,200.00. (766235/472-84787/490-253).

f. Paving on Angel Street, Kessler Street, Kessler Circle and Angel Court to serve Angel Fire Addition (north of 47th Street South, east of West Street). Total Cost - $466,405.35 (plus idle fund interest – $121.73, plus temporary note interest - $772.92). Financing to be issued at this time - $467,300.00 (766251/472-84886/490-269).

g. Paving on Lark Court from the east line of Lark, east to and including the cul-de-sac to serve Steve Kelley 6th Addition (south of Kellogg, west of Maize). Total Cost - $55,748.24 (plus idle fund interest – $151.76, plus temporary note interest - $0.00). Financing to be issued at this time - $55,900.00 (766252/472-84889/490-270).

Statements of Cost:

SEWER

a. Constructing Lateral 22, Main 19 Southwest Interceptor Sewer to serve Avalon Park 3rd Addition (north of 37th Street North, east of Tyler). Total Cost - $67,138.35 (plus idle fund interest – $33.42, plus temporary note interest - $228.23). Sewer main benefit fee - $12,000.00. Financing to be issued at this time - $79,400.00. (744317/468-84010/480-009).

b. Constructing Lateral 511, Southwest Interceptor Sewer to serve Koker Addition (north of Central, west of 119th Street West). Total Cost - $55,090.11 (plus idle fund interest – $15.19, plus temporary note interest - $187.70). Sewer main benefit fee - $2,577.00. Financing to be issued at this time - $57,870.00. (744315/468-84145/480-007).

c. Constructing Lateral 13, Main 4 Northwest Interceptor Sewer to serve Silverton Addition (north of 13th Street North, west of 135th Street West). Total Cost - $77,335.63 (plus idle fund interest - $56.66, plus temporary note interest - $257.71). Sewer main benefit fee - $15,800.00. Financing to be issued at this time - $93,450.00. (744314/468-84246/480-006).

d. Constructing Lateral 24, Main 13 Southwest Interceptor Sewer to serve Steve Kelley 6th Addition (south of Kellogg, west of Maize). Total Cost - $46,909.41 (plus idle fund interest - $32.71, plus temporary note interest - $197.88). Sewer main benefit fee - $3,710.00. Financing to be issued at this time - $50,850.00. (744312/468-84671/480-004).

e. Constructing Lateral 5, Main 2 Northwest Interceptor Sewer to serve Pearson Commercial Addition (east of Maize, north of 29th Street North). Total Cost - $74,558.67 (plus idle fund interest - $12.62, plus temporary note interest - $257.71). Sewer main benefit fee - $26,921.00. Financing to be issued at this time - $101,750.00. (744316/468-84688/480-008).

f. Constructing Lateral 6, Main 18 Four Mile Creek Sewer to serve Casa Bella, Casa Bella 2nd and Casa Bella 3rd Additions (north of Pawnee, west of 127th Street East). Total Cost - $69,474.90 (plus idle fund interest – $39.48, plus temporary note interest - $235.62). Sewer main benefit fee - $0. Financing to be issued at this time - $69,750.00. (744318/468-84718/480-010).

STORM WATER SEWER AND STORM WATER DRAIN

g. Constructing Storm Water Sewer #552 to serve a replat of Part of Spencer Gardens Addition (south of Pawnee, west of Oliver). Total Cost - $56,451.18 (plus idle fund interest - $31.42, plus temporary note interest - $617.40). Financing to be issued at this time - $57,100.00. (751495/468-83274/485-386).

h. Constructing Storm Water Sewer #656 to serve North Elementary School Addition (north of 29th Street North, east of Seneca). Total Cost - $176,567.29 (plus idle fund interest - $306.50, plus temporary note interest - $76.21). Financing to be issued at this time - $176,950.00. (751492/468-84678/485-383).

i. Constructing Storm Water Sewer #659 to serve Greenwich Office Park 2nd Addition (north of 13th Street North, west of Greenwich). Total Cost - $87,355.17 (plus idle fund $101.31, plus temporary note interest $143.52). Financing to be issued at this time - $87,600.00. (751494/468-84725/485-385).

WATER

j. Constructing Water Distribution System to serve Avalon Park 3rd Addition (north of 37th Street North, east of Tyler). Total Cost - $70,775.21 (plus idle fund interest - $78.12, plus temporary note interest - $246.67). Water main benefit fee - $0. Financing to be issued at this time - $71,100.00. (735453/448-90076/470-126).

k. Constructing Water Distribution System to serve The Woods Addition (east of 151st Street East, north of Maple). Total Cost - $32,975.89 (plus idle fund interest - $13.70, plus temporary note interest - $110.41). Water main benefit fee - $0. Financing to be issued at this time - $33,100.00. (735457/448-90164/470-130).

l. Constructing Water Distribution System to serve Koker Addition (north of Central, west of 119th Street West). Total Cost - $35,956.78 (plus idle fund interest - $25.41, plus temporary note interest - $117.81). Water main benefit fee - $0. Financing to be issued at this time - $36,100.00. (735451/448-90167/470-124).

m. Constructing Water Distribution System to serve Stonebridge 2nd and 3rd Additions (north of 13th Street North, east of 143rd Street East). Total Cost - $74,548.66 (plus idle fund interest - $40.12, plus temporary note interest - $2,978.22). Water main benefit fee - $18,833.00. Financing to be issued at this time - $96,400.00. (735459/448-90294/470-132).

n. Constructing Water Distribution System to serve Steve Kelley 6th Addition (south of Kellogg, west of Maize). Total Cost - $18,429.77 (plus idle fund interest - $37.42, plus temporary note interest - $82.81). Water main benefit fee - $1,930.00. Financing to be issued at this time - $20,480.00. (735445/448-90473/470-118).

o. Constructing Water Distribution System to serve Casa Bella 3rd Addition (north of Pawnee, west of 127th Street East). Total Cost - $28,385.56 (plus idle fund interest - $78.64, plus temporary note interest - $13.80). Water main benefit fee - $6,072.00. Financing to be issued at this time - $34,550.00. (735455/448-90502/470-128).

p. Constructing Water Distribution System to serve Greenwich Office Park 2nd Addition (north of 13th Street North, west of Greenwich). Total Cost - $49,400.79 (plus idle fund interest - $49.33, plus temporary note interest - $47.88). Water main benefit fee - $11,352.00. Financing to be issued at this time - $60,850.00. (735458/448-90509/470-131).

q. Constructing Water Distribution System to serve Newmarket Office 2nd Addition (north of 29th Street North, west of Maize). Total Cost - $42,608.58 (plus idle fund interest - $62.61, plus temporary note interest - $125.09). Water main benefit fee - $24,403.72. Financing to be issued at this time - $67,200.00. (735460/448-90523/470-133).

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: Relocation of Southern Star Central Gas Pipe Line (Kellogg/Webb Interchange) (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the design reimbursement agreement.

Background: On August 3, 2010, the City Council approved a design concept for the Kellogg Freeway, from Cypress to 127th Street East. The project will include an interchange at Kellogg and Webb. Southern Star Central Gas Pipeline, Inc. has a pipeline that is in conflict with the City's project. The pipeline is located in a private easement. The Company has indicated that it will relocate its pipeline and accommodate the City's project if the City reimburses the Company for all of its actual costs, both direct and indirect.

Analysis: An agreement has been prepared for the design of the pipeline relocation. An amending agreement will be returned to the City Council at a future date to authorize reimbursement for the construction cost.

Financial Considerations: The estimated design cost is $89,846. It is acknowledged that the actual cost may be greater or less than the estimate. Funds are available in the approved project budget. The funding source is the Local Sales Tax.

Goal Impact: This project addresses the Efficient Infrastructure goal by constructing a Kellogg Freeway Interchange.

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

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

Attachments: Agreement.

STATE OF KANSAS Tract: 36615, 36228, 21322

COUNTY OF SEDGWICK Line: TG

CITY OF WICHITA PROJECT NO. 472 84615

ENGINEERING AND DESIGN
REIMBURSEMENT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2011, by and between the **CITY OF WICHITA, KANSAS**, a Kansas Municipality Corporation, hereinafter referred to as **"CITY"** whose mailing address is 455 N. Main St. 7th Floor Engineering, Wichita, Kansas 67202, and **SOUTHERN STAR CENTRAL GAS PIPELINE, INC.,** a Delaware corporation, formerly Williams Gas Pipelines Central, Inc., Williams Natural Gas Company, Northwest Central Pipeline, Inc., and Cities Service Gas Company, hereinafter referred to as **"SOUTHERN STAR"**, whose mailing address is 4700 Kentucky Highway 56 and P.O. Box 20010, Owensboro, Kentucky 42304.

WITNESSETH:

SOUTHERN STAR certifies and has provided evidence showing that SOUTHERN STAR has right of occupancy on private right of way by holding the fee, an easement, or other property interest. SOUTHERN STAR certifies that no deed, easement, agreement, or other document granting Company's existing right of occupancy on the private right of way requires SOUTHERN STAR to relocate its facilities for public purposes at SOUTHERN STAR's own expense.

WHEREAS, the CITY desires that SOUTHERN STAR'S PIPELINE be relocated for improvements to East Kellogg and Webb road located in the part of the Southwest Quarter of

Section 21-T27S-R2E and the Northwest Quarter of Section 28-T27S-2E, and the Northeast Quarter of Section 29 T27S R2E in Sedgwick County, Kansas; and

WHEREAS, CITY owns a public road right-of-way lying where City proposes to develop East Kellogg and Webb road preliminary street improvements as referenced on drawing titled, US 54 State Highway, City of Wichita, Project 472 84615, sheet 69 of 607, dated October 19, 2010.

WHEREAS, CITY has requested that SOUTHERN STAR conduct the preliminary engineering and design for the proposed relocation of its pipeline referred above (hereinafter, the "**WORK**"); and

WHEREAS, it is in the best interest of the CITY for SOUTHERN STAR to proceed with the WORK associated with the relocation of SOUTHERN STAR'S PIPELINE with an estimated cost Eighty-Nine Thousand, Eight Hundred, and Forty-Six dollars and no cents ($89,846.00) as more fully described in **Exhibit A**, which is attached hereto and made apart hereof.

WHEREAS, for the purpose of this agreement, CITY shall reimburse SOUTHERN STAR for preliminary route design cost without regard to actual proportion of cost determined by the study, applicable to each party based on right-of-way widths of E. Kellogg & Webb road. The cost associated with the actual reroute and engineering will be proportional to the CITY and SOUTHERN STAR and will be shown in the actual reimbursement agreement for the relocation of SOUTHERN STAR facilities.

NOW, THEREFORE, in consideration of the premises and mutual promises of the parties, the CITY and SOUTHERN STAR agree as follows:

1. SOUTHERN STAR and / or its contractor shall furnish the **WORK**, the costs and scope of which are more fully described in **Exhibit A**.

2. Upon completion of the **WORK**, SOUTHERN STAR shall forward to the CITY it proposed route for the relocation of SOUTHERN STAR'S PIPELINE in conjunction with the CITY'S East Kellogg and Webb intersection street improvements. An itemized invoice shall be sent to the CITY reflecting the amount equal to one hundred percent (100%) of the actual costs incurred by SOUTHERN STAR for the WORK.

3. In the event the actual costs incurred for the work performed exceeds the estimated amount as stated, SOUTHER STAR will forward itemized invoice to CITY reflecting the amount equal to 100% of the actual reasonable costs incurred above the estimated

amount. City agrees to pay all actual costs other than those which may be arbitrary and capricious.

4. The itemized invoice as referred to above shall be forwarded to the CITY at the following address:
   Attn. Mike Jacobs 7th Floor Engineering
   Public Works
   455 N. Main
   Wichita, Kansas 67202

5. In order to ensure proper and timely credit of payment to SOUTHERN STAR, payments must be mailed to the following address and attention of the person named below:
   Southern Star Central Gas Pipeline, Inc.
   Attn. Diane Bowers
   P.O. Box 20010
   Owensboro, Kentucky 42304

6. The parties agree that following the completion of the **WORK** and prior to relocation of the SOUTHERN STAR PIPELINE, a Relocation and Reimbursement Agreement governing the reimbursement for the actual relocation cost and prepayment of the estimated land acquisition cost shall be entered into by and between the CITY and SOUTHERN STAR.

7. SOUTHERN STAR agrees to include the cost of preliminary engineering and design (the **WORK**) in the Relocation and Reimbursement Agreement. If the relocation is undertaken, the CITY will receive reimbursement from SOUTHERN STAR of any payment made by CITY for said **WORK** in a proportional amount equal to the CITY's proportional amount of costs for relocation. Reimbursement may be in the form of credit towards CITY's share of relocation costs. In the event relocation is not required by the project, no refund, reimbursement, or credit for preliminary engineering costs (the **WORK**) will be made by SOUTHERN STAR to CITY.

8. The terms and provisions hereof shall extend to and be binding upon the parties and hereto, their successors, assigns, and transferees.

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

CITY OF WICHITA, KANSAS
BY ACTION OF THE CITY COUNCIL

By:_____

Carl Brewer, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

SOUTHERN STAR CENTRAL GAS PIPELINE, INC.

By: Robert S. Bahnick

Robert S. Bahnick
Title: Vice President & Chief Operations Officer

STATE OF KENTUCKY
COUNTY OF DAVIESS

Corporate Acknowledgment

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on the 28 day of October, 2011, personally appeared Robert S. Bahnick, who being duly sworn, did say the he is Vice President & Chief Operations Officer for Southern Star Central Gas Pipeline, Inc., a Delaware corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and Robert S. Bahnick acknowledged said instrument to be the free act and deed of said corporation.

In Testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year written above.

ROBIN L. CARLISLE
Notary Public
State at Large, Kentucky
My Appt. Expires: 9-16-15

Robin L. Carlisle
Notary Public

Notary ID 451468

My Commission Expires: 9-16-15

Exhibit A

Scope of Work and Cost Estimate

Scope of Work

SOUTHERN STAR and/or its contractors will perform the feasibility and preliminary route study, including options for its Line TG relocation related to the CITY'S East Kellogg Street and Webb Road street improvement project..

Cost Estimate

Engineering		$28,111
Survey		$23,320
Southern Star		$38,415
	Total	$89,846

STATE OF KANSAS Tract: 36615, 36228, 21322

COUNTY OF SEDGWICK Line: TG

CITY OF WICHITA PROJECT NO. 472 84615

ENGINEERING AND DESIGN
REIMBURSEMENT AGREEMENT

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WITNESSETH:

SOUTHERN STAR certifies and has provided evidence showing that SOUTHERN STAR has right of occupancy on private right of way by holding the fee, an easement, or other property interest. SOUTHERN STAR certifies that no deed, easement, agreement, or other document granting Company's existing right of occupancy on the private right of way requires SOUTHERN STAR to relocate its facilities for public purposes at SOUTHERN STAR's own expense.

WHEREAS, the CITY desires that SOUTHERN STAR'S PIPELINE be relocated for improvements to East Kellogg and Webb road located in the part of the Southwest Quarter of

Section 21-T27S-R2E and the Northwest Quarter of Section 28-T27S-2E, and the Northeast Quarter of Section 29 T27S R2E in Sedgwick County, Kansas; and

WHEREAS, CITY owns a public road right-of-way lying where City proposes to develop East Kellogg and Webb road preliminary street improvements as referenced on drawing titled, US 54 State Highway, City of Wichita, Project 472 84615, sheet 69 of 607, dated October 19, 2010.

WHEREAS, CITY has requested that SOUTHERN STAR conduct the preliminary engineering and design for the proposed relocation of its pipeline referred above (hereinafter, the "**WORK**"); and

WHEREAS, it is in the best interest of the CITY for SOUTHERN STAR to proceed with the WORK associated with the relocation of SOUTHERN STAR'S PIPELINE with an estimated cost Eighty-Nine Thousand, Eight Hundred, and Forty-Six dollars and no cents ($89,846.00) as more fully described in **Exhibit A**, which is attached hereto and made apart hereof.

WHEREAS, for the purpose of this agreement, CITY shall reimburse SOUTHERN STAR for preliminary route design cost without regard to actual proportion of cost determined by the study, applicable to each party based on right-of-way widths of E. Kellogg & Webb road. The cost associated with the actual reroute and engineering will be proportional to the CITY and SOUTHERN STAR and will be shown in the actual reimbursement agreement for the relocation of SOUTHERN STAR facilities.

NOW, THEREFORE, in consideration of the premises and mutual promises of the parties, the CITY and SOUTHERN STAR agree as follows:

1. SOUTHERN STAR and / or its contractor shall furnish the **WORK**, the costs and scope of which are more fully described in **Exhibit A**.

2. Upon completion of the **WORK**, SOUTHERN STAR shall forward to the CITY it proposed route for the relocation of SOUTHERN STAR'S PIPELINE in conjunction with the CITY'S East Kellogg and Webb intersection street improvements. An itemized invoice shall be sent to the CITY reflecting the amount equal to one hundred percent (100%) of the actual costs incurred by SOUTHERN STAR for the WORK.

3. In the event the actual costs incurred for the work performed exceeds the estimated amount as stated, SOUTHER STAR will forward itemized invoice to CITY reflecting the amount equal to 100% of the actual reasonable costs incurred above the estimated

amount. City agrees to pay all actual costs other than those which may be arbitrary and capricious.

4. The itemized invoice as referred to above shall be forwarded to the CITY at the following address:
   Attn. Mike Jacobs 7th Floor Engineering
   Public Works
   455 N. Main
   Wichita, Kansas 67202

5. In order to ensure proper and timely credit of payment to SOUTHERN STAR, payments must be mailed to the following address and attention of the person named below:
   Southern Star Central Gas Pipeline, Inc.
   Attn. Diane Bowers
   P.O. Box 20010
   Owensboro, Kentucky 42304

6. The parties agree that following the completion of the **WORK** and prior to relocation of the SOUTHERN STAR PIPELINE, a Relocation and Reimbursement Agreement governing the reimbursement for the actual relocation cost and prepayment of the estimated land acquisition cost shall be entered into by and between the CITY and SOUTHERN STAR.

7. SOUTHERN STAR agrees to include the cost of preliminary engineering and design (the **WORK**) in the Relocation and Reimbursement Agreement. If the relocation is undertaken, the CITY will receive reimbursement from SOUTHERN STAR of any payment made by CITY for said **WORK** in a proportional amount equal to the CITY's proportional amount of costs for relocation. Reimbursement may be in the form of credit towards CITY's share of relocation costs. In the event relocation is not required by the project, no refund, reimbursement, or credit for preliminary engineering costs (the **WORK**) will be made by SOUTHERN STAR to CITY.

8. The terms and provisions hereof shall extend to and be binding upon the parties and hereto, their successors, assigns, and transferees.

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

CITY OF WICHITA, KANSAS
BY ACTION OF THE CITY COUNCIL

By:_____

Carl Brewer, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

SOUTHERN STAR CENTRAL GAS PIPELINE, INC.

By: Robert S Bahnick

Robert S. Bahnick
Title: Vice President & Chief Operations Officer

STATE OF KENTUCKY
COUNTY OF DAVIESS

Corporate Acknowledgment

Before me, the undersigned, a Notary Public duly commissioned in and for the county and state aforesaid, on the 28 day of October, 2011, personally appeared Robert S. Bahnick, who being duly sworn, did say the he is Vice President & Chief Operations Officer for Southern Star Central Gas Pipeline, Inc., a Delaware corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and Robert S. Bahnick acknowledged said instrument to be the free act and deed of said corporation.

In Testimony whereof, I have hereunto set my hand and affixed my official seal at my office in said county and state the day and year written above.

ROBIN L. CARLISLE
Notary Public
State at Large, Kentucky
My Appt. Expires: 9-16-15

Notary ID 451468

Robin L. Carlisle
Notary Public

My Commission Expires: 9-16-15

Exhibit A

Scope of Work and Cost Estimate

Scope of Work

SOUTHERN STAR and/or its contractors will perform the feasibility and preliminary route study, including options for its Line TG relocation related to the CITY'S East Kellogg Street and Webb Road street improvement project..

Cost Estimate

Engineering		$28,111
Survey		$23,320
Southern Star		$38,415
	Total	$89,846

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: Change Order No. 1 – CDBG Sidewalk Improvements Phase 1 (District I)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the change order.

Background: On April 19, 2011, the City Council approved a construction contract with PPJ Construction, Inc., for sidewalk and wheelchair ramp repairs. Vice Mayor Williams has requested that additional funds be utilized for additional sidewalk repairs in eligible areas. A change order has been prepared to address the additional work.

Analysis: The additional work consists of 2,795 feet of sidewalk and one wheelchair ramp.

Financial Considerations: The total cost of the additional work is $10,000. The original contract amount is $80,917. This change order represents 12.35% of the original contract amount. Funding is available within the existing project budget

Goal Impact: This project addresses the Efficient Infrastructure goal by constructing neighborhood sidewalks.

Legal Considerations: The Law Department has approved the change order as to form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve Change Order No. 1 and authorize the necessary signatures.

Attachments: Change Order No. 1.

11/28/2011

PUBLIC WORKS-ENGINEERING

CHANGE ORDER

To: PPJ Construction Inc.

Project: CDBG Sidewalk Improvements FY2010/11 – Phase 1

Change Order No.: 1
Purchase Order No.: 130360
CHARGE TO OCA No.: 092043

Project No.: 472-84971
OCA No.: 092043
PPN: 800000 010110

Please perform the following extra work at a cost not to exceed <u>$10,000.00</u>

Additional Work: Add additional sidewalk and wheelchair ramp repair quantities to existing contract.

Reason for Additional Work: Council Member requests additional CDBG funds be utilized for additional sidewalk repairs in an eligible Local Investment Area.

Item	Negot'd/Bid	Qty	Unit Price	Extension
4" Sidewalk Repair	Bid	2,795.5 sf@	$3.40	$9,504.70
Wheelchair Ramp w/Det. Warn.	Bid	1 ea@	$495.30	$495.30
			TOTAL:	**$10,000.00**

CIP Budget Amount: $206,519.00 Original Contract Amt.: $80,918.00

Consultant: Staff
Exp. & Encum. To Date: $186,427.05

CO Amount: $10,000.00
Unencum. Bal. After CO: $10,091.95

Current CO Amt.: $10,000.00
Amt. of Previous CO's: $0.00
Total of All CO's: $10,000.00
% of Orig. Contract / 25% Max.: 12.35%
Adjusted Contract Amt.: $90,917.00

Recommended By:

Greg Baalman, P.E. Date
Construction Engineer

Approved:

Jim Armour, P.E. Date
City Engineer

Approved:

Contractor Date

Approved

Alan King Date
Director of Public Works & Utilities

Approved as to Form:

Gary Rebenstorf Date
Director of Law

Matt Schultze

By Order of the City Council:

Carl Brewer Date
Mayor

Attest:_____
City Clerk

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: Change Order No. 1 – CDBG Sidewalk Improvements Phase 2 (District III)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the change order.

Background: On May 10, 2011, the City Council approved a construction contract with PPJ Construction, Inc., for sidewalk and wheelchair ramp repairs. Council Member Clendenin has requested that additional funds be utilized for additional sidewalk repair. A change order has been prepared to address the additional work.

Analysis: The additional work consists of 2,750 feet of 4" sidewalk repair and 75 feet of 6" sidewalk repair.

Financial Considerations: The total cost of the additional work is $10,000. The original contract amount is $80,917. This change order represents 12.35% of the original contract amount. Funding is available within the existing project budget

Goal Impact: This project addresses the Efficient Infrastructure goal by constructing neighborhood sidewalks.

Legal Considerations: The Law Department has approved the change order as to form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve Change Order No. 1 and authorize the necessary signatures.

Attachments: Change Order No. 1.

PUBLIC WORKS-ENGINEERING

November 18, 2011

CHANGE ORDER

To: PPJ Construction Inc.

Project: CDBG Sidewalk Improvements FY2010/11 – Phase 2

Change Order No.: 1
Purchase Order No.: 130412
CHARGE TO OCA No.: 092043

Project No.: 472-84972
OCA No.: 092043
PPN: 800000 010110

Please perform the following extra work at a cost not to exceed <u>$10,000.00</u>

Additional Work: Add additional sidewalk repair quantities to existing contract.

Reason for Additional Work: Council Member requests additional CDBG funds be utilized for additional sidewalk repairs in an eligible Local Investment Area.

Item	Negot'd/Bid	Qty	Unit Price	Extension
4" Sidewalk Repair	Bid	2750 sf@	$3.50	$9,625.00
6" Sidewalk Repair	Bid	75 sf@	$5.00	$375.00
			TOTAL:	**$10,000.00**

CIP Budget Amount: $206,519.00 Original Contract Amt.: $80,917.00

Consultant: Staff
Exp. & Encum. To Date: $176,427.05

CO Amount: $10,000.00
Unencum. Bal. After CO: $20,091.95

Current CO Amt.: $10,000.00
Amt. of Previous CO's: $0.00
Total of All CO's: $10,000.00
% of Orig. Contract / 25% Max.: 12.35%
Adjusted Contract Amt.: $90,917.00

Recommended By:

Greg Baalman, P.E. Date
Construction Engineer

Approved:

Jim Armour, P.E. Date
City Engineer

Approved:

Contractor Date

Approved

Alan King Date
Director of Public Works & Utilities

Approved as to Form:

Gary Rebenstorf Date
Director of Law

By Order of the City Council:

Carl Brewer Date
Mayor

Attest:_____
City Clerk

Matt Schultze

CITY OF WICHITA
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 2107 North 135th Street West for the 135th Street from 13th Street to 21st Street Improvement Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On April 19, 2011, the City Council approved funding to acquire right-of-way for a project to improve 135th Street West from 13th Street North to 21st Street North. The improvements will consist of widening the two lane road to three lanes. A center lane will be improved with a two-way, left turn lane and landscaped medians. Landscaping will be installed within available right of way. Ditches will be replaced with a storm water sewer system and sidewalks will be built along both the east and west side of 135th. The intersection at 135th Street and 21st Street will be improved with left turn lanes in each direction. Traffic signalization will be installed at the intersection if warranted at the time of construction. To facilitate the project, a twenty-five foot wide strip for road right-of-way is required from the property at 2107 North 135th Street West. The proposed acquisition area consists of 11,480 square feet.

Analysis: The property is comprised of two parcels; one parcel is developed with a single-family residence and the other is a vacant tract. The vacant tract is large enough that it can be improved for single-family use. The acquisition area from each parcel is 5,740 for a total of 11,480. The owner rejected the estimated appraised value of $12,915, or $1.75 per square foot for the developed parcel and $.50 per square foot for the vacant parcel. Through negotiation the owner agreed to accept $15,785, or $1.75 per square foot for the developed parcel and $1 per square foot for the undeveloped parcel.

Financial Considerations: The funding source is General Obligations Bonds. A budget of $17,285 is requested. This includes $15,785 for acquisition and $1,500 for closing costs and related charges.

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

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

Recommendation/Action: It is recommended that the City Council; 1) Approve the contract; 2) Approve the budget; and 3) Authorize all necessary signatures.

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

REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 09 day of Dec, 2011 by and between Clarence L. Engels and Joyce A. Engels, hereinafter referred to as "Seller," whether one or more, and the City of Wichita, Kansas, a municipal corporation, 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:

   A parcel of land lying in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

   The West 25 feet of the East 50 feet of the South 459.20 feet of the North 1250 feet of said Northeast Quarter, except for existing right of way.

   Said parcel contains 11,480 sq. ft. excluding existing right of way.

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 Fifteen Thousand Seven Hundred Eighty-Five Dollars ($15,785) in the manner following to-wit: cash at closing.

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

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 with all the

improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear accepted.

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 January 6, 2012.

9. Possession to be given to Buyer at closing

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

11. Closing shall occur at Security 1st Title, 434 N Main, Wichita, KS.

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

SELLER:

Clarence L. Engels

Clarence L. Engels

Joyce A. Engels

Joyce A. Engels

BUYER:
City of Wichita, KS, a municipal corporation

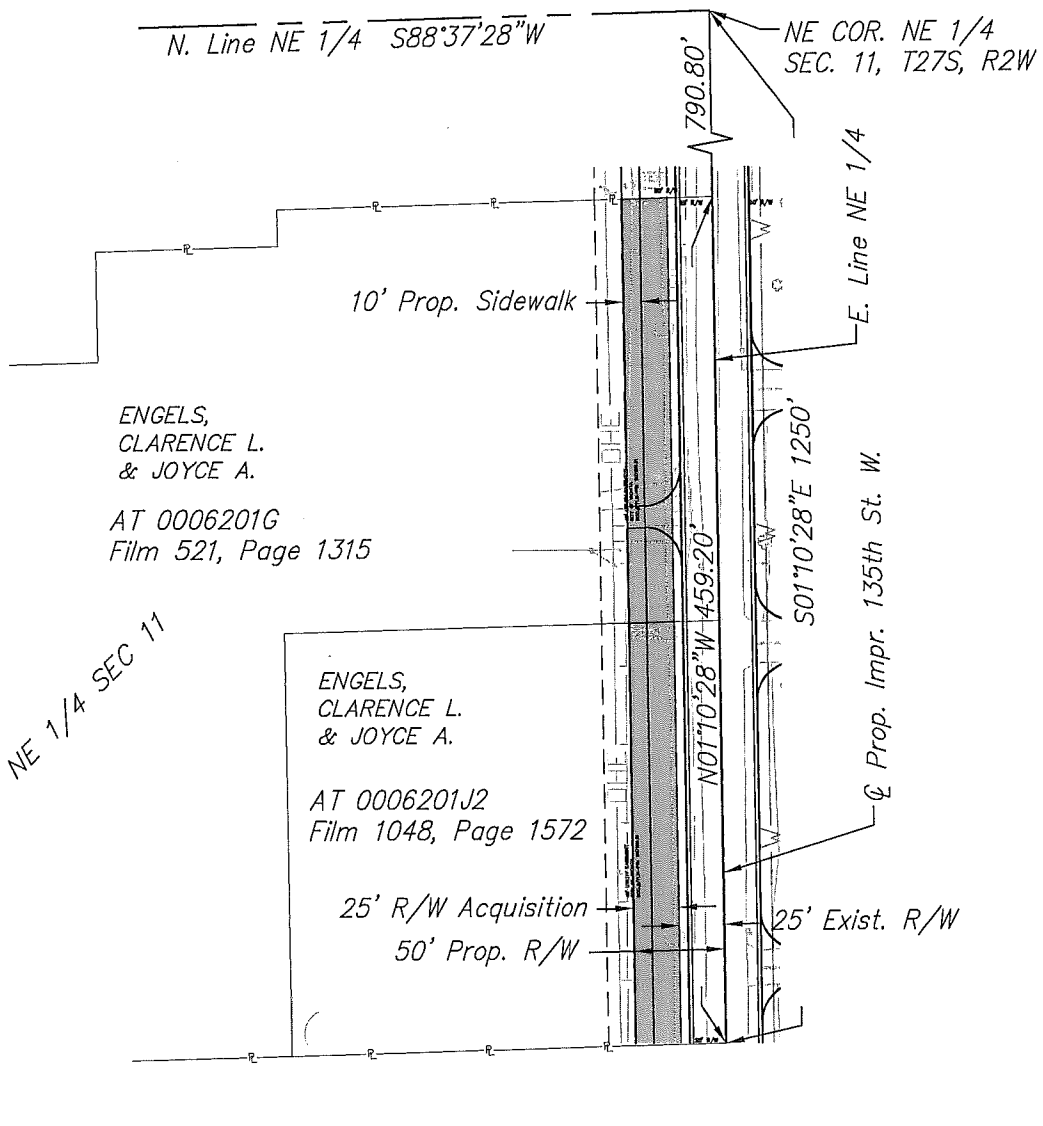
_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law



SCALE: 1" = 100'

100 0 100 200

LEGAL DESCRIPTION:

Right of Way Acquisition:

A parcel of land lying in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

The West 25 feet of the East 50 feet of the South 459.20 feet of the North 1250 feet of said Northeast Quarter, except for existing right of way.

Said parcel contains 11,480 sq. ft. excluding existing right of way.

LEGEND

Right of Way Acquisition
=11,480 sq. ft.
Excluding existing right of way.

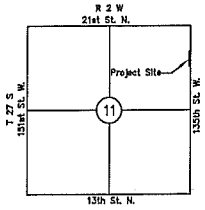
J:\CIVIL\10265\DWG\ROW-PROP\10265 TRACT MAPS ROW.DWG

Owner:

ENGELS,
CLARENCE L. & JOYCE A.
2107 N. 135th ST. W.
Wichita, KS. 67235-9556

Property Identification:

AT 0006201G
AT 0006201J2



VICINITY MAP

MKEC ENGINEERING CONSULTANTS
411 N. WEBB ROAD
WICHITA, KS. 67206
316 - 684 - 9600

135th ST. WEST 13TH TO 21ST ST. NORTH
PROJECT NAME

RIGHT OF WAY ACQUISITION TRACT MAP 10
SHEET TITLE

JRA	DSN	CWL
DESIGN BY:	DRAWN BY:	CHECKED BY:
MAY 2011		
Rev. NOV. 2011	10265	1 / 1
DATE	JOB NO.	SHEET/OF

Engels
Tract 10 ROW
DSN 5-26-11 rev. 11-21-11

Right of Way Acquisition:

A parcel of land lying in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

The West 25 feet of the East 50 feet of the South 459.20 feet of the North 1250 feet of said Northeast Quarter, except for existing right of way.

Said parcel contains 11,480 sq. ft. excluding existing right of way.

13909 and 2107

135th Street 13th to 21st

Identified Features
Selected Features
Historic Districts
Old Town
Delano Overlay District
NO
YES
Property Parcels
Roads
State Highway
US Federal Highway
Interstate
KTA
Arterial
Collector
Minor
Ramp
Railroads
Township and Range
Section
Quarter Section
Waterways
Streams
Historic Sites
REGIONAL
STATE/NATIONAL
STATE
Historic Environs
Parks
Airports
City Limits
Andale

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
December 20, 2011

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of 400 East 49th Street for the Wichita-Valley Center Flood Control Levee Certification and Rehabilitation Project (County)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: In 2007, the City of Wichita and Sedgwick County entered into an agreement with Federal Emergency Management Agency (FEMA) whereby it was agreed that the City and County would provide certification that the Wichita-Valley Center Flood Control levee system meet revised FEMA levee standards. As part of this certification process, certain portions of the levee system were identified as needing rehabilitation. One such segment is located at 400 East 49th Street North in Park City. The half acre property is zoned and improved for residential use. The proposed acquisition is along the north property line, at the rear of the property. The proposed area consists of 696 square feet. The site improvements are not impacted by the project.

Analysis: The owner rejected the estimated market value of $420, or $.60 per square foot. A counter offer of $8,784 was presented by the owner for loss of mature trees and damages for the loss of the fence. Through negotiation, the owner agreed to accept $2,500. This is comprised of $420 for the land and $2,080 for the trees. The fence will be replaced as part of the project.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $3,000 is requested. This includes $2,500 for the acquisition and $500 for closing costs and title insurance.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving storm water issues in a major residential area.

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

Recommendations/Actions: It is recommended that the City Council; 1) Approve the budget; 2) Approve the real estate agreement; and 3) Authorize the necessary signatures.

Attachments: Real estate agreement, tract map, and aerial map.

PROJECT: North Levee **DATE:** May 3, 2011

COUNTY: Sedgwick **TRACT NO.:** 36

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

Deborah M. Shive

400 E 49th Street N, Park City, KS 67219
(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

WITNESSETH, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Real property to be acquired as right of way:
696 (Sq. Ft.) $ 2,500.00
Temporary Easement for construction:
_____ (Sq. Ft.) $ N/A

Improvement & Buildings acquired with right of way:
Fencing to be replaced by City. Compensation includes loss of trees within area acquired.

TOTAL: $ 2,500.00

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.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: Deborah M Shive
Deborah M. Shive

By: _____

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:

Deborah M. Shive

If mortgage or other liens, show names of holders:

REMARKS:

PIN/APN

Security Title File Number

APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Gerald K. Cain, Project Manager

[redacted]

Tract #36

ADDITIONAL TAKING DESCRIPTION:
A portion of Lot 39, in Broadway Heights, an Addition to Wichita, Kansas, Sedgwick County, Kansas, described more particularly as commencing at the southeast corner of said Lot 39; thence N00°56'01"W (assumed), along the east line of said Lot 39, 158.00 feet to the point of beginning; thence S80°57'40"W, 101.01 feet to a point on the west line of said Lot 39, and 143.00 feet north of the southwest corner of said Lot 39; thence N00°56'01"W, along the west line of said Lot 39, 5.85 feet to a point on the south line of the Chisholm Creek Diversion Condemnation Case A-41501; thence northeasterly along the south line of said Chisholm Creek Diversion, said line being a curve to the left having a degree of curve of 7°42.7', having a calculated radius of 742.98 feet, an arc length of 101.84 feet, a chord length of 101.76 feet, and a chord bearing of N78°24'07"E, to a point on the east line of said Lot 39; thence S00°56'01"E, along the east line of said Lot 39, 10.44 feet to the point of beginning.

Additional taking contains 696.1 square feet, or 0.016 acres.

Deborah M. Shive Tract "36" (Key # KE-PC-02538):

Lot 39, in Broadway Heights, an Addition to Wichita, Sedgwick County, Kansas, except that portion condemned for flood control purposes in District Court Case A-41501.

ADDITIONAL TAKING DESCRIPTION:
A portion of Lot 39, in Broadway Heights, an Addition to Wichita, Kansas, Sedgwick County, Kansas, described more particularly as commencing at the southeast corner of said Lot 39; thence N00°56'01"W (assumed), along the east line of said Lot 39, 158.00 feet to the point of beginning; thence S80°57'40"W, 101.01 feet to a point on the west line of said Lot 39, and 143.00 feet north of the southwest corner of said Lot 39; thence N00°56'01"W, along the west line of said Lot 39, 5.85 feet to a point on the south line of the Chisholm Creek Diversion Condemnation Case A-41501; thence northeasterly along the south line of said Chisholm Creek Diversion, said line being a curve to the left having a degree of curve of 7°42.7', having a calculated radius of 742.98 feet, an arc length of 101.84 feet, a chord length of 101.76 feet, and a chord bearing of N78°24'07"E, to a point on the east line of said Lot 39; thence S00°56'01"E, along the east line of said Lot 39, 10.44 feet to the point of beginning.

Additional taking contains 696.1 square feet, or 0.016 acres.

NOTE: Baughman Company, P.A. has not researched any title examination of subject property. An abstract or title insurance company would need to be contacted to research and provide to us any easements, rights-of-ways or dedications.

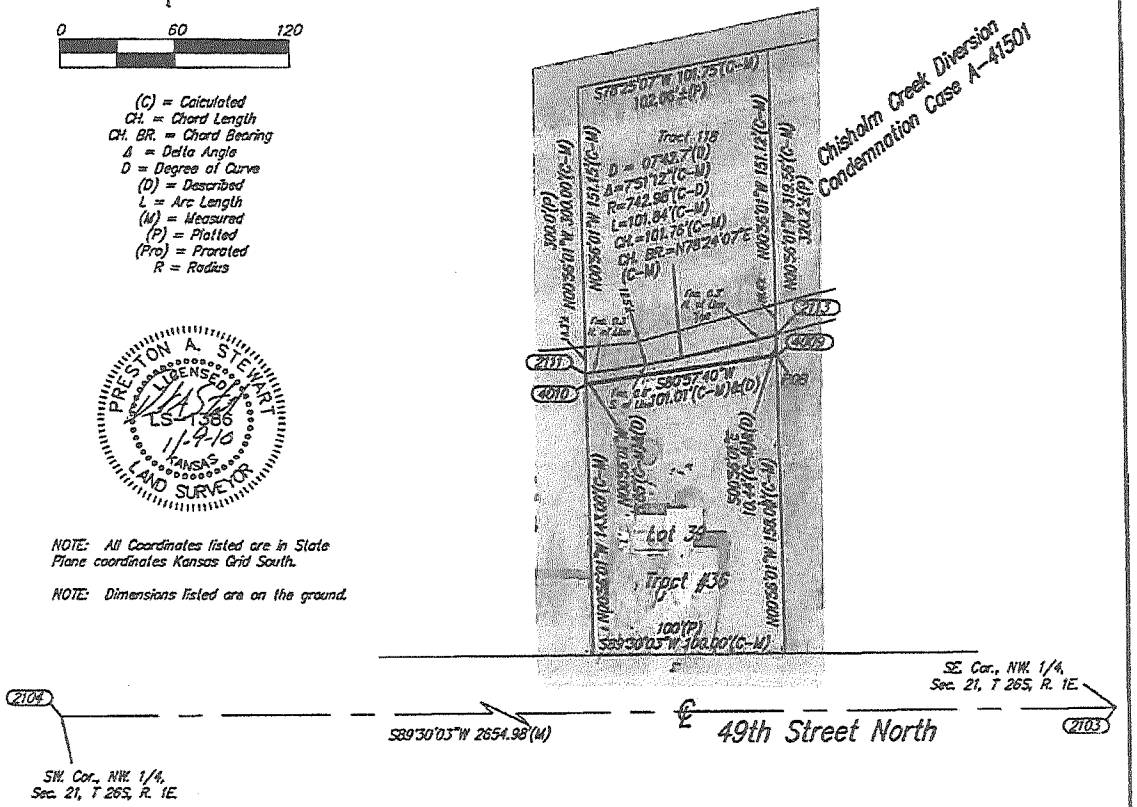
0 60 120

(C) = Calculated
CH. = Chord Length
CH. BR. = Chord Bearing
Δ = Delta Angle
D = Degree of Curve
(D) = Described
L = Arc Length
(M) = Measured
(P) = Platted
(Pro) = Prorated
R = Radius

PRESTON A. STEWART
LICENSED
LS-1386
1-4-10
KANSAS
LAND SURVEYOR

NOTE: All Coordinates listed are in State Plane coordinates Kansas Grid South.

NOTE: Dimensions listed are on the ground.



Pt. #	State Plane Northing	State Plane Easting
2103	1,717,703.97	1,651,462.38
2104	1,717,880.84	1,648,807.82
2111	1,717,862.82	1,649,169.84
2113	1,717,863.28	1,649,269.51
4009	1,717,872.84	1,649,269.68
4010	1,717,858.98	1,649,169.94

Baughman

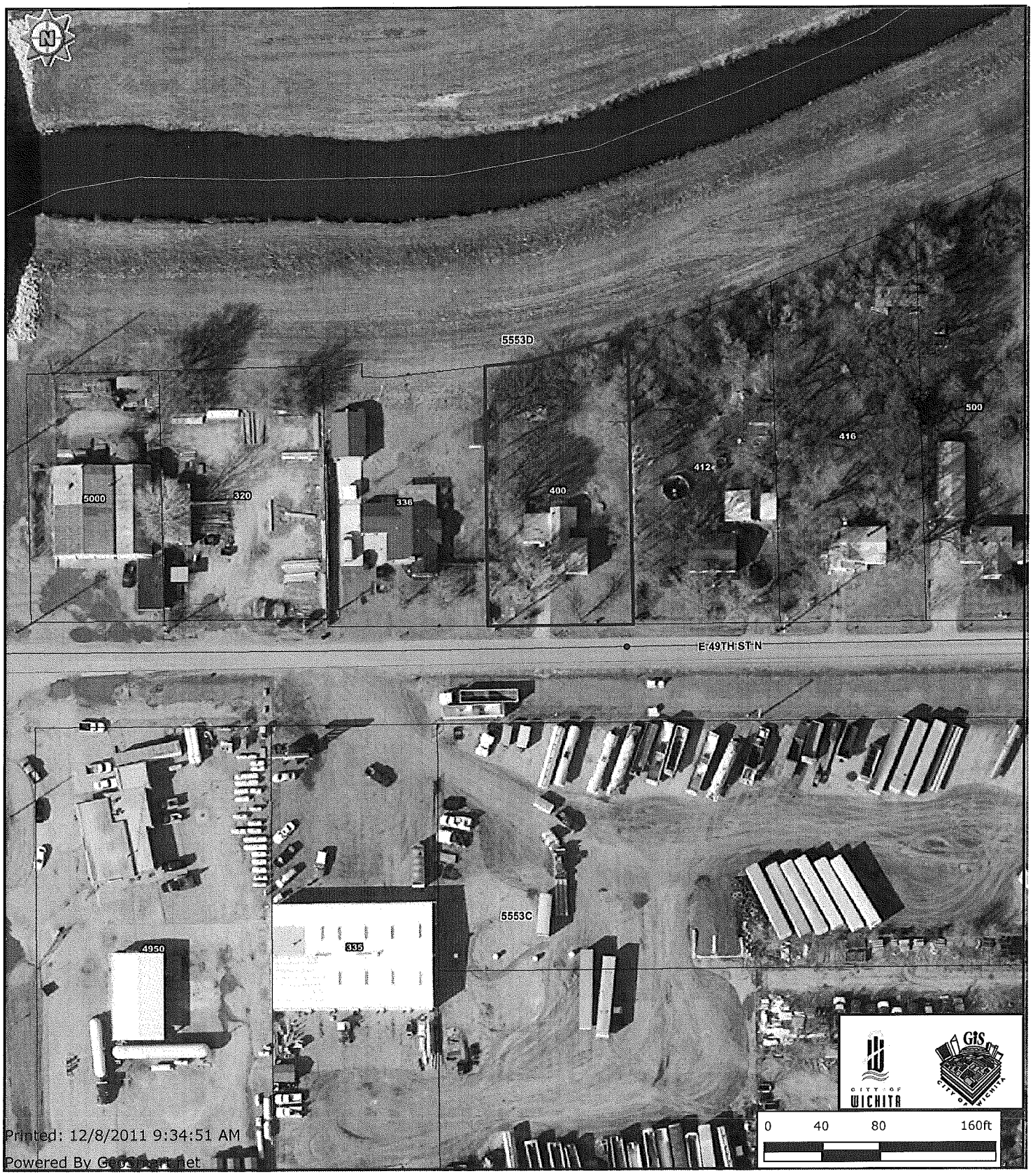
Tract #36 - Exhibit
Lot 39, Broadway Heights
Sedgwick County, Kansas

Baughman Company, P.A. 315 Ellis St. Wichita, KS 67211 P 316-262-7271 F 316-262-0149
ENGINEERING | SURVEYING | PLANNING | LANDSCAPE ARCHITECTURE

REVISIONS	APPROVED	DRAWN
	MGC	PAS
	SCALE 1"=60'	DATE November 9, 2010

E:\Projects\WVCFLS_10-07-P687\Tract_36.dwg 10-07-P687

400 East 49th Street North Park City



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CITY OF WICHITA
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 13909 West 21st Street for the 135th Street from 13th Street to 21st Street Improvement Project (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On April 19, 2011, the City Council approved funding to acquire right-of-way for a project to improve 135th Street West from 13th Street North to 21st Street North. The improvements will consist of widening the two lane road to three lanes. A center lane will be improved with a two-way, left turn lane and landscaped medians. Landscaping will be installed within available right of way. Ditches will be replaced with a storm water sewer system and sidewalks will be built along both the east and west side of 135th. The intersection at 135th Street and 21st Street will be improved with left turn lanes in each direction. Traffic signalization will be installed at the intersection if warranted at the time of construction. To facilitate the project, a drainage easement is required at the south property line of 13909 West 21st Street. The proposed acquisition area consists of 106,456 square feet.

Analysis: The site is improved with a church; however, the improvements are only on the northern portion of the site and removed from the proposed drainage easement. The estimated market value of the easement is $37,260 ($.35 per square foot). This amount was offered to the owner and was accepted.

Financial Considerations: The funding source is General Obligations Bonds. A budget of $37,760 is requested. This includes $37,260 and $500 for closing costs and related charges.

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

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

Recommendation/Action: It is recommended that the City Council; 1) Approve the contract; 2) Approve the budget; and 3) Authorize all necessary signatures.

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

REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ____ day of _____, 20____ by and between Believers Southern Baptist Church, Inc, hereinafter referred to as "Grantor," whether one or more, and the City of Wichita, Kansas, a municipal corporation, hereinafter referred to as "Grantee," 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 Grantor does hereby agree to sell and convey to the Grantee a Permanent Drainage Easement the following described real property, situated in Sedgwick County, KS, to-wit:

   A parcel of land lying in Lot 1, Block A, Believers Southern Baptist Church Addition in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th PM, Sedgwick County, KS, said parcel of land being more particularly described as follows:

   The South 95 feet of said Lot 1.

   Said parcel contains 106,456 square feet.

2. The Grantee hereby agrees to purchase and pay to the Grantor, as consideration for the conveyance to Grantee the above-described real property, the sum of Thirty-Seven Thousand Two Hundred Sixty Dollars ($37,260) in the manner following to-wit: cash at closing.

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

4. It is further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Grantee), 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.

5. The Grantor further agrees to convey the above-described premises with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear accepted.

6. 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 January 27, 2012.

7. Possession to be given to Grantee at closing

8. Closing costs shall be paid 100% by Grantee and 0% by Grantor.

9. Grantee hereby agrees to allow Grantor, assigns and successors, to drain storm water into the above described drainage easement at no cost to the Grantor so long as the Grantor's use of the land and drainage requirements meet the requirements of any governing body. Grantor hereby agrees that the Grantee will maintain said drainage easement and that the Grantee is not responsible for any costs related to the development or changes to the Grantor's remaining site.

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

Believers Southern Baptist Church, Inc:

_____ _____

City of Wichita, KS, a municipal corporation:

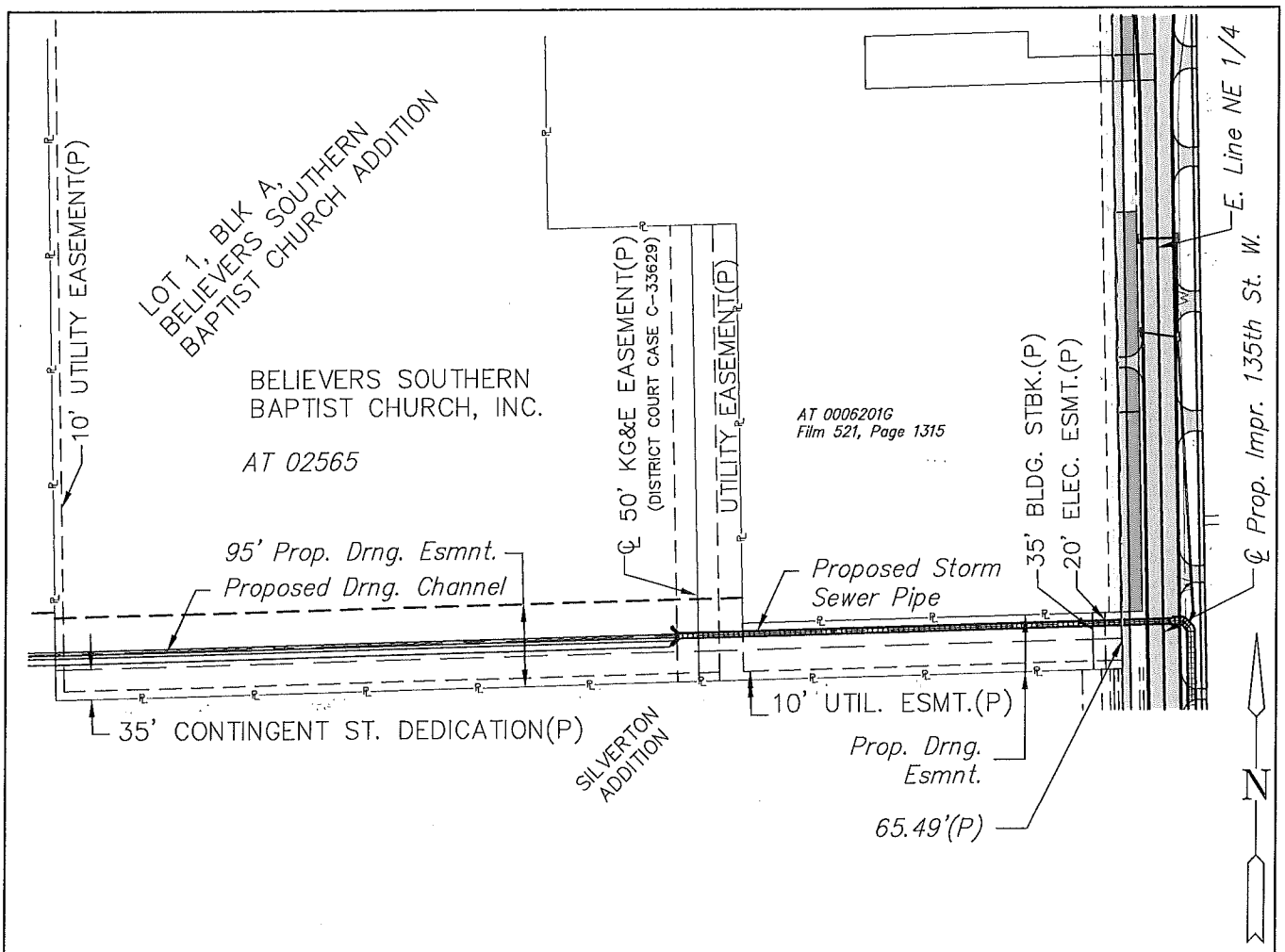
_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law



LEGEND

- Right of Way
- Construction Limits
- P – Platted
- New street and sidewalks
- Permanent Drainage Dedication =106,456 sq. ft.
- Right of Way Acquisition

LEGAL DESCRIPTION:

Permanent Drainage Dedication:

A parcel of land lying in Lot 1, Block A, Believers Southern Baptist Church Addition in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

The South 95 feet of said Lot 1

Said parcel contains 106,456 sq. ft

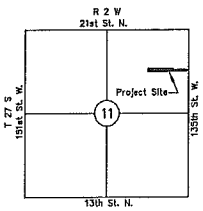
J:\CIVIL\10265\DWG\ROW-PROP\10265 TRACT MAPS ROW.DWG

Owner:

BELIEVERS SOUTHERN
BAPTIST CHURCH, INC.
13909 W. 21st ST. N.
Wichita, KS. 67235-9663

Property Identification:

AT 02565



VICINITY MAP

MKEC ENGINEERING CONSULTANTS
411 N. WEBB ROAD
WICHITA, KS. 67206
316 - 684 - 9600

135th ST. WEST 13TH TO 21ST ST. NORTH
PROJECT NAME

Permanent Drainage Dedication: TRACT MAP 6
SHEET TITLE

JRA	DSN	CWL
DESIGN BY:	DRAWN BY:	CHECKED BY:
MAY 2011	10265	1 / 1
DATE	JOB NO.	SHEET/OF

church property

Historic Districts
Old Town
Delano Overlay District
NO
YES
Property Parcels
Sewer Lines
Water Lines Schematic
Roads
State Highway
US Federal Highway
Interstate
KTA
Arterial
Collector
Minor
Ramp
Railroads
Township and Range
Section
Quarter Section
Waterways
Streams
Historic Sites
REGIONAL
STATE/NATIONAL
STATE
Historic Environs
Parks
Airports
City Limits
Andale
Bel Aire

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REAL ESTATE PURCHASE CONTRACT

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   A parcel of land lying in Lot 1, Block A, Believers Southern Baptist Church Addition in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th PM, Sedgwick County, KS, said parcel of land being more particularly described as follows:

   The South 95 feet of said Lot 1.

   Said parcel contains 106,456 square feet.

2. The Grantee hereby agrees to purchase and pay to the Grantor, as consideration for the conveyance to Grantee the above-described real property, the sum of Thirty-Seven Thousand Two Hundred Sixty Dollars ($37,260) in the manner following to-wit: cash at closing.

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

4. It is further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Grantee), 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.

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8. Closing costs shall be paid 100% by Grantee and 0% by Grantor.

9. Grantee hereby agrees to allow Grantor, assigns and successors, to drain storm water into the above described drainage easement at no cost to the Grantor so long as the Grantor's use of the land and drainage requirements meet the requirements of any governing body. Grantor hereby agrees that the Grantee will maintain said drainage easement and that the Grantee is not responsible for any costs related to the development or changes to the Grantor's remaining site.

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

Believers Southern Baptist Church, Inc:

_____ _____

City of Wichita, KS, a municipal corporation:

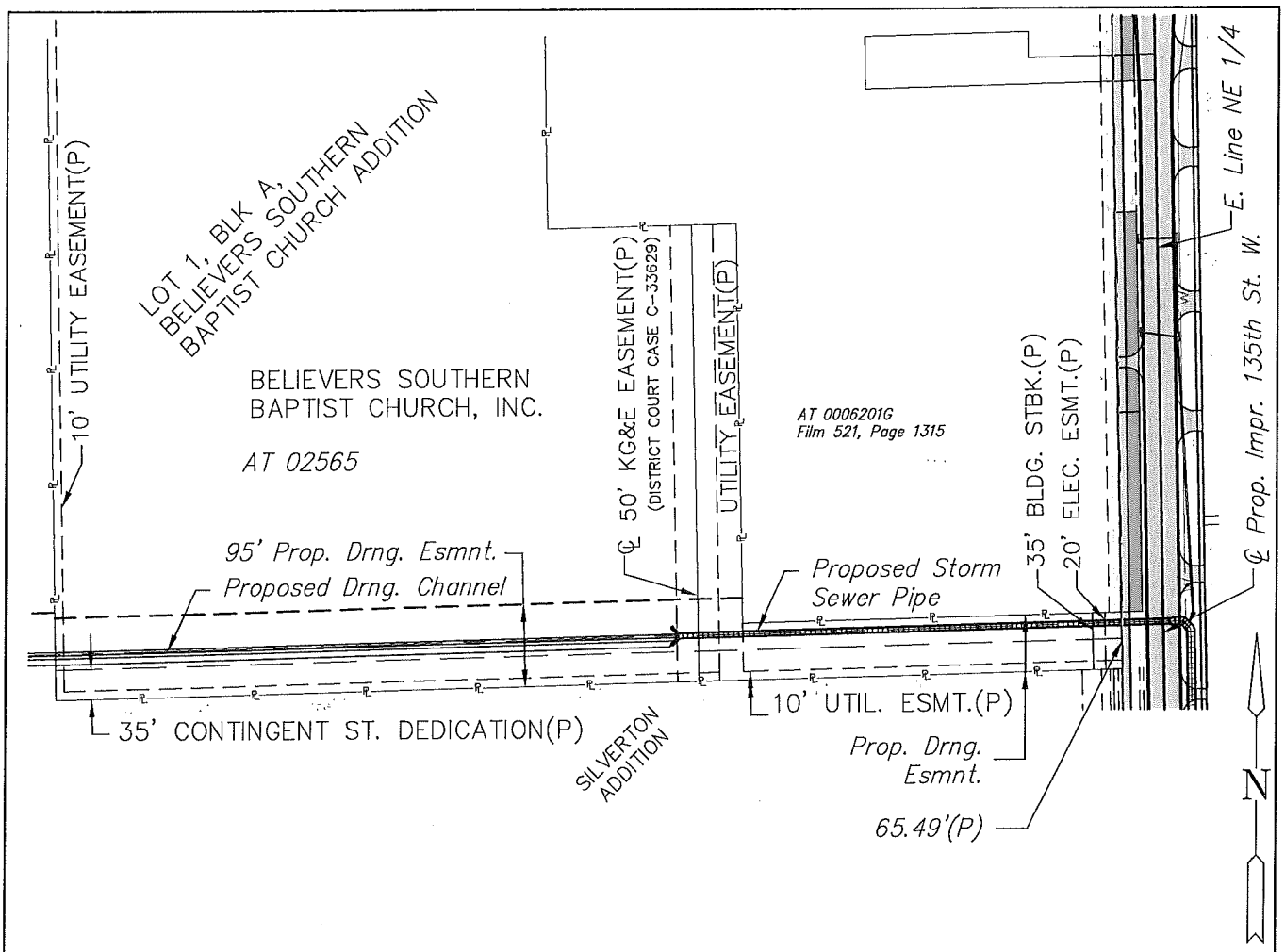
_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law



LEGEND

- Right of Way
- Construction Limits
- P – Platted
- New street and sidewalks
- Permanent Drainage Dedication =106,456 sq. ft.
- Right of Way Acquisition

LEGAL DESCRIPTION:

Permanent Drainage Dedication:

A parcel of land lying in Lot 1, Block A, Believers Southern Baptist Church Addition in the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, said parcel of land being more particularly described as follows:

The South 95 feet of said Lot 1

Said parcel contains 106,456 sq. ft

J:\CIVIL\10265\DWG\ROW-PROP\10265 TRACT MAPS ROW.DWG

Owner:

BELIEVERS SOUTHERN
BAPTIST CHURCH, INC.
13909 W. 21st ST. N.
Wichita, KS. 67235-9663

Property Identification:

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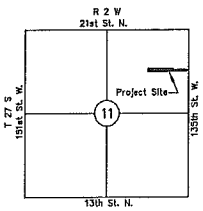

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135th ST. WEST 13TH TO 21ST ST. NORTH
PROJECT NAME

Permanent Drainage Dedication: TRACT MAP 6
SHEET TITLE

JRA	DSN	CWL
DESIGN BY:	DRAWN BY:	CHECKED BY:
MAY 2011	10265	1 / 1
DATE	JOB NO.	SHEET/OF

church property

Historic Districts
Old Town
Delano Overlay District
NO
YES
Property Parcels
Sewer Lines
Water Lines Schematic
Roads
State Highway
US Federal Highway
Interstate
KTA
Arterial
Collector
Minor
Ramp
Railroads
Township and Range
Section
Quarter Section
Waterways
Streams
Historic Sites
REGIONAL
STATE/NATIONAL
STATE
Historic Environs
Parks
Airports
City Limits
Andale
Bel Aire

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City of Wichita
City Council Meeting

December 20, 2011

TO: Mayor and City Council Members

SUBJECT: Repair or Removal of Dangerous & Unsafe Structure (District IV)

INITIATED BY: Office of Central Inspection

AGENDA: Consent

Recommendations: Adopt the attached resolution to schedule the required City Council public hearing to consider condemnation of the structure at 2107 West Irving, which has been deemed dangerous and unsafe per Kansas State Statutes.

Background: On December 5, 2011, the Board of Code Standards and Appeals conducted a hearing on the property listed below. The building on the property is considered a dangerous and unsafe structure per State Statutes and local ordinances, and is being presented in order to schedule a condemnation hearing before the City Council. The Board of Code Standards and Appeals has recommended that the City Council proceed with condemnation, demolition and removal of the dangerous building on this property.

Analysis: Minimum Housing Code violation notices have been issued on the structure; however, compliance has not been achieved. Pre-condemnation and formal condemnation letters have also been issued and the time granted for repair or removal has expired. No actions have been taken by the property owners and/or other interested parties to complete required building repairs or to remove the dangerous building.

Property Address	Council District
a. 2107 West Irving	IV

Financial Considerations: Structures condemned as dangerous buildings are demolished with funds from the Office of Central Inspection Special Revenue Fund contractual services budget, as approved annually by the City Council. This budget is supplemented by an annual allocation of federal Community Development Block Grant funds for demolition of structures located within the designated Neighborhood Reinvestment Area. Expenditures for dangerous building condemnation and demolition activities are tracked to ensure that City Council Resolution No. R-95-560, which limits OCI expenditures for non-revenue producing condemnation and housing code enforcement activities to 20% of OCI's total annual budgeted Special Revenue Fund expenditures, is followed. Owners of condemned structures demolished by the City are billed for the contractual costs of demolition, plus an additional $500 administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property, which may be collected upon subsequent sale or transfer of the property.

Goal Impact: This agenda item impacts the goal indicator to Support a Dynamic Core Area and Vibrant Neighborhoods. Dangerous building condemnation actions, including demolitions, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

Legal Considerations: The structure has defects that under Ordinance No. 28-251 of the Code of the City of Wichita cause it to be deemed as a dangerous and unsafe building for condemnation consideration, as required by State Statutes.

Recommendations/Actions: It is recommended that the City Council adopt the attached resolutions to schedule a public hearing before the City Council on February 7, 2012 at 9:30 a.m. or soon thereafter, to consider condemnation of structures deemed dangerous and unsafe per Kansas State Statutes and local ordinances.

Attachments: Letters to Council, summaries, and resolutions.

GROUP # 4

NOTICE OF DEMOLITION ACTION

This is to certify that the property located at **2107 W. IRVING** and legally described as: **LOTS 91 AND 93, ON LINCOLN , NOW IRVING AVENUE, GARFIELD 2ND ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS**, is the subject of a demolition action by the City of Wichita, Kansas, under the provisions of Section 18.16 of the Code of the City of Wichita. Unless certain improvements to the structure(s) located thereon are commenced and completed by **February 7, 2012** such structures are subject to being demolished and the costs associated therewith charged, as a lien, against the above-described real property.

_____
Kurt A. Schroeder, Superintendent, Office of Central Inspection
City of Wichita

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

BE IT REMEMBERED, That on this _____day of _____, 2011, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Kurt A. Schroeder, Superintendent of the Office of Central Inspection, City of Wichita, personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal; the day and year last above written.

_____
Notary Public

My Appointment Expires:
_____

TO: The Mayor and City Council
Wichita, Kansas

RE: Statement of Dangerous or Unsafe Structure

The following described structure is in a dangerous or unsafe condition:

(a) Description of Structure: A one story frame dwelling about 24 x 31 feet in size. Vacant for at least 2 months, this structure has rotted and missing wood lap siding; badly worn composition roof; deteriorated front porch; rotted wood trim; and the 6 x 6 foot metal accessory structure is deteriorated.

(b) Street Address: 2107 W. IRVING

(c) Owners:
Margauerite E. Lillie
c/o Roberta Lillie
426 N Gordon
Wichita KS 67203

(d) Resident Agent: None

(e) Occupant: None

(f) Lienholders of Record:
Kelly Arnold, County Clerk
Sedgwick County Courthouse
525 N Main
Wichita KS 67203

Chris McElgunn, Attorney
301 N Main #1600
Wichita KS 67202

(g) Mortgage Holder(s): None

(h) Interested Parties: None

DATE: December 6, 2011

CDM SUMMARY

COUNCIL DISTRICT # IV

ADDRESS: 2107 W. IRVING

LEGAL DESCRIPTION: LOTS 91 AND 93, ON LINCOLN , NOW IRVING AVENUE, GARFIELD 2ND ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A one story frame dwelling about 24 x 31 feet in size. Vacant for at least 2 months, this structure has rotted and missing wood lap siding; badly worn composition roof; deteriorated front porch; rotted wood trim; and the 6 x 6 foot metal accessory structure is deteriorated.

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.

B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.

C. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

_____ _____

Superintendent of Central Inspection Date
Enforcing Officer

OCA: 230200

_____PUBLISHED IN THE WICHITA EAGLE ON_____
RESOLUTION NO. _____

A RESOLUTION FIXING A TIME AND PLACE AND PROVIDING FOR NOTICE OF A HEARING BEFORE THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, AT WHICH THE OWNER, HIS AGENT, LIENHOLDERS OF RECORD AND OCCUPANTS OF PROPERTY LEGALLY DESCRIBED AS: **LOTS 91 AND 93, ON LINCOLN , NOW IRVING AVENUE, GARFIELD 2ND ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS** KNOWN AS **2107 W. IRVING** MAY APPEAR AND SHOW CAUSE WHY SUCH STRUCTURE SHOULD NOT BE CONDEMNED AND ORDERED REPAIRED OR DEMOLISHED AS A DANGEROUS STRUCTURE.

WHEREAS, the enforcing officer of the City of Wichita, Kansas, did on the **20th day of December 2011**, file with the governing body of said city, a statement in writing that certain structure(s), hereinafter described, is unsafe or dangerous.

NOW THEREFORE, be it Resolved by the Governing Body of the City of Wichita.
That a hearing will be held on the **7th day of February 2012**, before the governing body of the city at **9:30 A.M.,** or thereafter in the council room, City Building at which time the owner, his agent, any lienholders of record or any occupant of property, legally described at LOTS 91 AND 93, ON LINCOLN , NOW IRVING AVENUE, GARFIELD 2ND ADDITION TO WICHITA, SEDGWICK COUNTY, KANSAS, known as: 2107 W. IRVING, may appear and show cause why such structure should not be condemned as an unsafe or dangerous structure ordered repaired or demolished. The structure is a one story frame dwelling about 24 x 31 feet in size. Vacant for at least 2 months, this structure has rotted and missing wood lap siding; badly worn composition roof; deteriorated front porch; rotted wood trim; and the 6 x 6 foot metal accessory structure is deteriorated.

Be it further resolved that the City Clerk shall cause this Resolution to be published and shall give notice of the aforesaid hearing in the manner provided by K.S.A. 12-1752.

Adopted this **20th day of December 2011.**

_____
Carl Brewer, Mayor

(SEAL)

ATTEST:_____
Karen Sublett, City Clerk

DEPARTMENT OF LAW
INTEROFFICE MEMORANDUM

TO: Karen Sublett, City Clerk

FROM: Gary E. Rebenstorf, Director of Law

SUBJECT: Report on Claims for November, 2011

DATE: December 5, 2011

The following claims were approved by the Law Department during the month of November 2011.

Anderson, Carla	$	41.68
Kansas Gas Service	$	1,596.90
King, Ted	$	3,206.55**
McGinn, Michael	$	4,545.56
Shreve, Gary	$	250.00**
Smith-Basgall, Rhodora	$	1,507.15
Westar Energy	$	972.99

*City Manager Approval
** Settled for lesser amount than claimed
***Settled for more than amount claimed
****Overspray paint claim

cc: Robert Layton, City Manager
Kelly Carpenter, Director of Finance

CITY OF WICHITA
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: Professional Legal Services - Workers' Compensation

INITIATED BY: Department of Law

AGENDA: Consent

Recommendation: Approve the agreement with the Law Office of Edward D. Heath, Jr., to provide workers' compensation professional legal services.

Analysis: Because of the variety and volume of legal issues and services that the claims will generate, the selected law firm will assist the Department of Law and the Risk Manager in performing a broad range of professional services related to workers' compensation. To select legal representation in workers compensation cases commencing in 2012, a request for proposal was sent to 12 local attorneys and law firms who handle workers compensation matters. Four attorneys and firms responded to the request and two were interviewed by a panel. Those who were interviewed were evaluated on their experience, approach to problems, legal skills and knowledge, price and overall value. Mr. Heath was ranked the highest following the interviews. Mr. Heath has performed fully through 2011 and has agreed to continue to perform, without an increase in cost.

Background: The City retains outside legal counsel to provide legal advice and handle workers' compensation claims, litigation and related assignments. Because workers' compensation litigation has become a specialized area of law, it is necessary to retain outside legal counsel to perform these services.

Financial Considerations: This agreement provides authority for $60,000, to be paid upon receipt of detailed billings of hourly work and expenses. The charges are reasonable for the amount of legal services involved. Payment will be from the Workers Compensation fund.

Goal Impact: Internal Perspective. The worker's compensation services under this contract will be for all departments.

Legal Considerations: The Law Department has prepared the Agreement and has approved it as to form.

Recommendations/Actions: It is recommended that the City Council select the Law Office of Edward D. Heath, Jr. to provide workers' compensation professional legal services and authorize the necessary signatures to sign the Agreement for Professional Services.

Attachments: Agreement.

A G R E E M E N T

By and Between

THE CITY OF WICHITA, KANSAS

and

LAW OFFICE OF EDWARD D. HEATH, JR.

THIS AGREEMENT made and entered into this ___ day of December, 2011, by and between THE CITY OF WICHITA, KANSAS, a municipal corporation of the State of Kansas, having its principal office at 455 North Main Street, Wichita, Kansas (hereinafter called "City"), acting for and on behalf of its Department of Law (hereinafter called "City Attorney"), and Law Office of Edward D. Heath, Jr., having his principal office at 926 1/2 E. Douglas, Wichita, Kansas (hereinafter called "Attorney");

WITNESSETH:

WHEREAS, City, through its City Attorney, is authorized by law to employ outside counsel to assist the City Attorney in his representation of the legal interests of the City; and

WHEREAS, Attorney is desirous of providing legal services for the City and City is desirous of retaining the services of Attorney; and

WHEREAS, it has been deemed necessary for City to employ outside counsel to provide legal services for the City in connection with workers compensation claims, litigation and related assignments.

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between the parties hereto as follows:

1. Attorney shall be retained by City to provide professional services in connection with workers compensation claims, litigation, and related assignments as assigned by the City Attorney.

2. Attorney shall be compensated for professional services on the basis of time spent and actual expenses incurred in performing services for and on behalf of the City of Wichita, except as noted. Attorney shall be compensated by the City on an hourly rate not to exceed One Hundred Dollars ($100.00) per hour. Attorney shall be compensated for professional services associated with "Friendly Settlement Hearings" at a flat rate of Two Hundred Dollars ($200.00) per hearing. In no event, however, shall the total compensation pursuant to this contract exceed the sum of Sixty Thousand Dollars ($60,000.00), unless specifically authorized by the City Council of the City of Wichita, Kansas.

3. In addition, City agrees to pay the reasonable and necessary expenses and disbursements incurred by Attorney, at the following rate:

a.	In-House photocopying	$0.15 per page
b.	Long Distance	Actual cost incurred
c.	Out of town mileage	$0.51 per mile

4. Payments for professional services and expenses shall be made upon presentation of statements for the same as approved by the City Manager. There shall be no further compensation for services rendered hereunder or for expenses incurred in addition to those specified above in the absence of prior, written consent.

5. This Agreement may not be assigned, transferred, or in any way disposed of by Attorney without first having obtained written approval from the City Manager or City Council of the City of Wichita, Kansas.

6. Attorney agrees that he will be available at all times for conferences and consultation with City Council, the City Manager and/or the City Attorney throughout the term of this Agreement.

7. It is further understood and agreed that because of the responsibilities of the City Attorney under the statutes of the State of Kansas, the name of the City Attorney will appear on all documents and pleadings and Attorney will send no documents, applications or opinions of any kind to any agency or entity on behalf of the City, any of its agencies or departments, without consultation with the City Attorney or his designee, unless specifically requested to do so by the City Council or the City Manager. This Agreement contains no authorization for Attorney to sign any papers or documents in the name of the City Attorney. Further, it is understood and agreed that Attorney shall have no authority to contract or incur any liability, cost or expense on the part of the City, except as may be authorized by this Agreement or specifically authorized in writing by the City Attorney.

8. The term of this Agreement shall be from January 1, 2012 through December 31, 2012, with options to renew the contract under the same terms and conditions for up to four (4) successive one (1) year terms by mutual agreement of the parties.

9. 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 the Attorney. In the event of such termination prior to the expiration of the term of this Agreement or renewal, Attorney shall be paid for expenses and services rendered and for which payment has not been made.

10. In the event of termination, all files, exhibits, notes, research and other materials relating to any matter being handled by the Attorney pursuant to this Agreement will be turned

over to the City upon termination, without regard to whether payment for services has been fully paid, unless otherwise agreed by the parties.

11. Attorney agrees to maintain professional liability insurance coverage during the term of this Agreement, with the limits of such coverage to be not less than $2,000,000.00.

12. Attorney agrees that he will observe the provisions of the Wichita Ordinance Against Discrimination and will not discriminate against any person in the performance of services under this Agreement because of race, color, sex, religion, national origin, ancestry, marital status, age or physical handicap, except where age or physical handicap is a bona fide occupational qualification.

IN WITNESS WHEREOF, this Agreement has been executed the day and year first above written.

THE CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett
City Clerk

_____
Edward D. Heath, Jr.
Attorney at Law

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

TO: Doug Kupper, Director of Park and Recreation

FROM: Mary K. Vaughn, Director of Housing & Community Services

SUBJECT: Memorandum of Understanding
Hazardous Sidewalk Replacement with Community Development Block Grant-R

This Memorandum of Understanding (MOU) serves as the formal basis for assumption of the following performance requirements by the Department of Park and Recreation utilizing funds provided under the American Recovery and Reinvestment Act of 2009, as amended.

It is mutually agreed between the Director of Housing & Community Services and the Director of Park and Recreation that the Department of Park and Recreation will furnish all services necessary to carry out the additional Hazardous Sidewalk Replacement project in the City's Neighborhood Revitalization Area specified in Attachment A, Performance Criteria.

In addition, the Department of Park and Recreation will undertake the project for an amount not to exceed $26,520 using Community Development Block Grant – R (CDBG-R) funding as stated in Attachment B, Budget Detail

During the administration of activities covered by this Memorandum, the Department of Park and Recreation agrees to comply with all applicable laws, regulations and policies of the United States, the State of Kansas and the City of Wichita, including, but not limited to, the following:

1. American Recovery and Reinvestment Act of 2009
   a. Section 1512
   b. Section 1605

2. Community Development Block Grant
   a. 24 CFR Part 570
   b. City of Wichita Administrative Regulation No. 63

3. Equal Opportunity
   a. Title VI, Civil Rights Act of 1964.
   b. Section 109, Housing and Community Development Act of 1974, as amended.
   c. Executive Order 11246, as amended.
   d. Section 504 of the Rehabilitation Act of 1973, as amended and The Fair Housing Act. Accessibility Notice (Attachment E)
   e. City of Wichita Administrative Regulation No. 23.

4. Section 3
   a. Section 3, Housing and Urban Development Act of 1968, as amended (Attachment E)

b. National Environmental Policy Act of 1969.
c. Preservation of Historical and Archaeological Data Act of 1974, amended.
d. 24 CFR Part 58.

7. Other
   a. Federal Labor Standards.
   b. Clean Air Act, as amended.
   c. Lead-Based Paint Poisoning Prevention Act, as amended (note: requires certifications be retained in project files).
   d. 24 CFR Part 35 - Lead-based Paint Poisoning Prevention in Certain Residential Structures.
   e. 49 CFR Part 24 - Uniform Relocation Assistance and Real Property Acquisition Policies Act.
   f. City of Wichita Administrative Regulation No. 1.2
   g. City of Wichita Relocation and Anti-displacement Plan (one-for-one housing replacement).
   h. HUD Expenditure Guidelines.

Department of Housing & Community Services will review all changes, modifications, deletions or additions to the Memorandum of Understanding prior to being sent to the City Manager or City Council.

Any significant change in scope and intent of this Memorandum of Understanding shall be considered and approved or disapproved by all parties. A significant change is defined as a change in program intent, program beneficiaries, basic program guidelines, and any budget or funding change over $25,000. Any change approved shall have the full force and effect as all other provisions of this Memorandum of Understanding as though originally fully set out herein and shall be codified by a formal amendment.

Changes or amendments to this Memorandum of Understanding not submitted to the City Council for approval must be in writing and have the written approval of all signatories of this agreement.

Approval by the Director of Housing & Community Services and the City Manager constitutes a directive to implement this project.

The Memorandum of Understanding, as renewed and supplemented hereby, shall continue in effect until July 1, 2012.

APPROVED:

Mary K. Vaughn
Director of Housing & Community Services

Doug Kupper
Director of Park and Recreation

Robert Layton
City Manager

APPROVED AS TO FORM:

Gary E. Rebenstorf
City Attorney

The Department of Park and Recreation shall utilize additional CDBG-R funds in the amount of $26,520 to perform all services necessary to complete the removal and replacement of hazardous sidewalks, as funding permits, in the City's Neighborhood Revitalization Areas (Attachment D).

This activity is eligible under 24 CFR 570.201(c), public facilities and improvements meeting the HUD National Objective on a Low Mod Area Benefit under 24 CFR 570.208(1)(i). (Attachment D).

SCOPE OF SERVICES:

1. The Department of Park and Recreation will provide project oversight and coordination within the project budget and provide the Department of Housing & Community Services with all contracts between the City and subrecipients for review before being submitted to Law or the City Manager.

2. All projects funded with CDBG-R funds will require an Environmental Review by the Metropolitan Area Planning Department. The Department of Park and Recreation will request such a review and ensure that it is completed prior to any expenditure of funds. Any changes in the scope or alternate locations of work to be performed will require an Environmental Review update. All requests for Environmental Review must include the following information:

    - Requesting department
    - Funding source
    - Description of work to be performed
    - Address or legal description of property

3. The Department of Park and Recreation will develop specifications and Purchasing will bid this project in such a way that will to encourage Emerging Business Enterprises (EBE) to participate.

4. The Department of Parks and Recreation will develop specifications which include Federal Labor Standards, opportunities for EBE participation and Section 3 requirements. Bids will be solicited through Purchasing. The specifications shall require the contractor to supply all equipment, material, and services necessary to complete the job, including labor, and will warrant the work for a period of time commensurate with the type of improvement and industry standards**.** Prior to sending bid specifications, Park and Recreation will provide Housing & Community Services with a copy of the bid specifications to ensure all necessary federal forms are included.

    a. Federal Labor Standards - Housing & Community Services Department will obtain a

City's purchasing opportunities.

The Purchasing Department must demonstrate affirmative actions to encourage EBEs participation per 24 CFR 570.506(g)(6) and report to the Department of Housing & Community Services the level of participation using Attachment C.

c. Section 1605 of the Recovery Act – Section 1605 requires that all iron, steel and manufactured goods used in construction, alteration, repair, or maintenance of a public building or public work project assisted with funds under the Recovery Act must be produced in the United States, unless the Secretary finds that: the requirement is inconsistent with public interest; those goods are not reasonably available or produced in sufficient quantity in the U.S.; or the use of the goods will increase the project cost by more than 25 percent.

d. Section 3 of the HUD Act of 1968 – Department of Park and Recreation must comply with 24 CFR Part 135, Section 3 of the HUD Act of 1968, as amended, which requires that, to the greatest extent feasible, employment and other economic opportunities shall be directed to low and very low income persons, and to business concerns which provide economic opportunities to such persons.

Contractors and subcontractors with contracts over $100,000 shall maintain information as indicated on HUD form 2516 (Attachment C) and submit such information annually to the Department of Park and Recreation and on completion of the project, or by September 30, 2011, whichever comes first. The Department of Park and Recreation shall provide a copy of all HUD-2516 forms submitted to Housing & Community Services.

Section 3 Goals:
The City of Wichita in accordance with 24 CFR Part 135, has established goals for CDBG assisted projects. All Section 3 covered contracts shall include the Section 3 clause as shown in Attachment F. Consistent with existing Federal, State and local laws and regulations, the City of Wichita has set the following goals to comply with the Section 3 requirements:

- Committing to employ Section 3 residents at a rate of 30% of the aggregate of new hires for housing and community development assisted projects.
- Committing to contract a minimum of 10% of the total dollar amount of all other Section 3 covered contracts, such as community development infrastructure improvements or professional services;
- Committing to a minimum of 3% of the total dollar amount of all other Section 3 covered contracts.

5. The Department of Park and Recreation will schedule a pre-bid and pre-construction conference to review and explain applicable EEO/AA, Federal Labor Standards and Section 3 requirements. The Department of Park and Recreation must also document the affirmative steps to enhance opportunities for EBEs. Such affirmative steps may include, but not limited to, technical assistance that is open to all businesses.

6. The Department of Park and Recreation will verify satisfaction through Housing & Community Services that the contractor and its subcontractors have provided all necessary documentation and complied with all HUD regulations, before making final payment.

7. The Department of Park and Recreation will ensure construction is completed according to the extent funds are available. Substitutions or additions can be made as long as the budget contained herein is not exceeded and the substitutions or additions meet all CDBG project eligibility requirements. Substitutions or additions will require prior written approval from Housing & Community Services.

8. The Department of Park and Recreation will ensure that all of the contractor's necessary paperwork and documentation for CDBG requirements and Davis-Bacon compliance has been submitted to Housing & Community Services before final payment is made.

9. Any failure of the subrecipients to live up to the terms of their contract are to be immediately reported to Housing & Community Services with the following information: Agency Name, Address, Program Name, Date of Infraction, Detailed report of infraction(s), Actions taken or planned to resolve the violation.

BUDGET:

The total budget amount for the extension of this project shall not exceed $26,520 available from CDBG-R as specified in the budget detail and explanation (Attachment B). It is understood and agreed by and between the Director of Housing & Community Services and the Director of Park and Recreation that if the cost of the work to be performed is greater than the amount allocated, work will be accomplished to the extent that funds are available.

All payroll reports will document each project's organizational cost account (OCA) number and the total number of hours worked each day for each OCA as required by the Office of Management and Budget's OMB Circular No. A-87. Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by the responsible official(s) of the governmental unit.

Completion/Clearance of Environmental Review	12/15/11
Advertise for Bids	12/16/11
Pre-Bid Conference	12/21/11
Bid Opening	12/30/11
Contract Award Date	1/10/12
Pre-Construction Meeting	1/16/12
Work Order (Construction Start Date)	2/1/12
Construction Completion Date	4/13/12

OTHER PROGRAM REQUIREMENTS:

All procurement will be accomplished according to City of Wichita and the U.S. Department of Housing and Urban Development (HUD) purchasing policies and procedures in accordance with CFR Part 85.

REPORTS:

All subrecipients of CDBG-R must comply with the reporting requirements established for CDBG-R funding.

On a monthly basis the Department of Park and Recreation will report the following information to the Housing & Community Services Department:

- The number of new jobs created as a result of this project
- The number of jobs retained as a result of this project
- Specific addresses, or address ranges as long as the replaced sidewalks were contiguous
- Project costs
- An evaluation of the project's completion status

Project data are cumulative and should be reported as such.

Upon award of the contract, the Department of Park and Recreation will furnish the Department of Housing & Community Services with a Contract and Subcontract Activity Report (Attachment C) identifying all activity on the project and the Emerging Business Enterprise involvement with such contracts.

Upon completion of construction, and before July 1, 2012 the Department of Park and Recreation will furnish Housing & Community Services a final list of work completed.

intent of this agreement Housing & Community Services may take corrective action by recapturing project funds from the project and reallocating those funds to another eligible activity. Projects with continuing timeliness issues will be evaluated monthly and budget reduction adjustments will be made as necessary.

OTHER REQUIREMENTS

All procurement will be accomplished according to City of Wichita and HUD purchasing policies and procedures in accordance with CFR Part 85.

The Department of Park and Recreation shall record all program transactions into the City's financial system according to procedures established by the Controller's Office.

The Department of Park and Recreation shall establish and maintain accounting records specifically for the CDBG-R funds. Original documentation supporting all expenditures and other program records will be retained for five years after the final audit of expenditures made under this agreement. Records shall also be maintained documenting performance indicated in monthly reports and are subject to review by City staff.

All CDBG-R funded projects will be monitored at least annually to determine if CDBG-R funded activities are being carried out in accordance with the applicable Code of Federal Regulations.

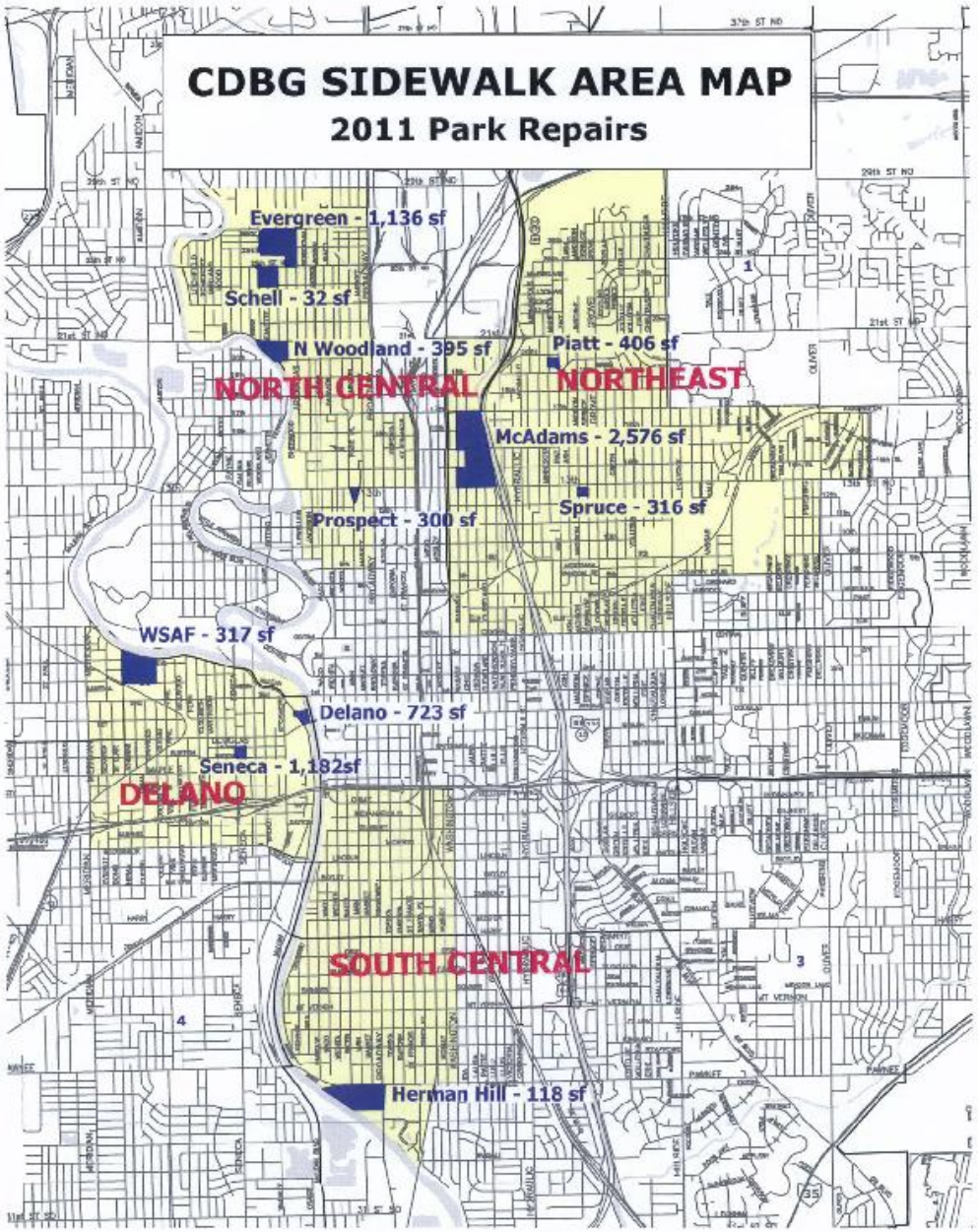
PHASE 4 BUDGET DETAIL

FUND	DEPT./DIVISION	PROJECT	PROJECT-OCA
Community Development Block Grant-R	Housing and Community Services – Community Investments	Hazardous Sidewalk Replacement	980901/980904/010100

Account Classification			Budget
PERSONAL SERVICES			0
01	110	Salaries	
	1100	Bi-Weekly Wages	
	1101	Longevity	
	1205	Auto Allowance	
	1208	Cellular Phone Allowance	
	140	Employee Benefits	
	1400	FICA	
	1401	Employees Pension	
	1403	Worker's Compensation	
	1404	Unemployment Compensation	
	1405	Group Health Insurance	
	1406	Group Life Insurance	
TOTAL			
CONTRACTUAL SERVICES			
02	2200	PBX – Line Charges	0
	2201	PBX – Instrument Charges	
	2203	Long Distance Service	
	2207	Postage – Regular	
	2301	Meals/Lodging Allowance	
	2302	Out of Town Registration	
	2304	Training Consultants	
	2308	Transportation Out of Town	
	2505	Contractor	26,520
	2600	Data Center Charges	
	2902	Advertising	
	2917	Printing & Photocopying	
	2999	Other Contractuals	
TOTAL			
OTHER			0
05	5308	Overhead	
TOTAL			
GRAND TOTAL			26,520

This page left blank intentionally. Insert **Attachment C – HUD Form 2516 Contract and Subcontract Activity**

This page left blank intentionally. Insert **Attachment D, CDBG-R Project Map showing Sidewalk Replacements**


CDBG SIDEWALK AREA MAP
2011 Park Repairs
Evergreen - 1,136 sf
Schell - 32 sf
N Woodland - 395 sf
Piatt - 406 sf
NORTH CENTRAL
NORTHEAST
McAdams - 2,576 sf
Spruce - 316 sf
Prospect - 300 sf
WSAF - 317 sf
Delano - 723 sf
Seneca - 1,182sf
DELANO
SOUTH CENTRAL
Herman Hill - 118 sf

Special Attention of:

All Secretary's Representatives
All State/Area Coordinators
All CPD Office Directors
All FHEO Field Offices
All CDBG Grantees

Notice: CPD-05-10

Issued: November 3, 2005
Expires: November 3, 2006

SUBJECT: Accessibility for Persons with Disabilities to Non-Housing Programs funded by Community Development Block Grant Funds -- Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act, and the Architectural Barriers Act

I. Purpose

The purpose of this Notice is to remind recipients of Federal funds under the Community Development Block Grant (CDBG) Program of their obligation to comply with Section 504 of the Rehabilitation Act of 1973, HUD's implementing regulations (24 CFR Part 8), the Americans with Disabilities Act, (ADA) and its implementing regulations, (28 CFR Parts 35, 36), and the Architectural Barriers Act (ABA) and its implementing regulations (24 CFR Parts 40, 41) in connection with recipients' non-housing programs. This Notice describes key compliance elements for non-housing programs and facilities assisted under the CDBG programs. However, recipients should review the specific provisions of the ADA, Section 504, the ABA, and their implementing regulations in order to assure that their programs are administered in full compliance.

Applicability

This Notice applies to all non-housing programs and facilities assisted with Community Development Block Grant Funds (e.g. public facilities and public improvements, commercial buildings, office buildings, and other non-residential buildings) and facilities in which CDBG activities are undertaken (e.g., public services). A separate Notice is being issued concerning Federal accessibility requirements for housing programs assisted by recipients of CDBG and HOME program funds.

II. Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973, as amended, provides "No otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her disability

Part 8 requires that recipients ensure that their programs are accessible to and usable by persons with disabilities. Part 8 also prohibits recipients from employment discrimination based upon disability.

The Section 504 regulations define "recipient" as any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution organization, or other entity or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance (24 CFR 8.3). For the purposes of Part 8, recipients include States and localities that are grantees and subgrantees under the CDBG program, their subrecipients, community-based development organizations, businesses, and any other entity that receives CDBG assistance, but not low and moderate income beneficiaries of the program. CDBG grantees are responsible for establishing policies and practices that they will use to monitor compliance of all covered programs, activities, or work performed by their subrecipients, contractors, subcontractors, management agents, etc.

Non-housing Programs

New Construction – 24 CFR Part 8 requires that new non-housing facilities constructed by recipients of Federal financial assistance shall be designed and constructed to be readily accessible to and usable by persons with disabilities (24 CFR 8.21(a)).

Alterations to facilities -- Part 8 requires to the maximum extent feasible that recipients make alterations to existing non-housing facilities to ensure that such facilities are readily accessible to and usable by individuals with disabilities. An element of an existing non-housing facility need not be made accessible if doing so would impose undue financial and administrative burdens on the operation of the recipients program or activity (24 CFR 8.21 (b)).

Existing non-housing facilities - A recipient is obligated to operate each non-housing program or activity so that, when viewed in its entirety, the program or activity is readily accessible to and usable by persons with disabilities (24 CFR 8.21 (c)).

Recipients are not necessarily required to make each of their existing non-housing facilities accessible to and usable by persons with disabilities if when viewed in its entirety, the program or activity is readily accessible to and usable by persons with disabilities 24 CFR 8.21(c)(1)). Recipients are also not required to take any action that they can demonstrate would result in a fundamental alteration in the nature of its program or activity or cause an undue administrative and financial burden. However, recipients are still required to take other actions that would not result in such alterations, but would nevertheless ensure that persons with disabilities receive the benefits and services of the program (24 CFR 8.21(c)(iii)).

cases where a physical alteration is not required, the recipient is still obligated to use alternative means to achieve program accessibility, including using audio-visual materials and devices to depict those portions of a historic property that cannot be made accessible, assigning persons to guide persons with disabilities into or through portions of historic properties that cannot be made accessible, or otherwise adopting other innovative methods so that individuals with disabilities can still benefit from the program (24 CFR 8.21(c)(2)(ii)).

Accessibility Standards

Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) is deemed to comply with the accessibility requirements for nonhousing facilities. Recipients may depart from particular technical and scoping requirements of UFAS where substantially equivalent or greater accessibility and usability is provided (24 CFR 8.32). For copies of UFAS, contact the HUD Distribution Center at 1-800-767-7468; hearing-impaired, or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

Where a property is subject to more than one law or accessibility standard, it is necessary to comply with all applicable requirements. In some cases, it may be possible to do this by complying with the stricter requirement; however, it is also important to ensure that meeting the stricter requirement also meets both the scoping and technical requirements of overlapping laws or standards.

Employment

Section 504 also prohibits discrimination based upon disability in employment (see 24 CFR Part 8, Subpart B).

III. The Americans With Disabilities Act of 1990

The Americans With Disabilities Act of 1990 (ADA) guarantees equal opportunities for persons with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. Unlike Section 504 which applies only to programs and activities receiving Federal financial assistance, the ADA applies even if no Federal financial assistance is given.

The U.S. Department of Justice enforces Titles I, II, and III of the ADA. HUD shares enforcement responsibility with the Department of Justice for Title II, and is designated the lead Federal agency for all programs, service and regulatory activities relating to state and local public housing and housing assistance and referral. The Equal Employment Opportunity Commission investigates administrative complaints involving Title I. For further information regarding The U.S. Department of Justice enforcement of Title II of the ADA, please visit

Commission (EEOC) offers technical assistance on the ADA provisions applying to employment. These can be obtained at the EEOC web site www.eeoc.gov, or by calling 800-669-3362 (voice) and 800-800-3302 (TTY).

Title II prohibits discrimination based on disability by State and local governments. Title II essentially extended the Section 504 requirements to services, programs, and activities provided by States, local governments and other entities that do not receive Federal financial assistance from HUD or another Federal agency. CDBG grantees are covered by both Title II and Section 504. The Department of Justice Title II regulations are found at 28 CFR Part 35.

Title II also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. (28 CFR 35.151 (a) & (b)) Facilities constructed or altered in conformance with either UFAS or the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR Part 36) shall be deemed to comply with the Title II Accessibility requirements, except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(j) of ADAAG shall not apply. (28CFR 35.151(c))

Title II specifically requires that all newly constructed or altered streets, roads, and highways and pedestrian walkways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level or pedestrian walkway and that all newly constructed or altered street level pedestrian walkways must have curb ramps at intersections. Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways. (28CFR 35.151(e))

The Title II regulations required that by January 26, 1993, public entities (State or local governments) conduct a self-evaluation to review their current policies and practices to identify and correct any requirements that were not consistent with the regulation. Public entities that employed more than 50 persons were required to maintain their self-evaluations on file and make it available for three years. If a public entity had already completed a self-evaluation under Section 504 of the Rehabilitation Act, then the ADA only required it to do a self-evaluation of those policies and practices that were not included in the previous self-evaluation. (28 CFR 35.105)

The Department of Justice offers technical assistance on Title II through its web page at **www.usdoj.gov/crt/ada/taprog.htm,** and through its ADA Information Line, at **202 514-0301 (voice and 202-514-0383 (TTY).** The Department of Justice's technical assistance materials include among others, the Title II Technical Assistance Manual with Yearly Supplements, the ADA guide for Small Towns, and an ADA Guide entitled The ADA and City Governments: Common Problems.

Title III prohibits discrimination based upon disability in places of public accommodation

Justice also offers technical assistance concerning Title III through the web page cited above and the ADA Hotline cited above.

Justice also offers technical assistance concerning Title III through the web page cited above and the ADA Hotline cited above.

IV. The Architectural Barriers Act of 1968

The Architectural Barriers Act of 1968 (ABA) (42 U.S.C. 4151-4157) requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with Federal funds, except privately-owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards (UFAS) (24 CFR 570.614). In practice, buildings built to meet the requirements of Section 504 and the ADA will conform to the requirements of the ABA.

Self Evaluations

The Section 504 regulations required recipients of Federal financial assistance to conduct a self-evaluation of their policies and practices to determine if they were consistent with the law's requirements. This self evaluation was to have been completed no later than July 11, 1989. Title II of the ADA imposed this requirement on all covered public entities. The ADA regulations required that ADA self evaluations be completed by January 26, 1993, although those public entities that had already performed a Section 504 self evaluation were only required to perform a self-evaluation on those policies and practices that had not been included in the Section 504 review.

The regulatory deadlines are long past. Nonetheless, recipients who have not completed a self-evaluation are encouraged to conduct a self-evaluation to be in compliance with this requirement under these regulatory provisions.

Involving persons with disabilities in the self-evaluation process is very beneficial. This will assure the most meaningful result for both the recipient and for persons with disabilities who participate in the recipient's programs and activities. It is important to involve persons and/or organizations representing persons with disabilities, and agencies or other experts who work regularly with accessibility standards.

Important steps in conducting a self-evaluation and implementing its results include the following:

- Evaluate current policies and practices and analyze them to determine if they adversely

- Modify any policies and practices that are not or may not be in compliance with the regulations at Section 504 or Title II and Title III of the ADA.

- Take appropriate corrective steps to remedy those policies and practices which either are discriminatory or have a discriminatory effect. Develop policies and procedures by which persons with disabilities may request a modification of a physical barrier or a rule or practice that has the effect of limiting or excluding a person with a disability from the benefits of the program.
- Document the self-evaluation process and activities. The Department recommends that all recipients keep the self-evaluation on file for at least three years, including records of the individuals and organizations consulted, areas examined and problems identified, and document modifications and remedial steps, as an aid to meeting the requirement at 24 CFR Part 8.55.

The Department also recommends that recipients periodically update the self-evaluation, particularly, for example, if there have been changes in the programs and services of the agency. In addition, public entities covered by Title II of the ADA should review any policies and practices that were not included in their Section 504 self-evaluation and should modify discriminatory policies and practices accordingly.

V. HUD Resources Available Concerning Section 504

Further information concerning compliance with Section 504 may be obtained through the HUD web page **(http://www.hud.gov/offices/fheo/disabilities/sect504.cfm).** Additional assistance and information may be obtained by contacting the local HUD Office of Community Planning and Development and the Office of Fair Housing and Equal Opportunity. Below is a list of the phone numbers for these offices.

CHAPTER I--OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 135--ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS--Table of Contents

Subpart B--Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

Sec. 135.38 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will

positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

Section 3 Compliance - Instructions

Section 3 Compliance is a Federal requirement and final payment cannot be made until pages 1 and 2 of attached "Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects", [HUD form 60002 (4/98)] have been completed and submitted to Community Investments, Housing & Community Services, 332 N Riverview, Wichita, KS 67203 (462-3723).

1. Section 3 applies to all housing rehabilitation, housing construction and other public construction contracts in excess of $100,000.

2. Section 3 resident means:
   a. a public housing resident; or
   b. an individual who resides in the metropolitan area in which the section 3 assistance is expended (City of Wichita) who is:
      i. low income (80% of median income).
      ii. very low income (50% of median income).
      iii. 30% of median income

3. Section 3 business concern means a business concern:
   a. that 51 percent or more of the business is owned by section 3 residents; or
   b. whose permanent, full time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
   c. that provides evidence of a commitment to subcontract in excess of 25 percent of the

a. Committing to employ section 3 residents as 30 percent of the aggregate number of new hires.
b. Committing to contract with section 3 business concerns as 10 percent of the total dollar amount of all Section 3 covered contracts for work arising in connection with housing rehabilitation, housing construction and other public construction.

Section 3 covered contracts do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract.

5. Record keeping/reporting:
Reports on HUD Form 60002 are to be submitted at the completion of the project or annually as of June 30th.

Examples of records Contractors/Subcontractors should maintain to show activity and results under Section 3.

1. Copies of advertisements for training and employment opportunities;

2. Lists of Section 3 residents who inquired about or actually applied for training or employment opportunities;

3. Copies of any procurement procedures conducted by the recipient;

4. Any evidence that, to the greatest extent feasible, steps have been taken to include Section 3 business concerns in opportunities arising from Section 3 - related activities;

5. Copies of strategies designed to implement Section 3, including records of solicitation mailing lists and direct solicitations of bids or proposals;

6. Records of bid evaluations and selections;

7. Copies of notifications of awards to grantees and contractors;

8. Documentation of pre-construction conferences;

9. Copies of letters to community organizations related to Section 3 recruiting or business development;

10. Photographs of signs or notices posted for Section 3 recruiting or business development;

11. Record of income levels of persons hired;

Fiscal Year 2011Median Income Family Limits
Wichita, Kansas

PROGRAM	**1 Person**	**2 Persons**	**3 Persons**	**4 Persons**	**5 Persons**	**6 Persons**	**7 Persons**	**8 Persons**
30% of Median	13,500	15,400	17,350	19,250	20,800	22,350	23,900	25,450
50% of Median	22,450	25,650	28,850	32,050	34,650	37,200	39,750	42,350
80% of Median	35,950	41,050	46,200	51,300	55,450	59,550	63,650	67,750

TO: Doug Kupper, Director of Park and Recreation

FROM: Mary K. Vaughn, Director of Housing & Community Services

SUBJECT: Memorandum of Understanding
Hazardous Sidewalk Replacement with Community Development Block Grant-R

This Memorandum of Understanding (MOU) serves as the formal basis for assumption of the following performance requirements by the Department of Park and Recreation utilizing funds provided under the American Recovery and Reinvestment Act of 2009, as amended.

It is mutually agreed between the Director of Housing & Community Services and the Director of Park and Recreation that the Department of Park and Recreation will furnish all services necessary to carry out the additional Hazardous Sidewalk Replacement project in the City's Neighborhood Revitalization Area specified in Attachment A, Performance Criteria.

In addition, the Department of Park and Recreation will undertake the project for an amount not to exceed $26,520 using Community Development Block Grant – R (CDBG-R) funding as stated in Attachment B, Budget Detail

During the administration of activities covered by this Memorandum, the Department of Park and Recreation agrees to comply with all applicable laws, regulations and policies of the United States, the State of Kansas and the City of Wichita, including, but not limited to, the following:

1. American Recovery and Reinvestment Act of 2009
   a. Section 1512
   b. Section 1605

2. Community Development Block Grant
   a. 24 CFR Part 570
   b. City of Wichita Administrative Regulation No. 63

3. Equal Opportunity
   a. Title VI, Civil Rights Act of 1964.
   b. Section 109, Housing and Community Development Act of 1974, as amended.
   c. Executive Order 11246, as amended.
   d. Section 504 of the Rehabilitation Act of 1973, as amended and The Fair Housing Act. Accessibility Notice (Attachment E)
   e. City of Wichita Administrative Regulation No. 23.

4. Section 3
   a. Section 3, Housing and Urban Development Act of 1968, as amended (Attachment E)

b. National Environmental Policy Act of 1969.
c. Preservation of Historical and Archaeological Data Act of 1974, amended.
d. 24 CFR Part 58.

7. Other
   a. Federal Labor Standards.
   b. Clean Air Act, as amended.
   c. Lead-Based Paint Poisoning Prevention Act, as amended (note: requires certifications be retained in project files).
   d. 24 CFR Part 35 - Lead-based Paint Poisoning Prevention in Certain Residential Structures.
   e. 49 CFR Part 24 - Uniform Relocation Assistance and Real Property Acquisition Policies Act.
   f. City of Wichita Administrative Regulation No. 1.2
   g. City of Wichita Relocation and Anti-displacement Plan (one-for-one housing replacement).
   h. HUD Expenditure Guidelines.

Department of Housing & Community Services will review all changes, modifications, deletions or additions to the Memorandum of Understanding prior to being sent to the City Manager or City Council.

Any significant change in scope and intent of this Memorandum of Understanding shall be considered and approved or disapproved by all parties. A significant change is defined as a change in program intent, program beneficiaries, basic program guidelines, and any budget or funding change over $25,000. Any change approved shall have the full force and effect as all other provisions of this Memorandum of Understanding as though originally fully set out herein and shall be codified by a formal amendment.

Changes or amendments to this Memorandum of Understanding not submitted to the City Council for approval must be in writing and have the written approval of all signatories of this agreement.

Approval by the Director of Housing & Community Services and the City Manager constitutes a directive to implement this project.

The Memorandum of Understanding, as renewed and supplemented hereby, shall continue in effect until July 1, 2012.

APPROVED:

Mary K. Vaughn
Director of Housing & Community Services

Doug Kupper
Director of Park and Recreation

Robert Layton
City Manager

APPROVED AS TO FORM:

Gary E. Rebenstorf
City Attorney

The Department of Park and Recreation shall utilize additional CDBG-R funds in the amount of $26,520 to perform all services necessary to complete the removal and replacement of hazardous sidewalks, as funding permits, in the City's Neighborhood Revitalization Areas (Attachment D).

This activity is eligible under 24 CFR 570.201(c), public facilities and improvements meeting the HUD National Objective on a Low Mod Area Benefit under 24 CFR 570.208(1)(i). (Attachment D).

SCOPE OF SERVICES:

1. The Department of Park and Recreation will provide project oversight and coordination within the project budget and provide the Department of Housing & Community Services with all contracts between the City and subrecipients for review before being submitted to Law or the City Manager.

2. All projects funded with CDBG-R funds will require an Environmental Review by the Metropolitan Area Planning Department. The Department of Park and Recreation will request such a review and ensure that it is completed prior to any expenditure of funds. Any changes in the scope or alternate locations of work to be performed will require an Environmental Review update. All requests for Environmental Review must include the following information:

    - Requesting department
    - Funding source
    - Description of work to be performed
    - Address or legal description of property

3. The Department of Park and Recreation will develop specifications and Purchasing will bid this project in such a way that will to encourage Emerging Business Enterprises (EBE) to participate.

4. The Department of Parks and Recreation will develop specifications which include Federal Labor Standards, opportunities for EBE participation and Section 3 requirements. Bids will be solicited through Purchasing. The specifications shall require the contractor to supply all equipment, material, and services necessary to complete the job, including labor, and will warrant the work for a period of time commensurate with the type of improvement and industry standards**.** Prior to sending bid specifications, Park and Recreation will provide Housing & Community Services with a copy of the bid specifications to ensure all necessary federal forms are included.

    a. Federal Labor Standards - Housing & Community Services Department will obtain a

City's purchasing opportunities.

The Purchasing Department must demonstrate affirmative actions to encourage EBEs participation per 24 CFR 570.506(g)(6) and report to the Department of Housing & Community Services the level of participation using Attachment C.

c. Section 1605 of the Recovery Act – Section 1605 requires that all iron, steel and manufactured goods used in construction, alteration, repair, or maintenance of a public building or public work project assisted with funds under the Recovery Act must be produced in the United States, unless the Secretary finds that: the requirement is inconsistent with public interest; those goods are not reasonably available or produced in sufficient quantity in the U.S.; or the use of the goods will increase the project cost by more than 25 percent.

d. Section 3 of the HUD Act of 1968 – Department of Park and Recreation must comply with 24 CFR Part 135, Section 3 of the HUD Act of 1968, as amended, which requires that, to the greatest extent feasible, employment and other economic opportunities shall be directed to low and very low income persons, and to business concerns which provide economic opportunities to such persons.

Contractors and subcontractors with contracts over $100,000 shall maintain information as indicated on HUD form 2516 (Attachment C) and submit such information annually to the Department of Park and Recreation and on completion of the project, or by September 30, 2011, whichever comes first. The Department of Park and Recreation shall provide a copy of all HUD-2516 forms submitted to Housing & Community Services.

Section 3 Goals:
The City of Wichita in accordance with 24 CFR Part 135, has established goals for CDBG assisted projects. All Section 3 covered contracts shall include the Section 3 clause as shown in Attachment F. Consistent with existing Federal, State and local laws and regulations, the City of Wichita has set the following goals to comply with the Section 3 requirements:

- Committing to employ Section 3 residents at a rate of 30% of the aggregate of new hires for housing and community development assisted projects.
- Committing to contract a minimum of 10% of the total dollar amount of all other Section 3 covered contracts, such as community development infrastructure improvements or professional services;
- Committing to a minimum of 3% of the total dollar amount of all other Section 3 covered contracts.

5. The Department of Park and Recreation will schedule a pre-bid and pre-construction conference to review and explain applicable EEO/AA, Federal Labor Standards and Section 3 requirements. The Department of Park and Recreation must also document the affirmative steps to enhance opportunities for EBEs. Such affirmative steps may include, but not limited to, technical assistance that is open to all businesses.

6. The Department of Park and Recreation will verify satisfaction through Housing & Community Services that the contractor and its subcontractors have provided all necessary documentation and complied with all HUD regulations, before making final payment.

7. The Department of Park and Recreation will ensure construction is completed according to the extent funds are available. Substitutions or additions can be made as long as the budget contained herein is not exceeded and the substitutions or additions meet all CDBG project eligibility requirements. Substitutions or additions will require prior written approval from Housing & Community Services.

8. The Department of Park and Recreation will ensure that all of the contractor's necessary paperwork and documentation for CDBG requirements and Davis-Bacon compliance has been submitted to Housing & Community Services before final payment is made.

9. Any failure of the subrecipients to live up to the terms of their contract are to be immediately reported to Housing & Community Services with the following information: Agency Name, Address, Program Name, Date of Infraction, Detailed report of infraction(s), Actions taken or planned to resolve the violation.

BUDGET:

The total budget amount for the extension of this project shall not exceed $26,520 available from CDBG-R as specified in the budget detail and explanation (Attachment B). It is understood and agreed by and between the Director of Housing & Community Services and the Director of Park and Recreation that if the cost of the work to be performed is greater than the amount allocated, work will be accomplished to the extent that funds are available.

All payroll reports will document each project's organizational cost account (OCA) number and the total number of hours worked each day for each OCA as required by the Office of Management and Budget's OMB Circular No. A-87. Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by the responsible official(s) of the governmental unit.

Completion/Clearance of Environmental Review	12/15/11
Advertise for Bids	12/16/11
Pre-Bid Conference	12/21/11
Bid Opening	12/30/11
Contract Award Date	1/10/12
Pre-Construction Meeting	1/16/12
Work Order (Construction Start Date)	2/1/12
Construction Completion Date	4/13/12

OTHER PROGRAM REQUIREMENTS:

All procurement will be accomplished according to City of Wichita and the U.S. Department of Housing and Urban Development (HUD) purchasing policies and procedures in accordance with CFR Part 85.

REPORTS:

All subrecipients of CDBG-R must comply with the reporting requirements established for CDBG-R funding.

On a monthly basis the Department of Park and Recreation will report the following information to the Housing & Community Services Department:

- The number of new jobs created as a result of this project
- The number of jobs retained as a result of this project
- Specific addresses, or address ranges as long as the replaced sidewalks were contiguous
- Project costs
- An evaluation of the project's completion status

Project data are cumulative and should be reported as such.

Upon award of the contract, the Department of Park and Recreation will furnish the Department of Housing & Community Services with a Contract and Subcontract Activity Report (Attachment C) identifying all activity on the project and the Emerging Business Enterprise involvement with such contracts.

Upon completion of construction, and before July 1, 2012 the Department of Park and Recreation will furnish Housing & Community Services a final list of work completed.

intent of this agreement Housing & Community Services may take corrective action by recapturing project funds from the project and reallocating those funds to another eligible activity. Projects with continuing timeliness issues will be evaluated monthly and budget reduction adjustments will be made as necessary.

OTHER REQUIREMENTS

All procurement will be accomplished according to City of Wichita and HUD purchasing policies and procedures in accordance with CFR Part 85.

The Department of Park and Recreation shall record all program transactions into the City's financial system according to procedures established by the Controller's Office.

The Department of Park and Recreation shall establish and maintain accounting records specifically for the CDBG-R funds. Original documentation supporting all expenditures and other program records will be retained for five years after the final audit of expenditures made under this agreement. Records shall also be maintained documenting performance indicated in monthly reports and are subject to review by City staff.

All CDBG-R funded projects will be monitored at least annually to determine if CDBG-R funded activities are being carried out in accordance with the applicable Code of Federal Regulations.

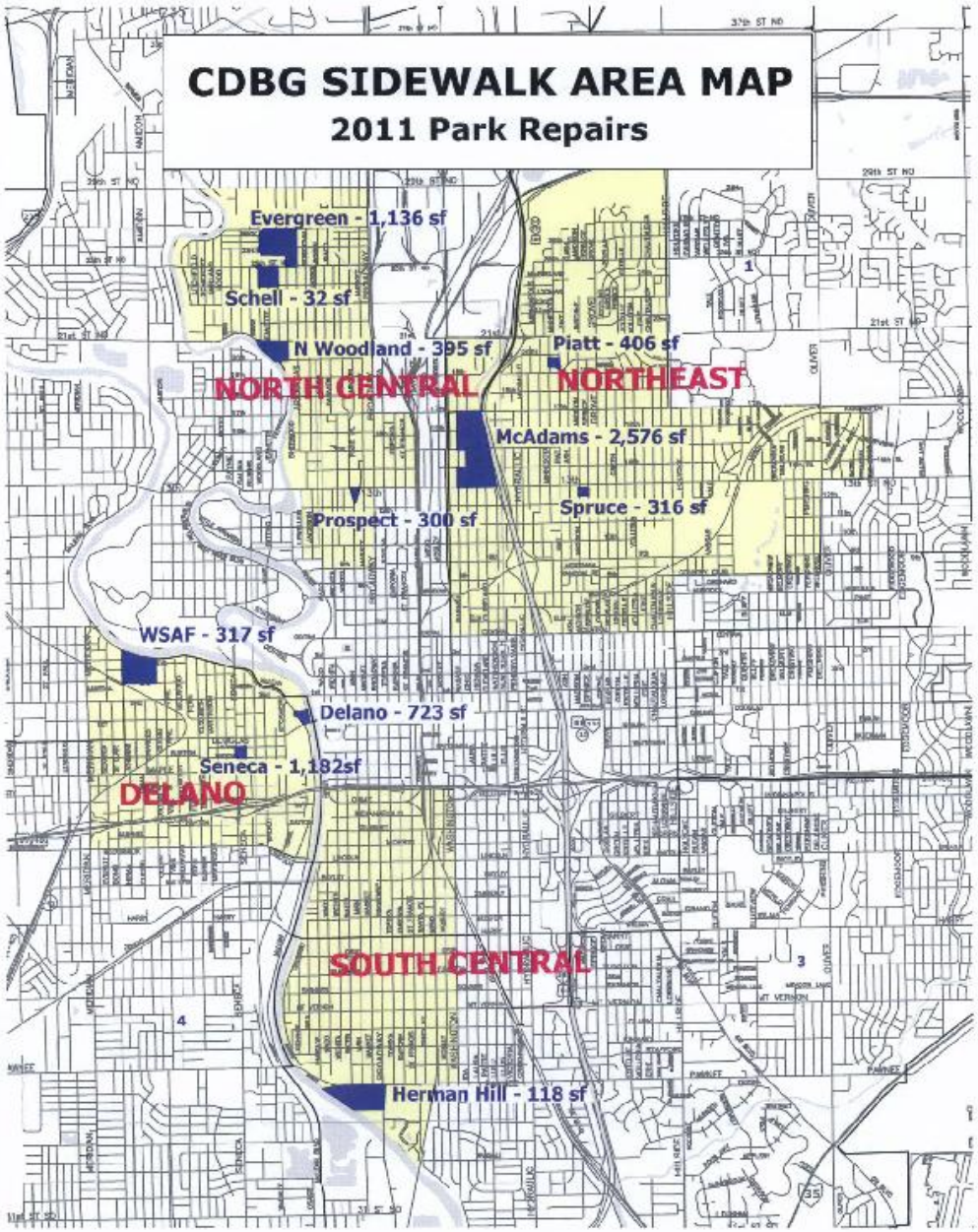
PHASE 4 BUDGET DETAIL

FUND	DEPT./DIVISION	PROJECT	PROJECT-OCA
Community Development Block Grant-R	Housing and Community Services – Community Investments	Hazardous Sidewalk Replacement	980901/980904/010100

Account Classification			Budget
PERSONAL SERVICES			0
01	110	Salaries	
	1100	Bi-Weekly Wages	
	1101	Longevity	
	1205	Auto Allowance	
	1208	Cellular Phone Allowance	
	140	Employee Benefits	
	1400	FICA	
	1401	Employees Pension	
	1403	Worker's Compensation	
	1404	Unemployment Compensation	
	1405	Group Health Insurance	
	1406	Group Life Insurance	
TOTAL			
CONTRACTUAL SERVICES			
02	2200	PBX – Line Charges	0
	2201	PBX – Instrument Charges	
	2203	Long Distance Service	
	2207	Postage – Regular	
	2301	Meals/Lodging Allowance	
	2302	Out of Town Registration	
	2304	Training Consultants	
	2308	Transportation Out of Town	
	2505	Contractor	26,520
	2600	Data Center Charges	
	2902	Advertising	
	2917	Printing & Photocopying	
	2999	Other Contractuals	
TOTAL			
OTHER			0
05	5308	Overhead	
TOTAL			
GRAND TOTAL			**26,520**

This page left blank intentionally. Insert **Attachment C – HUD Form 2516 Contract and Subcontract Activity**

This page left blank intentionally. Insert **Attachment D, CDBG-R Project Map showing Sidewalk Replacements**


CDBG SIDEWALK AREA MAP
2011 Park Repairs
Evergreen - 1,136 sf
Schell - 32 sf
N Woodland - 395 sf
Piatt - 406 sf
NORTH CENTRAL
NORTHEAST
McAdams - 2,576 sf
Spruce - 316 sf
Prospect - 300 sf
WSAF - 317 sf
Delano - 723 sf
Seneca - 1,182sf
DELANO
SOUTH CENTRAL
Herman Hill - 118 sf

Special Attention of:

All Secretary's Representatives
All State/Area Coordinators
All CPD Office Directors
All FHEO Field Offices
All CDBG Grantees

Notice: CPD-05-10

Issued: November 3, 2005
Expires: November 3, 2006

SUBJECT: Accessibility for Persons with Disabilities to Non-Housing Programs funded by Community Development Block Grant Funds -- Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act, and the Architectural Barriers Act

I. Purpose

The purpose of this Notice is to remind recipients of Federal funds under the Community Development Block Grant (CDBG) Program of their obligation to comply with Section 504 of the Rehabilitation Act of 1973, HUD's implementing regulations (24 CFR Part 8), the Americans with Disabilities Act, (ADA) and its implementing regulations, (28 CFR Parts 35, 36), and the Architectural Barriers Act (ABA) and its implementing regulations (24 CFR Parts 40, 41) in connection with recipients' non-housing programs. This Notice describes key compliance elements for non-housing programs and facilities assisted under the CDBG programs. However, recipients should review the specific provisions of the ADA, Section 504, the ABA, and their implementing regulations in order to assure that their programs are administered in full compliance.

Applicability

This Notice applies to all non-housing programs and facilities assisted with Community Development Block Grant Funds (e.g. public facilities and public improvements, commercial buildings, office buildings, and other non-residential buildings) and facilities in which CDBG activities are undertaken (e.g., public services). A separate Notice is being issued concerning Federal accessibility requirements for housing programs assisted by recipients of CDBG and HOME program funds.

II. Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973, as amended, provides "No otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her disability

Part 8 requires that recipients ensure that their programs are accessible to and usable by persons with disabilities. Part 8 also prohibits recipients from employment discrimination based upon disability.

The Section 504 regulations define "recipient" as any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution organization, or other entity or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance (24 CFR 8.3). For the purposes of Part 8, recipients include States and localities that are grantees and subgrantees under the CDBG program, their subrecipients, community-based development organizations, businesses, and any other entity that receives CDBG assistance, but not low and moderate income beneficiaries of the program. CDBG grantees are responsible for establishing policies and practices that they will use to monitor compliance of all covered programs, activities, or work performed by their subrecipients, contractors, subcontractors, management agents, etc.

Non-housing Programs

New Construction – 24 CFR Part 8 requires that new non-housing facilities constructed by recipients of Federal financial assistance shall be designed and constructed to be readily accessible to and usable by persons with disabilities (24 CFR 8.21(a)).

Alterations to facilities -- Part 8 requires to the maximum extent feasible that recipients make alterations to existing non-housing facilities to ensure that such facilities are readily accessible to and usable by individuals with disabilities. An element of an existing non-housing facility need not be made accessible if doing so would impose undue financial and administrative burdens on the operation of the recipients program or activity (24 CFR 8.21 (b)).

Existing non-housing facilities - A recipient is obligated to operate each non-housing program or activity so that, when viewed in its entirety, the program or activity is readily accessible to and usable by persons with disabilities (24 CFR 8.21 (c)).

Recipients are not necessarily required to make each of their existing non-housing facilities accessible to and usable by persons with disabilities if when viewed in its entirety, the program or activity is readily accessible to and usable by persons with disabilities 24 CFR 8.21(c)(1)). Recipients are also not required to take any action that they can demonstrate would result in a fundamental alteration in the nature of its program or activity or cause an undue administrative and financial burden. However, recipients are still required to take other actions that would not result in such alterations, but would nevertheless ensure that persons with disabilities receive the benefits and services of the program (24 CFR 8.21(c)(iii)).

cases where a physical alteration is not required, the recipient is still obligated to use alternative means to achieve program accessibility, including using audio-visual materials and devices to depict those portions of a historic property that cannot be made accessible, assigning persons to guide persons with disabilities into or through portions of historic properties that cannot be made accessible, or otherwise adopting other innovative methods so that individuals with disabilities can still benefit from the program (24 CFR 8.21(c)(2)(ii)).

Accessibility Standards

Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) is deemed to comply with the accessibility requirements for nonhousing facilities. Recipients may depart from particular technical and scoping requirements of UFAS where substantially equivalent or greater accessibility and usability is provided (24 CFR 8.32). For copies of UFAS, contact the HUD Distribution Center at 1-800-767-7468; hearing-impaired, or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

Where a property is subject to more than one law or accessibility standard, it is necessary to comply with all applicable requirements. In some cases, it may be possible to do this by complying with the stricter requirement; however, it is also important to ensure that meeting the stricter requirement also meets both the scoping and technical requirements of overlapping laws or standards.

Employment

Section 504 also prohibits discrimination based upon disability in employment (see 24 CFR Part 8, Subpart B).

III. The Americans With Disabilities Act of 1990

The Americans With Disabilities Act of 1990 (ADA) guarantees equal opportunities for persons with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. Unlike Section 504 which applies only to programs and activities receiving Federal financial assistance, the ADA applies even if no Federal financial assistance is given.

The U.S. Department of Justice enforces Titles I, II, and III of the ADA. HUD shares enforcement responsibility with the Department of Justice for Title II, and is designated the lead Federal agency for all programs, service and regulatory activities relating to state and local public housing and housing assistance and referral. The Equal Employment Opportunity Commission investigates administrative complaints involving Title I. For further information regarding The U.S. Department of Justice enforcement of Title II of the ADA, please visit

Commission (EEOC) offers technical assistance on the ADA provisions applying to employment. These can be obtained at the EEOC web site www.eeoc.gov, or by calling 800-669-3362 (voice) and 800-800-3302 (TTY).

Title II prohibits discrimination based on disability by State and local governments. Title II essentially extended the Section 504 requirements to services, programs, and activities provided by States, local governments and other entities that do not receive Federal financial assistance from HUD or another Federal agency. CDBG grantees are covered by both Title II and Section 504. The Department of Justice Title II regulations are found at 28 CFR Part 35.

Title II also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. (28 CFR 35.151 (a) & (b)) Facilities constructed or altered in conformance with either UFAS or the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR Part 36) shall be deemed to comply with the Title II Accessibility requirements, except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(j) of ADAAG shall not apply. (28CFR 35.151(c))

Title II specifically requires that all newly constructed or altered streets, roads, and highways and pedestrian walkways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level or pedestrian walkway and that all newly constructed or altered street level pedestrian walkways must have curb ramps at intersections. Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways. (28CFR 35.151(e))

The Title II regulations required that by January 26, 1993, public entities (State or local governments) conduct a self-evaluation to review their current policies and practices to identify and correct any requirements that were not consistent with the regulation. Public entities that employed more than 50 persons were required to maintain their self-evaluations on file and make it available for three years. If a public entity had already completed a self-evaluation under Section 504 of the Rehabilitation Act, then the ADA only required it to do a self-evaluation of those policies and practices that were not included in the previous self-evaluation. (28 CFR 35.105)

The Department of Justice offers technical assistance on Title II through its web page at **www.usdoj.gov/crt/ada/taprog.htm,** and through its ADA Information Line, at **202 514-0301 (voice and 202-514-0383 (TTY).** The Department of Justice's technical assistance materials include among others, the Title II Technical Assistance Manual with Yearly Supplements, the ADA guide for Small Towns, and an ADA Guide entitled The ADA and City Governments: Common Problems.

Title III prohibits discrimination based upon disability in places of public accommodation

Justice also offers technical assistance concerning Title III through the web page cited above and the ADA Hotline cited above.

Justice also offers technical assistance concerning Title III through the web page cited above and the ADA Hotline cited above.

IV. The Architectural Barriers Act of 1968

The Architectural Barriers Act of 1968 (ABA) (42 U.S.C. 4151-4157) requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with Federal funds, except privately-owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards (UFAS) (24 CFR 570.614). In practice, buildings built to meet the requirements of Section 504 and the ADA will conform to the requirements of the ABA.

Self Evaluations

The Section 504 regulations required recipients of Federal financial assistance to conduct a self-evaluation of their policies and practices to determine if they were consistent with the law's requirements. This self evaluation was to have been completed no later than July 11, 1989. Title II of the ADA imposed this requirement on all covered public entities. The ADA regulations required that ADA self evaluations be completed by January 26, 1993, although those public entities that had already performed a Section 504 self evaluation were only required to perform a self-evaluation on those policies and practices that had not been included in the Section 504 review.

The regulatory deadlines are long past. Nonetheless, recipients who have not completed a self-evaluation are encouraged to conduct a self-evaluation to be in compliance with this requirement under these regulatory provisions.

Involving persons with disabilities in the self-evaluation process is very beneficial. This will assure the most meaningful result for both the recipient and for persons with disabilities who participate in the recipient's programs and activities. It is important to involve persons and/or organizations representing persons with disabilities, and agencies or other experts who work regularly with accessibility standards.

Important steps in conducting a self-evaluation and implementing its results include the following:

- Evaluate current policies and practices and analyze them to determine if they adversely

- Modify any policies and practices that are not or may not be in compliance with the regulations at Section 504 or Title II and Title III of the ADA.

- Take appropriate corrective steps to remedy those policies and practices which either are discriminatory or have a discriminatory effect. Develop policies and procedures by which persons with disabilities may request a modification of a physical barrier or a rule or practice that has the effect of limiting or excluding a person with a disability from the benefits of the program.
- Document the self-evaluation process and activities. The Department recommends that all recipients keep the self-evaluation on file for at least three years, including records of the individuals and organizations consulted, areas examined and problems identified, and document modifications and remedial steps, as an aid to meeting the requirement at 24 CFR Part 8.55.

The Department also recommends that recipients periodically update the self-evaluation, particularly, for example, if there have been changes in the programs and services of the agency. In addition, public entities covered by Title II of the ADA should review any policies and practices that were not included in their Section 504 self-evaluation and should modify discriminatory policies and practices accordingly.

V. HUD Resources Available Concerning Section 504

Further information concerning compliance with Section 504 may be obtained through the HUD web page **(http://www.hud.gov/offices/fheo/disabilities/sect504.cfm).** Additional assistance and information may be obtained by contacting the local HUD Office of Community Planning and Development and the Office of Fair Housing and Equal Opportunity. Below is a list of the phone numbers for these offices.

CHAPTER I--OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 135--ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS--Table of Contents

Subpart B--Economic Opportunities for Section 3 Residents and Section 3 Business Concerns

Sec. 135.38 Section 3 clause.

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will

positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

Section 3 Compliance - Instructions

Section 3 Compliance is a Federal requirement and final payment cannot be made until pages 1 and 2 of attached "Economic Opportunities for Low- and Very Low-Income Persons in Connection with Assisted Projects", [HUD form 60002 (4/98)] have been completed and submitted to Community Investments, Housing & Community Services, 332 N Riverview, Wichita, KS 67203 (462-3723).

1. Section 3 applies to all housing rehabilitation, housing construction and other public construction contracts in excess of $100,000.

2. Section 3 resident means:
   a. a public housing resident; or
   b. an individual who resides in the metropolitan area in which the section 3 assistance is expended (City of Wichita) who is:
      i. low income (80% of median income).
      ii. very low income (50% of median income).
      iii. 30% of median income

3. Section 3 business concern means a business concern:
   a. that 51 percent or more of the business is owned by section 3 residents; or
   b. whose permanent, full time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or
   c. that provides evidence of a commitment to subcontract in excess of 25 percent of the

a. Committing to employ section 3 residents as 30 percent of the aggregate number of new hires.
b. Committing to contract with section 3 business concerns as 10 percent of the total dollar amount of all Section 3 covered contracts for work arising in connection with housing rehabilitation, housing construction and other public construction.

Section 3 covered contracts do not include contracts for the purchase of supplies and materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a Section 3 covered contract.

5. Record keeping/reporting:
Reports on HUD Form 60002 are to be submitted at the completion of the project or annually as of June 30th.

Examples of records Contractors/Subcontractors should maintain to show activity and results under Section 3.

1. Copies of advertisements for training and employment opportunities;

2. Lists of Section 3 residents who inquired about or actually applied for training or employment opportunities;

3. Copies of any procurement procedures conducted by the recipient;

4. Any evidence that, to the greatest extent feasible, steps have been taken to include Section 3 business concerns in opportunities arising from Section 3 - related activities;

5. Copies of strategies designed to implement Section 3, including records of solicitation mailing lists and direct solicitations of bids or proposals;

6. Records of bid evaluations and selections;

7. Copies of notifications of awards to grantees and contractors;

8. Documentation of pre-construction conferences;

9. Copies of letters to community organizations related to Section 3 recruiting or business development;

10. Photographs of signs or notices posted for Section 3 recruiting or business development;

11. Record of income levels of persons hired;

Fiscal Year 2011Median Income Family Limits
Wichita, Kansas

PROGRAM	**1 Person**	**2 Persons**	**3 Persons**	**4 Persons**	**5 Persons**	**6 Persons**	**7 Persons**	**8 Persons**
30% of Median	13,500	15,400	17,350	19,250	20,800	22,350	23,900	25,450
50% of Median	22,450	25,650	28,850	32,050	34,650	37,200	39,750	42,350
80% of Median	35,950	41,050	46,200	51,300	55,450	59,550	63,650	67,750

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council Members

SUBJECT: General Obligation Bond and Note Sale

INITIATED BY: Finance Department

AGENDA: Consent

Recommendation: Adopt the resolution.

Background: The City is planning to offer for sale two series of general obligation temporary notes in the principal amount of approximately $46,350,000 (Series 243 and 250) and two series of general obligation bonds (Series 803 and 808) in the principal amount of approximately $25,655,000 for the purpose of providing interim and permanent financing for capital improvement projects of the City. The public sale of the bonds and notes is scheduled for 10:00 a.m. C.T. on January 10, 2012, at which time bids will be received and the City Council will award the sale of bonds and notes to the bidders whose proposed interest rates result in the lowest overall cost to the City.

Analysis: The sale of temporary notes allows short-term financing of improvements that shall be permanently financed through the issuance of bonds, pay-as-you-go financing or other sources. The bonds are being issued on a reimbursement basis to finance project costs previously incurred.

The City's Winter 2012 general obligation bond and note sale includes the following issues:

Temporary Notes
The proceeds from the sale of the Series 243 and 250 Renewal and Improvement Temporary Notes will be used to provide interim financing for City-at-large projects, improvement district projects, public improvement projects and improvements related to Tax Increment Financing (TIF) Districts. Due to the nature of the TIF improvements, the Series 243 Renewal and Improvement Notes are taxable under Federal law. Temporary Note Series 243 will be issued in a principal amount of approximately $7,870,000. Temporary Note Series 250 will be issued in a principal amount of approximately $38,480,000.

General Obligation Bonds
The proceeds from the sale of the Series 803 Bonds will be used to permanently finance City-at-large and public improvement projects. The General Obligation Bonds, Series 803 will be issued in a principal amount of approximately $19,905,000.

Special Assessment Bonds
The Series 808 Bonds will be issued in a principal amount of approximately $5,750,000 and will be used to permanently finance neighborhood improvements located in special improvement districts. Special assessments have been levied against the property owners in the improvement districts for the purpose of paying all or a portion of the costs of such improvements, including the payment of principal and interest on the Series 808 Bonds.

Financial Considerations: The City of Wichita awards the sale of bonds to the bidder with the lowest true interest cost, or "TIC". Using the TIC to calculate the bids, accounts for the time value of money. The TIC is the rate that will discount all future cash payments so that the sum of their present value will equal the bond proceeds. Further, using the TIC calculation can potentially result in the City saving money because TIC does not ignore the timing of interest payments. Due to their short term, the awards for the sale of temporary notes are made to the bidder with the lowest net interest cost.

The Series 243 and 250 Temporary Notes will mature on February 7, 2013 and will be retired using the proceeds of permanent financing bonds, renewal notes and/or other available funds of the City. The Series 243 and 250 Temporary Notes will be callable August 9, 2012 at par.

The Series 803 General Obligation Bonds will mature serially over 10 and 15 years with principal maturities structured to produce level annual payments of principal and interest. The Series 803 Bonds are payable from Citywide ad valorem taxes and are callable beginning in 2019 with a 1% call premium and thereafter at par.

The Series 808 Special Assessment Bonds will mature serially over 15 and 20 years with principal maturities structured to produce level annual payments of principal and interest for each maturity term. The Series 808 Bonds are payable from the collection of special assessments levied against benefitting properties, and if not so paid, from Citywide ad valorem taxes. The Series 808 Special Assessment Bonds will be callable beginning in 2022 at par.

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

Legal Considerations: The Law Department has approved the Resolution authorizing the sale of the bonds and notes and directing the publication and distribution of the Notice of Sale (prepared by the City's Bond Counsel).

Recommendation/Action: It is recommended the City Council adopt the resolution: 1) authorizing the general obligation bond and note sales; 2) approving the distribution to prospective bidders of the Preliminary Official Statement, subject to such minor revisions as may be determined necessary by the Director of Finance and Bond Counsel; 3) finding that such Preliminary Official Statement is in a form "deemed final" for the purpose of the Securities Exchange Commission's Rule 15c2-12(b)(l), subject to revision, amendment and completion in the final Official Statement; and, 4) authorizing publication and distribution of the Notice of Sale; and 5) authorizing staff, in consultation with Bond Counsel, to take such further action reasonably required to implement this Resolution.

Attachments: Sales Resolution
Official Notice of Sale

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, AUTHORIZING THE PUBLIC SALE OF GENERAL OBLIGATION NOTES AND BONDS OF THE CITY.

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

Section 1. The following obligations (collectively, the "Obligations") of the City of Wichita, Kansas (the "City"), shall be offered at competitive public sale on January 10, 2012, at 10:00 a.m., Central Time, or at such other time and date approved by the Mayor that is the date of a City Council meeting:

Name of Obligation	**Series**	**Approximate Principal Amount**
General Obligation Bonds	803	$19,905,000
General Obligation Bonds	808	5,750,000
General Obligation Renewal and Improvement Temporary Notes	243 (Taxable Under Federal law)	7,870,000
General Obligation Renewal and Improvement Temporary Notes	250	38,480,000

Section 2. Bids for the purchase of each series of Obligations shall be accepted through the *PARITY* Electronic Bid Submission System until 10:00 a.m., Central Time, and will at such time be read aloud and tabulated by City staff. The bids will be considered and each series of Obligations will be awarded to the respective best bidder by the Governing Body at their earliest convenience following the deadline for receipt of the bids.

Section 3. The City's Bond Counsel, Kutak Rock LLP "Bond Counsel"), in conjunction with City staff, are authorized to prepare a notice of sale and preliminary official statement in connection with the offering of the Obligations (the "Notice of Sale and Preliminary Official Statement") and appropriate officers of the City are authorized to provide the original purchaser of each series of Obligations with a certification to the effect that the City deems the information contained in the Preliminary Official Statement "final" as of its date, except for the omission of such information as is permitted by Rule 15c2-12(b)(1) of the Securities Exchange Commission, and to take such other actions or execute such other documents as such officers in their reasonable judgment deem necessary to enable such original purchasers to comply with the requirement of such Rule**.**

Section 4. City staff is authorized and directed to give notice of the sale of the Obligations by making copies of the Notice of Sale and Preliminary Official Statement available to prospective purchasers of the Obligations and by publishing a summary of such Notice of Sale

in such final form as shall be prepared by Bond Counsel and approved by City staff, on a date which is at least 6 but not more than 30 days prior to the date of the public sale, in a newspaper of general circulation in Sedgwick County, Kansas, and in *The Kansas Register*, the official newspaper of the State of Kansas.

Section 5. City staff, in consultation with Bond Counsel, is hereby authorized to take such further action reasonably required to implement this Resolution, including, but not limited to, providing notice of outstanding notes being redeemed and paid prior to their maturity with the proceeds of the Obligations.

Section 6. This Resolution shall be in full force and effect from and after its adoption.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on December 20, 2011.

(Seal)

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

CITY OF WICHITA, KANSAS

$19,905,000* GENERAL OBLIGATION BONDS, SERIES 803

$5,750,000* GENERAL OBLIGATION BONDS, SERIES 808

$7,870,000* GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 243 (TAXABLE UNDER FEDERAL LAW)

$38,480,000* GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 250

(General Obligation Bonds and Notes Payable from Unlimited Ad Valorem Taxes)

Date, Time and Place of Receiving Bids

Bids will be received by the Director of Finance on behalf of the Governing Body of the City of Wichita, Kansas (the "City"), via *PARITY* electronic bid submission system ("*PARITY*"), until 10:00 a.m. (good faith deposits by 9:30 a.m. as described herein) Central Time, on: **TUESDAY, JANUARY 10, 2012** (the "Sale Date"), for the purchase of:

$19,905,000* principal amount of General Obligation Bonds, Series 803 (the "Series 803 Bonds");

$5,750,000* principal amount of General Obligation Bonds, Series 808 (the "Series 808 Bonds");

$7,870,000* principal amount of General Obligation Renewal and Improvement Temporary Notes, Series 243 (Taxable Under Federal Law) (the "Series 243 Notes"); and

$38,480,000* principal amount of General Obligation Renewal and Improvement Temporary Notes, Series 250 (the "Series 250 Notes").

All bids shall be publicly read and tabulated on the date and at the time above indicated and all bids and the tabulations thereof shall thereafter be presented to the Governing Body of the City at their earliest convenience in the Council Chamber at City Hall. The Series 803 Bonds and the Series 808 Bonds are herein collectively referred to as the "Bonds." The Series 243 Notes and the Series 250 Notes are herein collectively referred to as the "Notes." The Governing Body will thereupon consider the award each series of the Bonds and the Notes to the respective best bidders.

Each series of Bonds and Notes shall be sold separately, and bidders may bid on any series of Bonds or the Notes. No oral or auction bid for any series of Bonds or the Notes shall be considered, and no bid for less than the entire principal amount of the applicable series of Bonds or Notes shall be considered.

* Subject to change.

Description of Bonds

Series 803 Bonds. The Series 803 Bonds shall be issued in the aggregate principal amount of $19,905,000,* shall bear a Dated Date of February 1, 2012, shall be issued in book-entry-only form, and individual purchases may be made in denominations of $5,000 or integral multiples thereof. The Series 803 Bonds shall mature on June 1 in the years and principal amounts as follows:

Maturity Schedule – Series 803 Bonds

Maturing June 1	Principal Amount*	Maturing June 1	Principal Amount*
2013	$1,360,000	2021	$1,750,000
2014	1,400,000	2022	1,805,000
2015	1,445,000	2023	780,000
2016	1,490,000	2024	805,000
2017	1,545,000	2025	835,000
2018	1,590,000	2026	865,000
2019	1,645,000	2027	895,000
2020	1,695,000		

The Series 803 Bonds shall bear interest at the rates specified by the successful bidder, and interest shall be payable semiannually on June 1 and December 1 of each year, commencing December 1, 2012.

Series 808 Bonds. The Series 808 Bonds shall be issued in the aggregate principal amount of $5,750,000,* shall bear a Dated Date of February 1, 2012, shall be issued in book-entry-only form, and individual purchases may be made in denominations of $5,000 or integral multiples thereof. The Series 808 Bonds shall mature on June 1 in the years and principal amounts as follows:

Maturity Schedule - Series 808 Bonds

Maturing June 1	Principal Amount*	Maturing June 1	Principal Amount*
2013	$290,000	2023	$410,000
2014	300,000	2024	420,000
2015	310,000	2025	440,000
2016	320,000	2026	455,000
2017	330,000	2027	470,000
2018	345,000	2028	30,000
2019	355,000	2029	30,000
2020	370,000	2030	30,000
2021	385,000	2031	30,000
2022	400,000	2032	30,000

*Subject to change.

The Series 808 Bonds shall bear interest at the rates specified by the successful bidder, and interest shall be payable semiannually on June 1 and December 1 of each year, commencing December 1, 2012.

Principal Amounts Subject to Change. The City reserves the right to increase or decrease the total principal amount of any series of Bonds and the principal amount of any maturity in order to properly size a Bond issue including adjustments based on net bond proceeds received by the City as a result of any premium bid. Adjustments, if required, will be made proportionately to each maturity as permitted by the authorized denominations of such series of Bonds. The successful bidder may not withdraw its bid or change the interest rates bid as a result of any changes made to the principal amount of a series of Bonds as described. If there is an adjustment in the final aggregate principal amount of a series of Bonds or the schedule of principal payments as described above, any premium bid on such series of Bonds will be proportionately adjusted. At the request of the City, each successful bidder agrees to resize the Bond issue, adjust the premium and provide a revised maturity schedule to the City promptly after receipt of notification of such a request by the City.

Redemption of Bonds

Series 803 Bonds. The Series 803 Bonds maturing in the years 2013 through 2019, inclusive, shall become due on their stated maturity dates without the option of prior payment. At the option of the City, the Series 803 Bonds maturing June 1, 2020, and thereafter, may be called for redemption and payment prior to their respective maturities on and after June 1, 2019, in whole or in part at any time. Series 803 Bonds called for redemption and payment shall be redeemed at a price (expressed as a percentage of the principal amount) as follows, plus accrued interest to the date established for redemption and payment:

Redemption Dates (Inclusive)	Redemption Prices
June 1, 2019, through May 31, 2020	101.00%
June 1, 2020, through May 31, 2021	100.00%

Series 808 Bonds. The Series 808 Bonds maturing in the years 2013 through 2022, inclusive, shall become due on their stated maturity dates without the option of prior payment. At the option of the City, the Series 808 Bonds maturing June 1, 2023, and thereafter, may be called for redemption and payment prior to their respective maturities on and after June 1, 2022, in whole or in part at any time at a price of 100% (expressed as a percentage of the principal amount), plus accrued interest to the date established for redemption and payment.

Mandatory Redemption. A bidder may elect to have all or a portion of a series of Bonds scheduled to mature in consecutive years issued as term bonds (the "Term Bonds") scheduled to mature in the latest of those consecutive years and subject to mandatory redemption requirements consistent with the schedule of serial maturities set forth herein, subject to the following conditions for each series of Bonds: (a) not less than all Bonds of the same serial maturity shall be converted to Term Bonds with mandatory redemption requirements, (b) callable and noncallable serial maturities of the Bonds may not be combined in the same Term Bond maturity, and (c) a bidder must indicate the Term Bond election on the bid submitted.

General Redemption Provisions. If less than all of a series of outstanding Bonds are called for redemption on a specified date, the method of selection of the Bonds to be called shall be designated by the City in such equitable manner as it may determine. In the case of Bonds registered in denominations greater than $5,000, the City shall treat each $5,000 of face value as though it were a separate Bond in the denomination of $5,000.

Written notice of any call for redemption and payment of the Bonds shall be given by the Paying Agent by United States first class mail, not less than 30 days prior to the date established for such redemption and payment, to the Registered Owners of the Bonds called for redemption and payment as shown by the Registration Books maintained by the Bond Registrar.

Paying Agent and Bond Registrar

The Treasurer of the State of Kansas, Topeka, Kansas, has been designated as Paying Agent and Bond Registrar for the Bonds (hereinafter called the "Paying Agent"). The fees of the Paying Agent for the registration, transfer, exchange, payment and redemption, if any, of the Bonds shall be paid by the City. The City shall also pay for the printing of a reasonable supply of blank registered bond certificates for such purpose. Any additional costs or fees that might be incurred in the secondary market, except the fees of the Paying Agent, shall be the responsibility of the Registered Owners of the Bonds.

Payment of Principal and Interest on Bonds; Ownership Registration

One certificate representing the entire principal amount of each maturity of each series of the Bonds will be issued to The Depository Trust Company, New York, New York (hereafter called "DTC"), registered in the name of Cede & Co. (DTC's nominee), and will be immobilized in the custody of DTC. A book-entry-only system of issuance will be employed, evidencing ownership of the Bonds in the permitted $5,000 denominations, with transfers of ownership effected on the records of DTC and its Direct Participants pursuant to the rules and procedures established by DTC and its participants. Principal and interest on the Bonds will be paid in same-day funds to DTC or its nominee as the Registered Owner of the Bonds. DTC's practice is to credit Direct Participants' accounts on the payable date. Payments by Direct Participants to Beneficial Owners will be governed by standing instructions and customary practices. The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its participants or persons acting through such participants. Reference is made to the Preliminary Official Statement for further information regarding the book-entry-only issuance of the Bonds.

Description of Notes

Series 243 Notes. The Series 243 Notes shall be issued in the principal amount of $7,870,000,* shall bear a Dated Date of February 9, 2012, and a Maturity Date of February 7, 2013, shall be issued in book-entry-only form, and individual purchases may be made in denominations of $5,000 or integral multiples thereof. The Series 243 Notes shall bear interest from the Dated Date at the rate which shall be determined upon the public sale of the Notes, and said interest shall be payable on the Maturity Date.

* Subject to change.

***Series 250 Notes*.** The Series 250 Notes shall be issued in the principal amount of $38,480,000,* shall bear a Dated Date of February 9, 2012, and a Maturity Date of February 7, 2013, shall be issued in book-entry-only form, and individual purchases may be made in denominations of $5,000 or integral multiples thereof. The Series 250 Notes shall bear interest from the Dated Date at the rate which shall be determined upon the public sale of the Notes, and said interest shall be payable on the Maturity Date.

***Principal Amounts Subject to Change*.** The City reserves the right to increase or decrease the total principal amount of any series of Notes based on net note proceeds received by the City in order to properly size a Note issue including adjustment resulting from any premium bid. The successful bidder may not withdraw its bid or change the interest rate bid as a result of any changes made to the principal amount of a series of Notes as described. If there is an adjustment in the final aggregate principal amount of a series of Notes or the schedule of principal payments as described above, any premium bid on such series of Notes will be proportionately adjusted.

Redemption of Notes

The Notes may each be called for redemption and payment prior to their respective maturities on and after August 9, 2012, in whole or in part at anytime. Notes called for redemption and payment shall be redeemed at a price of 100% of the principal amount thereof, plus accrued interest to the date established for redemption and payment.

If less than all of the outstanding Notes of a series are called for redemption on a specified date, the method of selection of the Notes to be called shall be designated by the City in such equitable manner as it may determine. In the case of Notes registered in denominations greater than $5,000, the City shall treat each $5,000 of face value as though it were a separate Note in the denomination of $5,000.

Written notice of any call for redemption and payment of the Notes shall be given by the Paying Agent by United States first class mail, not less than 30 days prior to the date established for such redemption and payment, to the Registered Owners of the Notes called for redemption and payment as shown by the Registration Books maintained by the Note Registrar.

Payment of Principal and Interest on Notes; Ownership Registration

One certificate representing the entire principal amount of each series of Notes will be issued to The Depository Trust Company, New York, New York (hereafter called "DTC"), registered in the name of Cede & Co. (DTC's partnership nominee,) and will be immobilized in the custody of DTC. A book-entry-only system of issuance will be employed, evidencing ownership of the Notes in the hereinbefore stated permitted denominations, with transfers of ownership effected on the records of DTC and its Direct Participants pursuant to the rules and procedures established by DTC and its participants. Principal and interest on the Notes will be paid in same-day funds to DTC or its nominee as the Registered Owner of the Notes. DTC's practice is to credit Direct Participants' accounts on the payable date. Payments by Direct Participants to Beneficial Owners will be governed by standing instructions and customary

practices. The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its participants or persons acting through such participants. Reference is made to the Preliminary Official Statement for further information regarding the book-entry-only issuance of the Notes.

Paying Agent and Note Registrar

The Treasurer of the State of Kansas, Topeka, Kansas, has been designated as Paying Agent and Note Registrar for the Notes (hereinafter called the "Paying Agent"). The fees of the Paying Agent for the registration, transfer, exchange, payment and redemption, if any, of the Notes shall be paid by the City. The City shall also pay for the printing of a reasonable supply of blank registered note certificates for such purpose. Any additional costs or fees that might be incurred in the secondary market, except the fees of the Paying Agent, shall be the responsibility of the Registered Owners of the Notes.

Conditions of Bidding

General Bid Conditions. Individual proposals for the purchase of each series of Bonds and/or the Notes shall be received bearing such rate or rates of interest as may be specified by the bidder, subject to the conditions of this paragraph. No bid for less than par value, plus accrued interest thereon from the Dated Date to the date of delivery, shall be considered, and no supplemental interest payments shall be authorized. Each bid must state (i) the total interest cost to the City during the life of the applicable series of Bonds or the Notes on the basis of the bid, (ii) the premium, if any, offered by the bidder, (iii) the net interest cost to the City on the basis of the bid, and (iv), for each series of Bonds, the true interest cost (as hereinafter defined) on the basis of such bid. Each bid shall be certified by the bidder to be correct, and the Governing Body of the City shall be entitled to rely on such certificate of correctness.

Bond Bid Conditions. The same rate of interest shall apply to all Bonds of the same series having the same maturity date. Each interest rate specified shall be in an even multiple of 1/8th or 1/20th of 1%. *No interest rate specified for a maturity for a series of Bonds may be less than the interest rate specified for any prior maturity for such series of Bonds unless the interest rate bid for any maturity is not more than 1% lower than the highest interest rate specified for any preceding maturity for such series of Bonds.* The maximum stated rate of interest on any Bonds shall not exceed the daily yield for the ten-year treasury bonds published by *The Bond Buyer*, in New York, New York, on the Monday next preceding the date of the public sale, plus 6%.

Note Bid Conditions. Only a single rate of interest for each series of Notes may be specified by the bidder. Each interest rate specified shall be in an even multiple of 1/8th or 1/20th of 1%. The maximum stated rate of interest on the Series 243 Notes shall not exceed the daily yield for the ten-year treasury bonds published by *The Bond Buyer*, in New York, New York, on the Monday next preceding the date of the public sale, plus 7%. The maximum stated rate of interest on any Series 250 Notes shall not exceed the daily yield for the ten-year treasury bonds published by *The Bond Buyer*, in New York, New York, on the Monday next preceding the date of the public sale, plus 6%.

Form and Submission of Bid; Good Faith Deposit

Bids must be submitted through the *PARITY* Electronic Bid Submission System ("*PARITY*"). To the extent any instructions or directions set forth in *PARITY* conflict with the Official Notice of Sale, the terms of the Official Notice of Sale shall control. All bids must be received by the undersigned prior to 10:00 a.m., Central Time (the "Submittal Hour") on January 10, 2012 (the "Sale Date"), accompanied by the applicable good faith deposit described below, which may be submitted separately, provided such good faith deposit is received by the City prior to the Submittal Hour on the Sale Date. The City shall not be responsible for any failure, misdirection or error in the means of transmission via *PARITY*. Bids submitted in accordance with this section and accepted by the City as provided below shall be binding obligations of the bidders. For further information about the electronic bidding services of *PARITY*, potential bidders may contact Ipreo, 1359 Broadway, 2nd Floor, New York, NY 10010, (212) 849-5021.

Good Faith Deposit

Each bid for the Bonds shall be accompanied by a good faith deposit in an amount equal to 2% of the principal amount of the series of Bonds for which the bid is submitted ($398,100 for the Series 803 Bonds and $115,000 for the Series 808 Bonds), and each bid for the Notes shall be accompanied by a good faith deposit in an amount equal to 2% of the principal amount of the series of Notes for which the bid is submitted ($157,400 for the Series 243 Notes and $769,600 for the Series 250 Notes). The good faith deposit must be in the form of (1) a certified or cashier's check drawn on a bank located in the United States of America, payable to the order of the City, (2) a Financial Surety Bond (as described below) payable to the order of the City or (3) a wire of Federal Reserve funds (as described below), immediately available for use by the City. If a bid is accepted, such good faith deposit shall be deposited by the City until the bidder shall have complied with all of the terms and conditions of this Notice and of its bid. In the event a bidder whose bid is accepted shall default in the performance of any of the terms and conditions of this Notice or of its bid, said bidder's good faith deposit shall be retained by the City for liquidated damages. If a bid is accepted, but the City shall fail to deliver the applicable Bonds or Notes to the bidder in accordance with the terms and conditions hereof, said good faith deposit amount shall be returned to the bidder. No interest shall be paid upon the successful bidder's good faith deposit. Checks representing the good faith deposit accompanying the bids of the unsuccessful bidders shall be promptly returned.

Certified or Cashier's Check Received By 9:30 a.m. If a certified or cashier's check is used for the good faith deposit, it must be received by the City by 9:30 a.m. Central Time on the Sale Date by delivery to Ms. Catherine Gilley, Debt Coordinator, Department of Finance, Twelfth Floor, City Hall, 455 North Main, Wichita, Kansas 67202-1679.

Financial Surety Bond Received By 9:30 a.m. If a Financial Surety Bond is used for the good faith deposit, emailed (cgilley@wichita.gov) notification of the surety bond must be received by Ms. Catherine Gilley, Debt Coordinator by the insurance company issuing the surety bond by 9:30 a.m. Central Time on the Sale Date. If a Financial Surety Bond is used for the good faith deposit, it must be from an insurance company licensed to issue such surety bond in the State of Kansas. Such surety bond must be submitted to the Director of Finance prior to the time that bids for the purchase of the applicable series of Bonds or the Notes will be received. The Financial Surety Bond must identify each bidder whose good faith deposit is guaranteed by such Financial Surety Bond. If a series

of Bonds or the Notes is awarded to a bidder using a Financial Surety Bond, then that bidder is required to submit its good faith deposit to the City in the form of a certified or cashier's check or wire transfer as instructed by the Director of Finance not later than 2:00 p.m., Central Time, on the next business day following the award of the applicable series of Bonds or the Notes. If such check or wire transfer is not received by that time, the Financial Surety Bond will be drawn by the City to satisfy the good faith deposit requirement.

Wire Transfer Received By 9:30 a.m. If a wire transfer of the good faith deposit is used, the wire transfer shall reference the applicable series of Bonds or the Notes and shall be sent to the City for receipt by 9:30 a.m. Central Time on the Sale Date. Wire transfer instructions may be obtained by contacting:

Catherine Gilley
Debt Coordinator
455 North Main – 12th Floor
Wichita, Kansas 67202
316/268-4143
cgilley@wichita.gov

or

Shawn Henning
City Treasurer
455 North Main – 12th Floor
Wichita, Kansas 67202
316/268-4444
shenning@wichita.gov

If a wire transfer of the good faith deposit is used, the wire transfer identification information shall reference the applicable series of Bonds or the Notes by including the following information which shall be completed by the bidder with the applicable series designation

Ref: City of Wichita, Kansas Good Faith Deposit, Series _____
[fill in appropriate Series designation]

Contemporaneously with such wire transfer, each bidder shall send an e-mail to cgilley@wichita.gov and shenning@wichita.gov including the following information: (i) indication that a wire transfer has been made; (ii) the amount of the wire transfer; (iii) the wire transfer federal reference number; (iv) the issue to which it applies; (v) the return wire instructions if such bidder is not awarded the applicable series of Bonds or the Notes to which the wire transfer applies, (vi) the name of the bidder for which the wire transfer is to be credited as a good faith deposit, and (vi) if the name of the bidder as shown on *PARITY* does not match the name shown as the beneficiary on the wire instructions, the email will also state that the bidder is identified by the beneficiary's name on the wire instructions.

Awarding of Bonds and Notes

Bonds. Each series of Bonds will be sold separately and each will be awarded to the responsible bidder offering to pay not less than the par amount of applicable series of Bonds and accrued interest thereon and specifying a rate or rates of interest that result in the lowest effective interest rate to the City. The effective interest rate to the City shall be the interest rate per annum determined on a per annum true interest cost ("TIC") basis by discounting the scheduled semiannual debt service payments of the City on the applicable series of Bonds (based on such rate or rates of interest so bid), to the Dated Date of such Bonds (based on a 360-day year), compounded semiannually and to the bid price, excluding accrued interest to the date of delivery. The City reserves the right to verify each bidder's calculation of TIC, and the award shall be made to the bidder whose proposal results in the lowest TIC calculated in accordance with the provisions of this Notice. If two or more identical bids for the lowest TIC are received, the Governing Body shall determine which bid, if any, shall be accepted, and such determination shall be final. The Governing Body reserves the right to reject any and/or all bids, and to waive any irregularities in any bid submitted.

Notes. Each series of Notes will be sold separately and each will be awarded to the responsible bidder offering to pay not less than the par amount of applicable series of and accrued interest thereon and specifying a rate or rates of interest that result in the lowest net interest cost to the City, which will be determined by subtracting the amount of the premium bid, if any, from the total interest cost to the City (the "NIC"). If there is any discrepancy between the NIC and any average annual net interest rate specified, the specified NIC shall govern and the interest rates specified in the bid shall be adjusted accordingly. The City reserves the right to verify each bidder's calculation of NIC, and the award shall be made to the bidder whose proposal results in the lowest NIC calculated in accordance with the provisions of this Notice. If two or more identical bids for the lowest NIC are received, the Governing Body shall determine which bid, if any, shall be accepted, and such determination shall be final. The Governing Body reserves the right to reject any and/or all bids, and to waive any irregularities in any bid submitted.

Ratings

The City's outstanding general obligation bonds are rated "Aa1" by Moody's Investors Service, Inc. ("Moody's") and "AA+" by Standard & Poor's, a division of the McGraw-Hill Companies ("S&P"). The City's general obligation notes are rated *"MIG 1"* by Moody's and "SP-1+" by S&P. The City has applied to both Moody's and S&P for ratings on the Bonds and Notes described herein. Any explanations of the significance of such ratings (as well as any positive or negative outlooks thereon or potential changes to any rating in the near future) should be obtained from S&P at 55 Water Street, New York, New York 10041 and Moody's at 7 World Trade Center at 250 Greenwich Street, New York, New York 10007. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. There is no assurance such ratings will continue for any given period of time or that such ratings will not be revised downward or withdrawn entirely by a rating agency if in its judgment circumstances so warrant. Any downward revision or withdrawal of any such ratings may have an adverse effect on the market price of the Bonds and Notes.

Bond Insurance

The City has not applied for any policy of municipal bond insurance with respect to the Bonds or Notes and will not pay the premium in connection with any policy of municipal bond insurance desired by the successful bidder. In the event a bidder desires to purchase and pay all costs associated with the issuance of a policy of municipal bond insurance in connection with any series of the Bonds or Notes, such intent must be specified on the bid and the bid must be accompanied by a commitment from the selected insurer specifying all terms and conditions to which the City will be required to agree in connection with the issuance of such insurance policy. Such commitment shall be delivered to the office of the Department of Finance, located on the Twelfth Floor of City Hall, 455 North Main, Wichita, Kansas 67202-1679. The Governing Body specifically reserves the right to reject any bid specifying municipal bond insurance, even though such bid may result in the lowest true interest cost to the City.

CUSIP Identification Numbers

The CUSIP Service Bureau will be requested to assign CUSIP identification numbers to the Bonds and Notes, and such numbers shall be printed on the Bonds and Notes; however, neither the failure to assign any such number to or print any such number on any Bond or Note, nor any error with respect thereto, shall constitute cause for the failure or refusal by the successful bidder to accept delivery of and to make payment for the Bonds or Notes in accordance with the terms of this Notice and of its bid. All expenses in relation to the printing of the CUSIP numbers and the expenses of the CUSIP Service Bureau for the assignment thereof shall be the responsibility of and shall be paid for by the City.

Delivery of and Payment for Bonds

A single Bond per maturity, duly printed or typewritten, executed and registered in conformity with the laws of the State of Kansas, shall be furnished and delivered at the expense of the City to the successful bidder of each series of Bonds on or about February 9, 2012, by deposit of such Bonds with DTC. Payment for each series of Bonds shall be received by 12:00 noon, Central Time, on the delivery date, in Federal Reserve funds immediately available for use by the City.

The successful bidder(s) shall be furnished with a certified Transcript of Proceedings evidencing the authorization and issuance of the applicable series of Bonds, and the usual closing proofs, which shall include a Certificate that there is no litigation pending or threatened at the time of the delivery of such series of Bonds affecting their validity and also regarding the completeness and accuracy of the Official Statement.

Delivery of and Payment for Notes

A single Note, duly printed or typewritten, executed, registered and countersigned in conformity with the laws of the State of Kansas, shall be furnished and delivered at the expense of the City to the successful bidder(s) of each series of Notes on or about February 9, 2012, by deposit of such Notes with DTC. Payment for each series of Notes shall be received by 12:00 noon, Central Time, on the delivery date, in Federal Reserve funds immediately available for use by the City.

The successful bidder(s) shall be furnished with a certified Transcript of Proceedings evidencing the authorization and issuance of the applicable series of Notes, and the usual closing proofs, which shall include a Certificate that there is no litigation pending or threatened at the time of the delivery of the Notes affecting their validity and also regarding the completeness and accuracy of the Official Statement.

Official Statement

The Governing Body of the City has authorized and directed the preparation of a Preliminary Official Statement in connection with the issuance of the Bonds and Notes, copies of which may be obtained from the City's Department of Finance. The Preliminary Official Statement is in a form "deemed final" by the Governing Body for the purpose of the Securities Exchange Commission's Rule l5c2-12(b)(1), but is subject to revision, amendment and completion in the final Official Statement. Authorization is hereby given to redistribute this Official Notice of Sale and the Preliminary Official Statement, but this entire Official Notice of Sale and the entire Preliminary Official Statement, and not portions thereof, must be redistributed.

By awarding the Bonds or Notes to any bidder or bidding syndicate submitting a proposal therefor, the Governing Body agrees that, no more than seven business days after the date of such award, it shall provide without cost to the senior managing underwriter of the syndicate to which such Bonds or Notes are awarded, a reasonable number of copies of the final Official Statement. The City designates the senior managing underwriter of any syndicate to which such Bonds or Notes are awarded as agent for purposes of distributing copies of the final Official Statement to each participating underwriter. Any bidder delivering a proposal with respect to the Bonds or Notes agrees thereby that if such proposal is accepted (i) it shall accept such designation, and (ii) it shall enter into a contractual relationship with all participating underwriters of the applicable series of Bonds or the Notes for purposes of assuring the receipt by each such participating underwriter of the final Official Statement. Copies of the final Official Statement in excess of a reasonable number may be ordered by the successful bidder at its expense.

Continuing Disclosure

The City will agree in the resolutions of the City prescribing the terms of the Bonds and Notes to enter into an undertaking (the "Undertaking") for the benefit of the holders of the applicable series of Bonds and Notes to send to the Municipal Securities Rulemaking Board (the "MSRB") through the Electronic Municipal Market Access facility, or other applicable entity as required or permitted under Securities and Exchange Commission Rule 15c2-12 (the "Rule"), certain financial information and operating data annually and to provide notice to the MSRB of certain events, pursuant to the requirements of the Rule.

Authority, Purpose and Security

The Bonds and Notes shall be issued under the authority of and pursuant to the provisions of the Constitution and laws of the State of Kansas, including K.S.A. 10-101 *et seq.*, as amended and supplemented, including specifically, with reference to the Notes, K.S.A. 10-123, as amended and supplemented. The Bonds and Notes shall be authorized by ordinances and

accompanying resolutions to be adopted and passed, respectively, by the Governing Body on the Sale Date. The Bonds and Notes and the interest thereon shall constitute general obligations of the City, and the full faith, credit and resources of the City will be pledged by the aforesaid ordinances to the payment thereof. Reference is made to the City's Official Statement for a more extensive discussion of security for the Bonds and Notes.

Legal Opinion

All matters relating to the authorization and issuance of the Bonds and the Notes are subject to the approving opinion of Kutak Rock LLP, Kansas City, Missouri, Bond Counsel. Bond Counsel's opinion shall be furnished without expense to the successful bidder(s) concurrently with delivery of the Bonds and the Notes. All fees and expenses of Bond Counsel shall be paid by the City.

Tax Exemption

Exemption from State Tax. The interest on the Bonds and the Notes is excludable from the computation of Kansas adjusted gross income and the Bonds and the Notes are exempt from the tax imposed by Kansas counties, cities or townships upon the gross earnings derived from money, notes and other evidence of debt.

Exemption from Federal Tax – the Series 803 Bonds, Series 808 Bonds and Series 250 Notes. In the opinion of Kutak Rock LLP, Bond Counsel, under existing laws, regulations, rulings and judicial decisions, interest on the Bonds and the Series 250 Notes is excludable from gross income for federal income tax purposes and is not a specific preference item for purposes of the federal alternative minimum tax. The opinions described herein assume the accuracy of certain representations and compliance by the City with covenants designed to satisfy the requirements of the Code that must be met subsequent to the issuance of the Bonds and the Series 250 Notes. Failure to comply with such requirements could cause interest on the applicable series of Bonds and the Series 250 Notes to be included in gross income for federal income tax purposes retroactive to the date of issuance of the applicable Bonds and the Series 250 Notes. The City has covenanted to comply with such requirements. Bond Counsel has expressed no opinion regarding other federal tax consequences arising with respect to the Bonds and the Series 250 Notes.

Notwithstanding Bond Counsel's opinion that the interest on the Bonds and the Series 250 Notes is not a specific preference item for purposes of the federal alternative minimum tax, such interest will be included in adjusted current earnings of certain corporations, and such corporations are required to include in the calculation of alternative minimum taxable income 75% of the excess of such corporations' adjusted current earnings over their alternative minimum taxable income (determined without regard to such adjustment and prior to reduction for certain net operating losses).

Other Federal Tax Consequences. The accrual or receipt of interest on the Bonds or Notes may otherwise affect the federal income tax liability of the owners of the Bonds or Notes. The extent of these other tax consequences will depend upon such owner's particular tax status and other items of income or deduction. Bond Counsel has expressed no opinion regarding any such consequences. Purchasers of the Bonds or Series 250 Notes, particularly purchasers that are

corporations (including S corporations and foreign corporations operating branches in the United States), property or casualty insurance companies, banks, thrifts or other financial institutions, certain recipients of social security or railroad retirement benefits, taxpayers otherwise entitled to claim the earned income credit, or taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry obligations, should consult their tax advisors as to the tax consequences of purchasing or owning the applicable series of the Bonds or Series 250 Notes.

***Not Exempt from Federal Tax – Series 243 Notes*.** In the opinion of Kutak Rock, LLP, Bond Counsel, interest on the Series 243 Notes is subject to federal income taxation, and Bond Counsel expresses no opinion regarding other federal tax consequences arising with respect to the Series 243 Notes.

***Not Bank-Qualified Obligations*.** The City has not designated the Bonds or the Notes as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code relating to the ability of financial institutions to deduct from income for federal income tax purposes, interest expense that is allocable to carrying and acquiring tax-exempt obligations.

Additional information regarding tax matters with respect to the Bonds and Notes is included in the Preliminary Official Statement.

Original Purchaser's Certificate

The successful bidder for each series of Bonds and Notes will be required to complete, execute and deliver to the City, prior to the delivery of the applicable series of Bonds or Notes, a certificate regarding the "issue price" of such Bonds or Notes (as defined in Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"). The certificate shall state that, as of January 10, 2012 (the Sale Date), the bidder reasonably expected to offer all of the Bonds or Notes of such series to the general public (excluding bond houses, brokers, or similar persons acting in the capacity of underwriters or wholesalers) in a bona fide public offering at the prices set forth in such certificate (excluding accrued interest and expressed as dollar prices) and that all of such series of Bonds or Notes have actually been offered to the general public at such prices. Such certificate, however, may indicate that the successful bidder will not reoffer such Bonds or Notes for sale. The form of such certificate may be obtained from Bond Counsel prior to the Sale Date.

Assessed Valuation; Bonded Indebtedness

The City's equalized assessed tangible valuation for computation of bonded debt limitations is $3,537,184,604. The total outstanding general obligation bonded indebtedness of the City as of February 1, 2012, including the Bonds and Notes is $834,364,460. The City's Series 241 Notes (outstanding in the principal amount of $6,085,000), the Series 244 Notes (outstanding in the principal amount of $3,105,000) and the Series 246 Notes (outstanding in the principal amount of $67,355,000) will be retired on February 9, 2012, from a portion of the proceeds of the Bonds, the Notes and other available funds of the City.

Additional Information

Additional information regarding the Bonds and Notes may be obtained from the Department of Finance, Twelfth Floor, City Hall, 455 North Main, Wichita, Kansas 67202-1679 (Ms. Catherine Gilley, Debt Coordinator, Telephone 316/268-4143, E-mail: cgilley@wichita.gov). To obtain a Preliminary Official Statement visit www.onlinemunis.com.

BY ORDER OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, ON DECEMBER 20, 2011.

By: /s/ Carl Brewer, Mayor
Carl Brewer, Mayor

(Seal)

ATTEST:

By: /s/ Karen Sublett, City Clerk
Karen Sublett, City Clerk

4840-8685-6462.4

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: Purchased ADA Paratransit Rides Contractor Agreements (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve the agreements.

Background: The contractor agreements will allow Wichita Transit to purchase paratransit rides from human service agencies Kansas Elks Training Center for the Handicapped (KETCH), Starkey, ResCare, Catholic Charities, Envision, and Cerebral Palsy Research Foundation of Kansas (CPRFK). In 2011, Wichita Transit's in-house paratransit service provided approximately 25% of all ADA rides. The remaining 75% were provided by these six agencies. Rides provided by these agencies are typically limited to providing transportation to ADA-eligible persons who are part of each agency's individual programs and/or residential living arrangements.

These contractor agreements are renewals, which have a termination date of December 31, 2012, including automatic month-to-month renewal if a new contractor agreement has not been negotiated.

Analysis: If Wichita Transit is to continue purchasing rides with federal funds, execution of the agreements is necessary. The Federal Transit Administration (FTA) requires that the purchased ride agreements be in writing for specific terms.

Financial Considerations: Total funding for the agreements allows for up to $1,660,000 for the 2012 calendar year. Funding for the agreements is as follows: $830,000 from the FTA; $475,000 from KDOT; and $355,000 from the City of Wichita transit fund.

Goal Impact: To Ensure Efficient Infrastructure by maintaining and optimizing public facilities and assets.

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

Recommendations/Actions: It is recommended that the City Council approve these agreements and authorize the necessary signatures.

Attachments: Purchased ADA Paratransit Rides Contractor Agreements

PURCHASED ADA PARATRANSIT RIDES
CONTRACTOR AGREEMENT

This Agreement is entered into this _____ day of _____, 2011, by and between the City of Wichita - Wichita Transit (hereinafter referred to as "City") and Catholic Charities (hereinafter referred to as "Contractor"). Hereinafter, both "City" and "Contractor" shall be jointly referred to as "Parties."

WHEREAS, the purpose of the program is to provide for purchased ADA paratransit rides, and

WHEREAS, The Contractor agrees to provide ADA paratransit rides in a safe and professional nature, in accordance with the terms and conditions set forth in Appendix A hereto, to eligible passengers within the service area defined in Section 4.2 of Appendix A.

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

1. Term: This Agreement shall become a legal and binding contract upon execution of same by both Parties, effective retroactively from January 1, 2012, until terminated as provided in Article 13 of Appendix A.

2. Compensation: Parties expressly understand and agree that payments made to the Contractor pursuant to the terms of this Agreement shall be on a fee-for-service basis according to the rates outlined in Appendix A and according to the method of billing and payment as set forth in Appendix A.

3. Indemnification: The Contractor shall indemnify, defend and hold harmless the City and the City Council, directors, officers, employees, agents, legal representatives, heirs, successors and assigns (collectively referred to as "Indemnified Parties") from and against any and all losses, costs, injuries, claims, damages, expenses and liabilities, including attorneys' fees (without limitations), collectively referred to as "Liabilities," arising out of or resulting from (i) the provision by the Contractor of transportation services hereunder or (ii) the failure of the Contractor to fulfill any of its obligations pursuant to this Agreement; provided, however, that such duty to indemnify shall not include Liabilities arising from the acts or omissions of the Indemnified parties.

4. Duties: As listed in Appendix A, the Contractor and the City shall perform duties pursuant to this Agreement.

5. Local and Federal Compliance: The Parties shall comply with the requirements of all applicable federal, state, and local rules and regulations, standard assurances, and one-time submissions listed in Appendixes A and B.

6. Assignment: Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

7. Amendments: This Agreement may not be amended unless such amendment is in writing and signed by both Parties.

8. Incorporation of Appendixes: Appendixes A and B are attached hereto and made a part hereof.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the day and year first above written.

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

CATHOLIC CHARITIES
Non-profit Organization

Cynthia Colbert, Executive Director

APPENDIX A
GENERAL CONTRACTUAL PROVISIONS FOR CONTRACTOR

ARTICLE 1: AUTHORITY TO CONTRACT

1.1 Affirmation Of Legal Authority

The Contractor assures it possesses legal authority to contract these services, that resolution, motion or similar action has been duly adopted or passed as an official act of the Contractor's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Contractor to act in connection with the application and to provide such additional information as may be required.

1.2 Required Documentation

Corporations, limited liability companies, or other forms of business requiring statutory conformance shall furnish evidence of good standing in the form of a certificate signed by the Kansas Secretary of State. A corporation shall furnish a copy of its corporate resolution evidencing the authority to sign this Agreement, executed by the corporation's secretary or president.

ARTICLE 2: RELATIONSHIP OF PARTIES

It is agreed that the legal relationship between Contractor and City is of a contractual nature. Both parties assert and believe that the Contractor is acting as an independent contractor in providing the services and performing the duties provided for by this Agreement. The Contractor is, at all times, acting as an independent contractor and not as an officer, agent, or employee of the City. As an independent contractor, the Contractor, and employees of the Contractor, will not be within the protection or coverage of City's worker's compensation insurance, subject to the provisions of K.S.A. 1997 Supp. 44-505, nor shall the Contractor, and employees of the Contractor, be entitled to any current or future benefits provided to employees of the City. Further, the City shall not be responsible for withholding of social security, federal, and/or state income tax or unemployment compensation from payments made by the City to the Contractor.

ARTICLE 3: SCOPE OF SERVICES

3.1 Purpose

It is mutually agreed by and between City and Contractor that the purposes of this Agreement are for the Contractor to efficiently provide eligible passengers a level of curb-to-curb paratransit service which is substantially equivalent to the curb-to-curb paratransit service presently operated by Wichita Transit, all under the terms and conditions described in this Agreement, and to provide Wichita Transit those operating statistics required for federal reporting. If the present volume of service provided by the Contractor pursuant to this Agreement substantially increases or decreases, the Parties agree to negotiate reasonable modifications to this Agreement (which may include termination of this Agreement). The Parties also agree that Contractor shall only provide service, which is compensable under this Agreement, during Wichita Transit regular operating hours.

The Parties agree that the terms of this Agreement apply only to purchased rides for eligible passengers, which are referred to Contractor by Wichita Transit for service during normal

operating hours and conditions. To the extent that Contractor provides transportation services to persons who may otherwise be eligible passengers (whether as a part of Contractor's programs or otherwise) outside of such hours, Contractor may do so upon the terms and conditions acceptable to Contractor, and such services are outside the scope of this Agreement.

3.2 Special Needs Of Eligible Passengers

All eligible passengers have one or more disabilities that preclude their use of regular fixed route transit. Many will require special assistance when boarding or leaving the paratransit vehicle. The Contractor shall be responsible for assuring that all drivers are capable, competent, courteous and sensitive to these special needs.

ARTICLE 4: GENERAL PROVISIONS

4.1 Definitions

A. Unit Of Service – One one-way trip equals one unit of service per eligible passenger. A round-trip taken by an eligible passenger equals two units of service. A unit of service is the basis for subsidy reimbursement.

B. Eligible Passenger(S) – Individuals who are certified and approved as ADA paratransit eligible by Wichita Transit, both ambulatory and nonambulatory.

C. Personal Care Attendant (PCA) – A person who has been approved to ride free of charge with an eligible passenger for the purpose of providing the passenger with mobility assistance. Qualified drivers employed by the Contractor may act as a PCA for eligible passengers who are also the clients of the Contractor (human service agency).

D. Equivalent Level Of Paratransit Service – The following criteria are used to evaluate the Contractor's performance relative to the level of paratransit service operated by Wichita Transit:

1. On-time performance for pick-ups. Actual pick-up times shall be evaluated relative to a 30-minute pick-up window.

2. Length of time an eligible passenger spends on the paratransit vehicle. Length of time shall be evaluated relative to a 90-minute maximum ride time.

E. No-Show – When an eligible passenger fails to board the vehicle when the vehicle arrives on time (within the 30-minute pick-up window). Pursuant to subsection 9.1(F) of this Agreement, subsidy reimbursement shall not be paid for "no-shows." Wichita Transit agrees to permit the Contractor to develop and enforce reasonable policies, which limit "no-shows."

F. 30-Minute Pick-Up Window – The 30-minute timeframe provided to the eligible passenger that indicates when the paratransit vehicle has been scheduled to arrive. Vehicles arriving within the 30-minute pick-up window are considered on time.

G. Missed Trip – When the vehicle arrives for the pick-up, at a time after the end of the 30-minute pick-up window, and the client does not board the van. Pursuant to subsection 9.1(F) of this Agreement, subsidy reimbursement shall not be paid for "missed trips".

H. Passenger Fare – For eligible passengers, the amount of money that the Contractor may collect from an eligible passenger with respect to a unit of service. Pursuant to subsection 9.4(D) of this Agreement, the appropriate passenger fare will be assumed by the Parties to have been retained by the Contractor as partial payment. As required by The ADA, the passenger fare charged or collected from eligible passengers shall not be more that twice the price of regular bus fare.

I. Referred Ada Trip - A subscription service ride request referred to an agency by Wichita Transit. Possible Contractor acceptance of a referred trip is provided for in subsection of 9.4(C) of this Agreement.

J. Subscription Service – A trip to the same place at the same time at least twice a week for a minimum period of 30 days.

K. Unless otherwise indicated, all references to time periods, which are measured in "days," shall be deemed to refer to a day of ordinary operation for Wichita Transit.

4.2 Service Area

All transportation service provided pursuant to this Agreement shall be limited to trips within the corporate limits of the City of Wichita, within the Oaklawn Improvement District, or within that portion of The City of Bel Aire that lies within 3/4-mile of a fixed bus route operated by Wichita Transit.

4.3 Passenger Eligibility

The City, acting through Wichita Transit, shall establish a procedure to determine eligible passengers. No person shall be transported under this Agreement who has not first been determined by the City as eligible for the service.

4.4 Laws To Be Observed
[Reserved]

ARTICLE 5: PERSONNEL

5.1 Qualified Personnel

The Contractor represents that it has, or shall secure at its own expense, all personnel required to perform the transportation service provided under this Agreement. Except as provided in Section 6.3 below, such personnel shall not be employees of or have any other contractual relationship with the City. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this Agreement.

5.2 Minimum Wages
[Reserved]

5.3 Employee Conflict Of Interest

The Contractor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

5.4 Employee Background Checks

The parties to this Agreement recognize that those entities or persons providing government funded services are subject to public scrutiny. Consequently, by entering into this Agreement, the Contractor assumes an affirmative and ongoing duty during the term of this Agreement to guarantee and maintain compliance with requirements set forth in Subsection 5.5 below. Such compliance will require the use of Contractor customary criminal background checks, and such other background checks as may be reasonably requested by Wichita Transit from time to time, upon all personnel or agents providing services pursuant to this Agreement, or administering the funds conveyed under this Agreement.

5.5 Participant Safeguard

The Contractor certifies that none of its employees are:

A. Persons convicted of any felony, drug or drug related offense, crime of falsehood or dishonesty, or a crime against another person during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to provide services, administer this Agreement, or handle the funds conveyed under this Agreement;

B. Persons convicted of any sex offenses, crimes against children, or crimes of violence toward persons during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to interact in any way with persons served pursuant to this Agreement; and

C. Persons convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to operate a vehicle in which an eligible passenger is provided transportation pursuant to this Agreement. For purposes of this section, “serious traffic offense shall not include any offense deemed a “traffic infraction” under K.S.A. 8-2116 and 8-2118.

D. Any questions concerning the interpretation of this subsection and/or its application to an individual shall be referred to the City’s Law Department. The Department of Law’s decision shall be final for purposes of compliance with this Agreement. The term “conviction” shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and diversions appearing on the driving records maintained by the Kansas Department of Revenue.

ARTICLE 6: PROHIBITION OF CONFLICT OF INTEREST

6.1 Interest Of Public Officials And Others

No officer or employee of the City, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects such person’s personal interest or the interest of any corporation, partnership, or association

in which such person is directly or indirectly interested. Nor shall any officer or employee of the City or any member of its governing body or other public official have any interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2 Interest Of Contractor
[Reserved]

6.3 Employee Conflicts

If either party becomes aware of situations in which a) an employee of the City shall also be an employee of the Contractor at the time of the Agreement, b) an employee of the Contractor seeks additional / alternative employment with the City during term of the Agreement, or c) an employee of the City seeks additional / alternative employment with the Contractor during term of the Agreement, such party shall immediately provide written notice of such situations to the other party. The City shall make every effort to assure that such employees do not have any authority to approve a) grant funds, b) agreements, or c) affiliate status to the Contractor or Contractor's competitors.

ARTICLE 7: FUNDING / CASH BASIS AND BUDGET LAWS

The right of the City 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 shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

ARTICLE 8: REPORTS, RECORDS AND INSPECTION

8.1 Documentation Of Costs

Proper invoices, vouchers, or other documentation evidencing in proper detail the nature and propriety of charges shall support all costs incurred by the Contractor for which the Contractor purports to be entitled to reimbursement. All checks, invoices, vouchers, payrolls, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to both parties to this Agreement.

8.2 Maintenance Of Records

Except as otherwise authorized by the City, the Contractor shall retain such documentation as listed in subsections 8.1 and 8.3 for a period of not less than three (3) years after the close of the calendar year which contains the time period to which a monthly billing relates. This is the case unless City notifies Contractor in writing of an action, including but not limited to, litigation or audit resolution proceedings, which necessitates maintenance of records beyond the minimum three (3)-year period.

8.3 Reports

During the term of this Agreement, the Contractor shall furnish reports and information to the City substantially in the form attached hereto as Exhibit 1. If the Contractor fails to provide all required reports in a timely, complete and accurate manner, the City may withhold payments to the Contractor until such time as all reports are furnished. Exhibit 1 is deemed to satisfactorily address the reporting requirements for subsections (A) through (K) below. Contractor will be paid based

upon the status of the eligible passenger as either ambulatory or nonambulatory (as determined in the certification issued by Wichita Transit). However, Contractor shall report all applicable types of rides provided to such passenger (i.e., if one or more of the categories set forth in subsections G, H, I, and J below applies to a passenger, then Contractor shall report the ride under each applicable category).

A. Complaint Records

The Contractor agrees to maintain complete records of all complaints received regarding service provided under this Agreement. The Contractor agrees to submit a service complaint report each time a request for reimbursement is submitted. Such report shall identify the general nature of complaints received during the billing period along with any actions taken by the Contractor. The Contractor agrees that complaint records used to prepare complaint reports are subject to review by the City to ensure the accuracy and validity of information reported.

B. Financial And Operating Data

The Contractor shall be responsible for providing financial and operating data as may be required by the City and/or necessary to comply with the requirements of the National Transit Database of the Urban Mass Transportation Act of 1964, as amended.

C. On-Time Performance And Trip Length Records

For the purpose of determining if the Contractor is providing a level of paratransit service equivalent to that provided by Wichita Transit, the Contractor agrees to maintain records of on-time performance and trip length for all eligible passengers provided paratransit service under this Agreement. The Contractor agrees to submit an on-time performance and trip length report each time a request for billing is submitted. For the billing period, the report shall identify the percentage of pick ups occurring before, during, and after the 30-minute pick-up window and the number of trips involving an eligible passenger ride of 90 minutes or greater. The Contractor agrees that on-time performance and trip length records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

D. Alcohol And Drug Test Reports

The Contractor agrees to submit to the City an annual report that identifies the Contractor's efforts to comply with FTA and U.S. DOT requirements for pre-employment, post-accident and random alcohol and drug testing of safety sensitive employees. The annual alcohol and drug testing report shall be submitted by January 30th following the close of the year to which it relates.

E. No-Show Records

For the purpose of eliminating trips referrals involving a passenger who demonstrates a pattern of "no-showing" for trips, the Contractor agrees to maintain records of no-shows recorded by passengers provided paratransit service under this Agreement. The Contractor agrees to submit a no-show report each time a request for billing is submitted. For the billing period, the report shall identify the number of no-shows per eligible passenger and the dates on which no-shows were recorded. The Contractor agrees that no-show records used to

prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

F. Missed Trips

For the purpose of reporting "missed trips," the Contractor agrees to maintain records of missed trips affecting passengers who are provided paratransit service under this Agreement. The Contractor agrees to submit a missed trip report each time a request for billing is submitted. For the billing period, the report shall identify the number of missed trips affecting eligible passengers and the dates on which missed trips were experienced. The Contractor agrees that missed trip records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

G. Ada Rides

In order to ensure that rides provided pursuant to this Agreement are provided to eligible passengers and that operating statistics needed for federal reporting are provided, the following is required:

1. Pursuant to subsection 9.1(B) of this Agreement, each month, the Contractor shall submit an alphabetical listing of those persons who have been provided service during the month who the Contractor has reported as being an eligible passenger (approved by Wichita Transit as ADA paratransit eligible).

2. Wichita Transit will check the names on the list against the database of persons who have been granted ADA paratransit eligibility. Wichita Transit will provide the Contractor with the names of those individuals who have not been determined as ADA paratransit eligible.

3. After receipt of the names of nonADA eligible persons, the Contractor may assist the subject individuals with completion of an ADA paratransit eligibility application or shall, in the future, discontinue reporting them as eligible passengers on monthly billing.

H. Access To Jobs Trips

In order to report the number of rides funded through the Access to Jobs program, and pursuant to 9.1(B) of this Agreement, the Contractor's monthly billing shall identify the number of rides funded by way of that program.

I. Peak Hour Rides

As required by subsection 9.1(B) of this Agreement, the Contractor shall provide as part of monthly billing the number of rides provided to eligible passengers between 6:00 AM and 10:00 AM and between 2:00 PM and 6:00 PM.

J. Ambulatory / Wheelchair Rides

As required by subsection 9.1(B) of this Agreement, the Contractor shall provide as part of monthly billing the number rides provided to ambulatory persons and the number or rides provided to persons using a wheelchair or similar mobility device.

K. New Freedom Trips

In order to report the number of rides funded through the New Freedom Program, and pursuant to subsection 9.1(B) of this Agreement, the Contractor's monthly billing shall identify the number of rides funded by way of that program. The parties acknowledge that the federal record keeping and reporting requirements under the New Freedom Program have not yet been developed. City agrees to inform Contractor of such requirements when City becomes aware of them. The parties agree to develop reasonable procedures under this Agreement to satisfy such requirements.

8.4 Availability Of Records

During the time period set forth in Section 8.2 above, the Contractor agrees to make any and all of its records, books, papers, documents, and data, which are directly related to this Agreement, available to City, or to the authorized representative of the federal, state or local agency with statutory oversight authority, for the purposes of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies, and transcriptions.

8.5 Right To Inspect All Work, Equipment And Materials

The Contractor shall permit the City or any authorized representative of the City's Director of Transit to inspect all work, equipment and materials with regard to the provision of service under this Agreement during Contractor's normal business hours, upon reasonable advance notice.

8.6 Right To Observe Operations

The City reserves the right to observe operations by the Contractor pursuant to this Agreement at any reasonable time, i.e., maintenance, sensitivity training, loading and unloading eligible passengers, etc.

A. If any observed operations are deemed defective by the City, the City shall notify the Contractor in writing of such defect.

B. Upon receipt of a written notice of defect, the Contractor has 10 days to investigate the defect and provide reports to the City.

C. The response shall include a copy of the City's notice of defect, together with a written statement of any corrective action taken, and shall be subject to the City's reasonable approval.

D. If corrective actions are reasonably satisfactory, the City will advise the Contractor within 10 days. Otherwise, the City will notify the Contractor of the continuing defect within such 10-day period, and the City has an additional five (5) days to remedy the defect and failure to do so may be considered as a breach of this Agreement.

8.7 Confidentiality

Both parties will comply with the provisions of state and federal regulations in regard to confidentiality of eligible passenger records.

ARTICLE 9: METHOD OF BILLING AND PAYMENT

9.1 Billing Procedures

Contractor agrees that billings and payments made under this Agreement shall be processed in accordance with established budgeting, purchasing and accounting procedures of the City. After receipt of billing, payment shall be made as soon as procedures allow.

A. Monthly Billing

A monthly billing system will be used, and all billing, statements, and other necessary supporting documentation must be submitted by the 15th day of the month following the billing period.

B. Billing Content

All billings shall be substantially in the form of Exhibit 1. In addition, Wichita Transit may require copies of daily vehicle manifests to be submitted with monthly billing that indicate passenger pick up windows for eligible passengers and the actual time of vehicle arrival for passenger boarding. If Wichita Transit requires the submitting of daily vehicle manifests, trips provided to eligible passengers shall be highlighted on the manifests to make them easily differentiated from trips provided to persons who have not been granted ADA paratransit eligibility. If the Contractor is providing rides under the Access to Jobs program, those rides shall be totaled on monthly billing.

C. Billing Procedure
[Reserved]

D. Rate Of Reimbursement

Transportation reimbursements will be made on a unit of service basis pursuant to this Agreement. The reimbursement per unit of service for trips provided pursuant to this Agreement shall be $6.20 per ambulatory person and $10.50 per person who use a wheelchair or similar mobility device. Contractor will be paid based upon the status of the eligible passenger as either ambulatory or non-ambulatory (as determined in the certification issued by Wichita Transit).

E. Review Of Reimbursement Rates

The amount of reimbursement per unit of service will be reviewed during the last six months of 2012 and may be subject to revision starting January 1, 2013. Any change in the reimbursement rate must be agreed to in writing by all Parties prior to implementation.

F. No Show Trips And Missed Trips
[Reserved]

9.2 Support Documentation

Billing shall be supported with the documentation described above in Section 9.1.

9.3 Reimbursement Restrictions

Payments shall be made to the Contractor only for items and services authorized by this Agreement. The City reserves the right to disallow reimbursement for any item or service, which is not authorized by this Agreement.

9.4 Service By Contractor

A. General

Service is to be provided by the Contractor in a prompt and courteous manner. Passengers must be determined ADA paratransit-eligible before the Contractor provides paratransit rides pursuant to this Agreement. Passengers are to be picked up within a 30-minute pick-up window, and the unit of service or one-way trip shall not last longer than 90 minutes. If circumstances dictate that the aforementioned conditions cannot reasonably be met, the Contractor shall make note of the incident and reference it as part of the on-time performance or trip length reports discussed in subsection 8.3(C). As discussed in subsection 8.3(A) of this Agreement, the Contractor is to provide the City a complaints report.

B. Back-Up System

The Contractor must have a reasonable back-up system in place to ensure that eligible passengers are not stranded.

C. Acceptance Of Rides Referred By The City

When referred by the City, and upon reasonable notice, the Contractor agrees to accept subscription service ride requests by persons who are not already persons served by the Contractor. This is provided that acceptance of the referral will not negatively impact the Contractor's ability to meet on-time performance or trip length standards for existing eligible passengers or Contractor's other persons served.

D. Collection Of Fare From Eligible Passengers

To the extent required in Section 4.1(H), the Contractor shall collect and retain the standard ADA paratransit fare from eligible passengers.

E. Alcohol And Drug Testing

The Contractor shall comply with the federal drug and alcohol regulations as set forth in Appendix B of this Agreement. Pre-employment, post accident, and random tests shall be conducted for any and all safety-sensitive Contractor positions that perform duties under the terms of this Agreement.

F. Vehicle Specifications

All vehicles used in service pursuant to this Agreement shall be equipped with a two-way radio or other acceptable telecommunications device (including, but not limited to, cell phones) and shall, at all times, be maintained in a reasonable operating condition and shall be kept in clean and comfortable condition for the transportation of eligible passengers. Vehicles used to transport eligible passengers who use a wheelchair shall be equipped with an operable wheelchair lift or ramp. Regardless of the manner in which a vehicle is

equipped, all rides will be compensated at the applicable ambulatory or nonambulatory rate under Section 9.1.D, as the case may be. Compliance with vehicle specifications shall be subject to regular monitoring by the City or the designated representative of Wichita Transit.

G. Ada Compliance

The Contractor must be in compliance with the federal Americans with Disabilities Act (ADA) requirements.

ARTICLE 10: LICENSES AND PERMITS

A. The Contractor shall procure and maintain all permits, licenses, certifications, bonds and insurance required by federal, state or local authority for carrying out this Agreement.

B. The Contractor shall maintain workers compensation insurance in amounts not less than minimum statutory requirements.

C. The Contractor shall notify the City immediately if any required license, permit, bond or insurance is cancelled, suspended, or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may be the basis for immediate termination of this Agreement by the City.

ARTICLE 11: INSURANCE

The Contractor shall provide to the City a Certificate of Insurance evidencing comprehensive general liability, professional liability, and comprehensive automobile liability coverage in the following minimum amounts:

A.	Bodily Injury	$500,000	each occurrence
B.	Property Damage	$500,000	each occurrence
C.	Bodily Injury	$500,000	each person
D.	Bodily Injury (owned, not owned, hired, renter or otherwise)		
	1. Bodily Injury	$500,000	each accident
	2. Property Damage	$500,000	each accident
E.	Workers Compensation	As statutorily required	

ARTICLE 12: SUBCONTRACTING

A. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City.

B. All approved subcontracts must conform to applicable requirements set forth in this Agreement.

C. If the City consents to the use of subcontractors, the Contractor shall remain fully responsible for all obligations of this Agreement, including indemnification of the City for all actions by subcontractors.

ARTICLE 13: TERMINATION OF AGREEMENT

13.1 Termination For Cause

If either party fails to fulfill, in a timely and proper manner, its obligations under this Agreement or if either party violates any of the terms, covenants, conditions, or stipulations of this Agreement, the nonbreaching party may terminate this Agreement by giving at least 10 days written termination notice to the breaching party. Such notice of termination shall specify the specific breach(s) and the date of the termination.

In the event of termination, such information prepared by the Contractor to carry out this Agreement, including data, studies, surveys, records, drawings, maps, and reports shall, continue to be made available to the City in accordance with Article 8 above. The Contractor shall be entitled to just and equitable compensation for any satisfactory work completed on such documents and other materials.

In spite of the above, the Contractor shall not be relieved of liability to the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the City from the Contractor are determined.

13.2 Termination Of Agreement On Other Grounds

Either party, upon 30 days written notice, may terminate this Agreement for any reason whatsoever. Written notice must state the effective date of the termination.

13.3 Expiration Of Contract Term

Subject to earlier termination as provided in Sections 13.1 and 13.2 above, this Agreement shall extend until December 31, 2012. If the Parties do not have a negotiated renewal agreement completed on or before that date, this Agreement shall continue under the last agreed terms on a month-to-month basis.

ARTICLE 14: NOTIFICATION

Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if in writing and delivered by public or private carrier, personal delivery, registered or certified mail (return receipt requested) or by means of telefacsimile or telecopier. Notices delivered in person or sent via telefacsimile or telecopier shall be effective as of the date the notice is delivered or sent. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be effective forty-eight hours after the date said notice is postmarked to the addressee.

Contractor: City of Wichita – Wichita Transit
Attn: Director of Transit
Address: 777 E. Waterman
Phone: (316) 352-4805
Fax: (316) 337-9287

Vendor: Contractor Name: Catholic Charities
Attn: Cynthia Colbert
Address: 5920 W. Central
Phone: 264-8344

ARTICLE 15: MISCELLANEOUS

15.1 The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right or remedy provide by this Agreement, shall not be construed as a future waiver or relinquishment of such term, provision, option, right or remedy. A waiver by either party of any term or provision of this Agreement shall not be deemed to have been made unless submitted in writing and signed by the waiving party.

15.2 This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and to their permitted successors and assigns.

15.3 In the event that any provision in this Agreement shall be adjudicated invalid under applicable laws, the invalid provision shall automatically be considered amended so as to conform to all applicable legal requirements. If the invalidity cannot be cured by amendment, the invalid provision shall be considered stricken and deleted. In either case, the validity or enforceability of the remaining provision of this Agreement shall remain intact.

15.4 Both parties to this Agreement represent and agree that (i) they have reviewed all aspects of this Agreement, (ii) they have been given the opportunity to review this Agreement with counsel, and (iii) they have carefully read and fully understand all provisions of this Agreement.

15.5 The Contractor and the City shall not be obligated to resolve any claim or dispute related to this Agreement by arbitration. Any reference to arbitration in the Agreement or its attached appendixes is deemed void. The Parties are free to negotiate, mediate, or litigate any dispute between them.

Appendix A

Exhibit 1

Monthly Reporting Form

Reporting Period: _____

On-Time Performance And Trip Length Compliance:

What was your on-time performance for the reporting period?

Early Arrival %	On Time %	Late Arrival %

What % of trips provided involved a client being on the van for more than 90 minutes? _____

Peak Hour Rides:

How many rides were provided to eligible passengers during the following times?

6:00 AM and 10:00 AM	2:00 PM and 6:00 PM

Wheelchair / Ambulatory Rides:

How many rides were provided to eligible passengers who use a wheelchair or similar mobility device and how may rides where provided to eligible passengers who are ambulatory.

Total Rides Provided	Number Of Ambulatory Rides	Number Of Wheelchair Rides

Access To Jobs Rides:

How many rides were provided to eligible passengers under the Access to Jobs Program? _____

New Freedom Rides:

How many rides were provided to eligible passengers under the New Freedom Program? _____

Passenger Fares Collected And Due:

What is the dollar value of passenger fares collected or due during the reporting period (number of eligible trips X $2.50)? $_____

Missed Trip Information:

Name Of Person	Number Of Missed Trips	Missed Trip Dates

No Show Information:

Name Of Person	Number Of No-Shows	No-Show Dates

Complaint Reporting:

Reason For Complaint	Number Of Incidents During Reporting Period
Late arrival	
Early arrival	
Length of time on van	
Driver rudeness	
Other	

Any Action Taken on Complaints

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

NAME OF CLIENT: _____

Nature of Complaint: _____

_____

Actions taken: _____

_____

Appendix B

Federal And State Regulations

The following additional provisions apply to this Agreement only to the extent that the subject matter of any given provision is relevant to the purposes of the Agreement. The Parties agree that the provisions found in subsections 1, 2, 3, 4, 6, 9, and 10 of Section 9 do not apply to this Agreement. Any inconsistency between the provisions of Appendixes A and B shall be resolved in favor of Appendix A. With respect to Section 10 below, the Parties agree that this is a “fee for service” contract and that no bids or proposals are being submitted in connection herewith. With respect to Section 12 below, the Parties agree that the dispute resolution provisions of Section 15.5 of Appendix A shall control. With respect to Section 13 below, no disadvantaged business goal is applicable to this Agreement. With respect to Section 15 below, the Parties agree that this Agreement does not involve international air transportation.

U. S. FEDERAL

1. Energy Conservation Requirements

   The Contractor agrees 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.

2. Clean Water Requirements

   A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

   B. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

3. Lobbying

   Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR, Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, gran,t or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with nonfederal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the (Purchaser).

4. Access To Records

   Contracts exceeding $100,000.

A. The Contractor agrees to provide the Purchaser, the FTA administrator, the Comptroller General of the United States, or any of their duly-authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

B. Where the Purchaser enters into a negotiated contract for other than a small purchase or under a simplified acquisition threshold and is an institution of higher education, a hospital or other nonprofit organization and is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, the FTA administrator, the Comptroller General of the United States, or any of their duly-authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

C. Where any Purchaser, which is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 U.S.C. 5325(a), enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation, and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

D. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

E. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly-authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

F. FTA does not require the inclusion of these requirements in subcontracts.

5. Federal Changes

Contractor shall, at all times, comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

6. Clean Air Requirements

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

7. No Government Obligation To Third Parties

A. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

8. Program Fraud And False Or Fraudulent Statements And Related Acts

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the federal fovernment deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

9. Termination

Contracts with nonprofit organizations and institutions of higher education in excess of $100,000 and all other contracts in excess of $10,000.

A. Termination for Convenience (General Provision)

The Purchaser may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Purchaser to be paid the Contractor. If the

Contractor has any property in its possession belonging to the Purchaser, the Contractor will account for the same and dispose of it in the manner the Purchaser directs.

B. Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract or if the Contractor fails to comply with any other provisions of the contract, the Purchaser may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Purchaser that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Purchaser, after setting up a new delivery of performance schedule, may allow the Contractor to continue work or treat the termination as a termination for convenience.

C. Opportunity to Cure (General Provision)

The Purchaser, in its sole discretion, may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Purchaser's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Purchaser setting forth the nature of said breach or default, Purchaser shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Purchaser)from also pursuing all available remedies against Contractor and its sureties for said breach or default.

D. Waiver of Remedies for Any Breach

In the event that Purchaser elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Purchaser shall not limit Purchaser's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

E. Termination for Convenience (Professional or Transit Service Contracts)

The Purchaser, by written notice, may terminate this contract, in whole or in part, when it is in the government's interest. If this contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

F. Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

G. Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Purchaser’s goods, the Contractor shall, upon direction of the Purchaser, protect and preserve the goods until surrendered to the Purchaser or its agent. The Contractor and Purchaser shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

H. Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Purchaser may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Purchaser resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Purchaser in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Purchaser, acts of another contractor in the performance of a contract with the Purchaser, epidemics, quarantine restrictions, strikes, freight embargoes; and

2) The Contractor, within 10 days from the beginning of any delay, notifies the Purchaser in writing of the causes of delay. If in the judgment of the Purchaser, the delay is excusable, the time for completing the work shall be extended. The judgment of the Purchaser shall be final and conclusive on the parties, but subject to appeal under the disputes clauses.

   If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Purchaser.

I. Termination for Convenience or Default (Architect and Engineering)

The Purchaser may terminate this contract in whole or in part, for the Purchaser's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall (i) immediately discontinue all services affected (unless the notice directs otherwise) and (ii) deliver to the contracting officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Purchaser, the contracting officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Purchaser may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Purchaser.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

J. Termination for Convenience of Default (Cost-Type Contracts)

The Purchaser may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the Purchaser or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Purchaser, or property supplied to the Contractor by the Purchaser. If the termination is for default, the Purchaser may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Purchaser and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the Purchaser, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the Purchaser determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the Purchaser, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination of convenience.

10. Government-Wide Debarment And Suspension

<u>Certification Regarding Debarment, Suspension, and Other Responsibilities Matters Lower Tier Covered Transactions (Third Party Contracts over $100,000)</u>

<u>Instructions for Certification</u>

By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

A. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, Purchaser may pursue available remedies, including suspension and/or debarment.

B. The prospective lower tier participant shall provide immediate written notice to Purchaser if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

C. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the definitions and coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Purchaser for assistance in obtaining a copy of those regulations.

D. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Purchaser.

E. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list issued by U.S. General Service Administration.

F. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

G. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the federal government, Purchaser may pursue available remedies including suspension and/or debarment.

<u>Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction</u>

A. The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed

for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

B. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

11. Civil Rights Requirements

The following requirements apply to the underlying contract:

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

12. Breaches And Dispute Resolution

Contracts exceeding $100,000.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the Parties shall be decided in writing by the authorized representative of Purchaser's [title of employee]. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

Performance During Dispute - Unless otherwise directed by Purchase), Contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Purchaser and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the Purchaser is located.

Rights and Remedies - The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Purchaser, architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

13. Disadvantages Business Enterprises (DBE)

The federal fiscal year goal has been set by the Purchaser in an attempt to match projected procurements with available qualified disadvantaged businesses. The Purchaser’s goals for budgeted service contracts, bus parts, and other materials and supplies for Disadvantaged Business Enterprises have been established by the Purchaser as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this Request for Proposal.

If a specified DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, the Purchaser may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

This section is being developed to reflect the new rule in 49 CFR Part 26.

A. Policy - It is the policy of the Department of Transportation and the City that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106c of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURRA), shall have the maximum opportunity to participate in the performance of contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106c of the STURAA of 1987 apply to this contract.

The Contractor agrees to ensure that DBEs, as defined in 49 CFR Part 23 and Section 106c of the STURRA of 1987, have the maximum opportunity to participate in the whole or in part with federal funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of the Purchaser to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the Purchaser's procurement activities are encouraged.

B. DBE Obligation – The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

C. Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the Purchaser may declare the contractor noncompliance and in breach of contract.

D. The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the Purchaser's DBE program. These records and documents will be made available at reasonable times and places for inspection by an authorized representative of the Purchaser and will be submitted to the state upon request.

E. The Purchaser will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- Identification of qualified DBE
- Available listing of minority assistance agencies
- Holding bid conferences to emphasize requirements

F. DBE program definitions as used in the contract:

1) Disadvantage business means a "small business concern"

a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

c) Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

d) Whose management and daily business operations are controlled by one or more women individuals who own it.

2) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B – (Section 106(c)) Determinations of Business Size.

3) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

14. Incorporation Of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Purchase) requests which would cause the Purchaser to be in violation of the FTA terms and conditions.

15. Fly America

Applies ONLY to contracts involving international air transportation of persons or material.

The Contractor understands and agrees that the federal government will not participate in the costs of international air transportation of any persons involved in or property acquired for the project unless that air transportation is provided by U.S. flag carriers to extend services by U.S. flag carriers is available,

consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974f. as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers." 41 C.F.R. §§ 301.131 through 301.143.

16. Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321, et seq., consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq*.; And joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

17. Access Requirements For Persons With Disabilities (ADA)

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101, et seq., which requires the provision of accessible facilities and services, and with the following federal regulations, including any amendments thereto:

A. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

B. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Assistance," 49 C.F.R. Part 27;

C. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

D. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

E. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

F. U.S. GSA regulations, "Accommodations for the Physically Handicapped'" 41 C.F.R. Subpart 101-19;

G. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

I. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

J. Any implementing requirements FTA may issue.

18. Notification Of Federal Participation

Applies ONLY to contracts for goods and services, including construction, valued at over $500,000.

In the announcement of any third party contract award for goods or services (including construction services) having aggregate value of $500,000 or more, the Contractor agrees to specify the amount of federal assistance to be used in financing that acquisition of goods and services and to the expressed amount of that federal assistance as a percentage of that total cost of that third-party contract.

STATE OF KANSAS

A. Agreement With Kansas Law

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

B. Disclaimer Of Liability

Neither the State of Kansas nor any agency thereof, nor the City, shall hold harmless or indemnify any Contractor beyond that for any liability or damage except for those occasioned by the acts or omissions of its own employees, and then only up to the limits of liability designated under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.). However, City agrees to indemnify and hold harmless Contractor to the maximum extent permitted by law.

C. Responsibility For Taxes

Neither the State of Kansas, nor the City, shall be responsible for, nor indemnify a Contractor for, any federal, state or local taxes that may be imposed or levied upon the subject matter of this contract.

PURCHASED ADA PARATRANSIT RIDES
CONTRACTOR AGREEMENT

This Agreement is entered into this _____ day of _____, 2011, by and between the City of Wichita - Wichita Transit (hereinafter referred to as "City") and CPRFK (hereinafter referred to as "Contractor"). Hereinafter, both "City" and "Contractor" shall be jointly referred to as "Parties."

WHEREAS, the purpose of the program is to provide for purchased ADA paratransit rides, and

WHEREAS, The Contractor agrees to provide ADA paratransit rides in a safe and professional nature, in accordance with the terms and conditions set forth in Appendix A hereto, to eligible passengers within the service area defined in Section 4.2 of Appendix A.

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

1. Term: This Agreement shall become a legal and binding contract upon execution of same by both Parties, effective retroactively from January 1, 2012, until terminated as provided in Article 13 of Appendix A.

2. Compensation: Parties expressly understand and agree that payments made to the Contractor pursuant to the terms of this Agreement shall be on a fee-for-service basis according to the rates outlined in Appendix A and according to the method of billing and payment as set forth in Appendix A.

3. Indemnification: The Contractor shall indemnify, defend and hold harmless the City and the City Council, directors, officers, employees, agents, legal representatives, heirs, successors and assigns (collectively referred to as "Indemnified Parties") from and against any and all losses, costs, injuries, claims, damages, expenses and liabilities, including attorneys' fees (without limitations), collectively referred to as "Liabilities," arising out of or resulting from (i) the provision by the Contractor of transportation services hereunder or (ii) the failure of the Contractor to fulfill any of its obligations pursuant to this Agreement; provided, however, that such duty to indemnify shall not include Liabilities arising from the acts or omissions of the Indemnified parties.

4. Duties: As listed in Appendix A, the Contractor and the City shall perform duties pursuant to this Agreement.

5. Local and Federal Compliance: The Parties shall comply with the requirements of all applicable federal, state, and local rules and regulations, standard assurances, and one-time submissions listed in Appendixes A and B.

6. Assignment: Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

7. Amendments: This Agreement may not be amended unless such amendment is in writing and signed by both Parties.

8. Incorporation of Appendixes: Appendixes A and B are attached hereto and made a part hereof.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the day and year first above written.

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST

City Clerk
City of Wichita, Kansas

APPROVED AS TO FORM

Department of Law
City of Wichita, Kansas

Cerebral Palsy Research Foundation
Non-profit Organization

Pat Jonas, CEO

APPENDIX A
GENERAL CONTRACTUAL PROVISIONS FOR CONTRACTOR

ARTICLE 1: AUTHORITY TO CONTRACT

1.1 Affirmation Of Legal Authority

The Contractor assures it possesses legal authority to contract these services, that resolution, motion or similar action has been duly adopted or passed as an official act of the Contractor's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Contractor to act in connection with the application and to provide such additional information as may be required.

1.2 Required Documentation

Corporations, limited liability companies, or other forms of business requiring statutory conformance shall furnish evidence of good standing in the form of a certificate signed by the Kansas Secretary of State. A corporation shall furnish a copy of its corporate resolution evidencing the authority to sign this Agreement, executed by the corporation's secretary or president.

ARTICLE 2: RELATIONSHIP OF PARTIES

It is agreed that the legal relationship between Contractor and City is of a contractual nature. Both parties assert and believe that the Contractor is acting as an independent contractor in providing the services and performing the duties provided for by this Agreement. The Contractor is, at all times, acting as an independent contractor and not as an officer, agent, or employee of the City. As an independent contractor, the Contractor, and employees of the Contractor, will not be within the protection or coverage of City's worker's compensation insurance, subject to the provisions of K.S.A. 1997 Supp. 44-505, nor shall the Contractor, and employees of the Contractor, be entitled to any current or future benefits provided to employees of the City. Further, the City shall not be responsible for withholding of social security, federal, and/or state income tax or unemployment compensation from payments made by the City to the Contractor.

ARTICLE 3: SCOPE OF SERVICES

3.1 Purpose

It is mutually agreed by and between City and Contractor that the purposes of this Agreement are for the Contractor to efficiently provide eligible passengers a level of curb-to-curb paratransit service which is substantially equivalent to the curb-to-curb paratransit service presently operated by Wichita Transit, all under the terms and conditions described in this Agreement, and to provide Wichita Transit those operating statistics required for federal reporting. If the present volume of service provided by the Contractor pursuant to this Agreement substantially increases or decreases, the Parties agree to negotiate reasonable modifications to this Agreement (which may include termination of this Agreement). The Parties also agree that Contractor shall only provide service, which is compensable under this Agreement, during Wichita Transit regular operating hours.

The Parties agree that the terms of this Agreement apply only to purchased rides for eligible passengers, which are referred to Contractor by Wichita Transit for service during normal operating hours and conditions. To the extent that Contractor provides transportation services to

persons who may otherwise be eligible passengers (whether as a part of Contractor's programs or otherwise) outside of such hours, Contractor may do so upon the terms and conditions acceptable to Contractor, and such services are outside the scope of this Agreement.

3.2 Special Needs Of Eligible Passengers

All eligible passengers have one or more disabilities that preclude their use of regular fixed route transit. Many will require special assistance when boarding or leaving the paratransit vehicle. The Contractor shall be responsible for assuring that all drivers are capable, competent, courteous and sensitive to these special needs.

ARTICLE 4: GENERAL PROVISIONS

4.1 Definitions

A. Unit Of Service – One one-way trip equals one unit of service per eligible passenger. A round-trip taken by an eligible passenger equals two units of service. A unit of service is the basis for subsidy reimbursement.

B. Eligible Passenger(S) – Individuals who are certified and approved as ADA paratransit eligible by Wichita Transit, both ambulatory and nonambulatory.

C. Personal Care Attendant (PCA) – A person who has been approved to ride free of charge with an eligible passenger for the purpose of providing the passenger with mobility assistance. Qualified drivers employed by the Contractor may act as a PCA for eligible passengers who are also the clients of the Contractor (human service agency).

D. Equivalent Level Of Paratransit Service – The following criteria are used to evaluate the Contractor's performance relative to the level of paratransit service operated by Wichita Transit:

1. On-time performance for pick-ups. Actual pick-up times shall be evaluated relative to a 30-minute pick-up window.

2. Length of time an eligible passenger spends on the paratransit vehicle. Length of time shall be evaluated relative to a 90-minute maximum ride time.

E. No-Show – When an eligible passenger fails to board the vehicle when the vehicle arrives on time (within the 30-minute pick-up window). Pursuant to subsection 9.1(F) of this Agreement, subsidy reimbursement shall not be paid for "no-shows." Wichita Transit agrees to permit the Contractor to develop and enforce reasonable policies, which limit "no-shows."

F. 30-Minute Pick-Up Window – The 30-minute timeframe provided to the eligible passenger that indicates when the paratransit vehicle has been scheduled to arrive. Vehicles arriving within the 30-minute pick-up window are considered on time.

G. Missed Trip – When the vehicle arrives for the pick-up, at a time after the end of the 30-minute pick-up window, and the client does not board the van. Pursuant to subsection 9.1(F) of this Agreement, subsidy reimbursement shall not be paid for "missed trips".

H. Passenger Fare – For eligible passengers, the amount of money that the Contractor may collect from an eligible passenger with respect to a unit of service. Pursuant to subsection 9.4(D) of this Agreement, the appropriate passenger fare will be assumed by the Parties to

have been retained by the Contractor as partial payment. As required by The ADA, the passenger fare charged or collected from eligible passengers shall not be more that twice the price of regular bus fare.

I. Referred Ada Trip - A subscription service ride request referred to an agency by Wichita Transit. Possible Contractor acceptance of a referred trip is provided for in subsection of 9.4(C) of this Agreement.

J. Subscription Service – A trip to the same place at the same time at least twice a week for a minimum period of 30 days.

K. Unless otherwise indicated, all references to time periods, which are measured in "days," shall be deemed to refer to a day of ordinary operation for Wichita Transit.

4.2 Service Area

All transportation service provided pursuant to this Agreement shall be limited to trips within the corporate limits of the City of Wichita, within the Oaklawn Improvement District, or within that portion of The City of Bel Aire that lies within 3/4-mile of a fixed bus route operated by Wichita Transit.

4.3 Passenger Eligibility

The City, acting through Wichita Transit, shall establish a procedure to determine eligible passengers. No person shall be transported under this Agreement who has not first been determined by the City as eligible for the service.

4.4 Laws To Be Observed
[Reserved]

ARTICLE 5: PERSONNEL

5.1 Qualified Personnel

The Contractor represents that it has, or shall secure at its own expense, all personnel required to perform the transportation service provided under this Agreement. Except as provided in Section 6.3 below, such personnel shall not be employees of or have any other contractual relationship with the City. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this Agreement.

5.2 Minimum Wages
[Reserved]

5.3 Employee Conflict Of Interest

The Contractor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

5.4 Employee Background Checks

The parties to this Agreement recognize that those entities or persons providing government funded services are subject to public scrutiny. Consequently, by entering into this Agreement, the Contractor assumes an affirmative and ongoing duty during the term of this Agreement to guarantee and maintain compliance with requirements set forth in Subsection 5.5 below. Such compliance will require the use of Contractor customary criminal background checks, and such other background checks as may be reasonably requested by Wichita Transit from time to time, upon all personnel or agents providing services pursuant to this Agreement, or administering the funds conveyed under this Agreement.

5.5 Participant Safeguard

The Contractor certifies that none of its employees are:

A. Persons convicted of any felony, drug or drug related offense, crime of falsehood or dishonesty, or a crime against another person during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to provide services, administer this Agreement, or handle the funds conveyed under this Agreement;

B. Persons convicted of any sex offenses, crimes against children, or crimes of violence toward persons during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to interact in any way with persons served pursuant to this Agreement; and

C. Persons convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to operate a vehicle in which an eligible passenger is provided transportation pursuant to this Agreement. For purposes of this section, "serious traffic offense shall not include any offense deemed a "traffic infraction" under K.S.A. 8-2116 and 8-2118.

D. Any questions concerning the interpretation of this subsection and/or its application to an individual shall be referred to the City's Law Department. The Department of Law's decision shall be final for purposes of compliance with this Agreement. The term "conviction" shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and diversions appearing on the driving records maintained by the Kansas Department of Revenue.

ARTICLE 6: PROHIBITION OF CONFLICT OF INTEREST

6.1 Interest Of Public Officials And Others

No officer or employee of the City, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested. Nor shall any officer or employee of the City or any member of its governing body or other public official have any interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2 Interest Of Contractor
[Reserved]

6.3 Employee Conflicts

If either party becomes aware of situations in which a) an employee of the City shall also be an employee of the Contractor at the time of the Agreement, b) an employee of the Contractor seeks additional / alternative employment with the City during term of the Agreement, or c) an employee of the City seeks additional / alternative employment with the Contractor during term of the Agreement, such party shall immediately provide written notice of such situations to the other party. The City shall make every effort to assure that such employees do not have any authority to approve a) grant funds, b) agreements, or c) affiliate status to the Contractor or Contractor's competitors.

ARTICLE 7: FUNDING / CASH BASIS AND BUDGET LAWS

The right of the City 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 shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

ARTICLE 8: REPORTS, RECORDS AND INSPECTION

8.1 Documentation Of Costs

Proper invoices, vouchers, or other documentation evidencing in proper detail the nature and propriety of charges shall support all costs incurred by the Contractor for which the Contractor purports to be entitled to reimbursement. All checks, invoices, vouchers, payrolls, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to both parties to this Agreement.

8.2 Maintenance Of Records

Except as otherwise authorized by the City, the Contractor shall retain such documentation as listed in subsections 8.1 and 8.3 for a period of not less than three (3) years after the close of the calendar year which contains the time period to which a monthly billing relates. This is the case unless City notifies Contractor in writing of an action, including but not limited to, litigation or audit resolution proceedings, which necessitates maintenance of records beyond the minimum three (3)-year period.

8.3 Reports

During the term of this Agreement, the Contractor shall furnish reports and information to the City substantially in the form attached hereto as Exhibit 1. If the Contractor fails to provide all required reports in a timely, complete and accurate manner, the City may withhold payments to the Contractor until such time as all reports are furnished. Exhibit 1 is deemed to satisfactorily address the reporting requirements for subsections (A) through (K) below. Contractor will be paid based upon the status of the eligible passenger as either ambulatory or nonambulatory (as determined in the certification issued by Wichita Transit). However, Contractor shall report all applicable types of rides provided to such passenger (i.e., if one or more of the categories set forth in subsections G,

H, I, and J below applies to a passenger, then Contractor shall report the ride under each applicable category).

A. Complaint Records

The Contractor agrees to maintain complete records of all complaints received regarding service provided under this Agreement. The Contractor agrees to submit a service complaint report each time a request for reimbursement is submitted. Such report shall identify the general nature of complaints received during the billing period along with any actions taken by the Contractor. The Contractor agrees that complaint records used to prepare complaint reports are subject to review by the City to ensure the accuracy and validity of information reported.

B. Financial And Operating Data

The Contractor shall be responsible for providing financial and operating data as may be required by the City and/or necessary to comply with the requirements of the National Transit Database of the Urban Mass Transportation Act of 1964, as amended.

C. On-Time Performance And Trip Length Records

For the purpose of determining if the Contractor is providing a level of paratransit service equivalent to that provided by Wichita Transit, the Contractor agrees to maintain records of on-time performance and trip length for all eligible passengers provided paratransit service under this Agreement. The Contractor agrees to submit an on-time performance and trip length report each time a request for billing is submitted. For the billing period, the report shall identify the percentage of pick ups occurring before, during, and after the 30-minute pick-up window and the number of trips involving an eligible passenger ride of 90 minutes or greater. The Contractor agrees that on-time performance and trip length records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

D. Alcohol And Drug Test Reports

The Contractor agrees to submit to the City an annual report that identifies the Contractor's efforts to comply with FTA and U.S. DOT requirements for pre-employment, post-accident and random alcohol and drug testing of safety sensitive employees. The annual alcohol and drug testing report shall be submitted by January 30th following the close of the year to which it relates.

E. No-Show Records

For the purpose of eliminating trips referrals involving a passenger who demonstrates a pattern of "no-showing" for trips, the Contractor agrees to maintain records of no-shows recorded by passengers provided paratransit service under this Agreement. The Contractor agrees to submit a no-show report each time a request for billing is submitted. For the billing period, the report shall identify the number of no-shows per eligible passenger and the dates on which no-shows were recorded. The Contractor agrees that no-show records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

F. Missed Trips

For the purpose of reporting "missed trips," the Contractor agrees to maintain records of missed trips affecting passengers who are provided paratransit service under this Agreement. The Contractor agrees to submit a missed trip report each time a request for billing is submitted. For the billing period, the report shall identify the number of missed trips affecting eligible passengers and the dates on which missed trips were experienced. The Contractor agrees that missed trip records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

G. Ada Rides

In order to ensure that rides provided pursuant to this Agreement are provided to eligible passengers and that operating statistics needed for federal reporting are provided, the following is required:

1. Pursuant to subsection 9.1(B) of this Agreement, each month, the Contractor shall submit an alphabetical listing of those persons who have been provided service during the month who the Contractor has reported as being an eligible passenger (approved by Wichita Transit as ADA paratransit eligible).

2. Wichita Transit will check the names on the list against the database of persons who have been granted ADA paratransit eligibility. Wichita Transit will provide the Contractor with the names of those individuals who have not been determined as ADA paratransit eligible.

3. After receipt of the names of nonADA eligible persons, the Contractor may assist the subject individuals with completion of an ADA paratransit eligibility application or shall, in the future, discontinue reporting them as eligible passengers on monthly billing.

H. Access To Jobs Trips

In order to report the number of rides funded through the Access to Jobs program, and pursuant to 9.1(B) of this Agreement, the Contractor's monthly billing shall identify the number of rides funded by way of that program.

I. Peak Hour Rides

As required by subsection 9.1(B) of this Agreement, the Contractor shall provide as part of monthly billing the number of rides provided to eligible passengers between 6:00 AM and 10:00 AM and between 2:00 PM and 6:00 PM.

J. Ambulatory / Wheelchair Rides

As required by subsection 9.1(B) of this Agreement, the Contractor shall provide as part of monthly billing the number rides provided to ambulatory persons and the number or rides provided to persons using a wheelchair or similar mobility device.

K. New Freedom Trips

In order to report the number of rides funded through the New Freedom Program, and pursuant to subsection 9.1(B) of this Agreement, the Contractor's monthly billing shall identify the number of rides funded by way of that program. The parties acknowledge that the federal record keeping and reporting requirements under the New Freedom Program have not yet been developed. City agrees to inform Contractor of such requirements when City becomes aware of them. The parties agree to develop reasonable procedures under this Agreement to satisfy such requirements.

8.4 Availability Of Records

During the time period set forth in Section 8.2 above, the Contractor agrees to make any and all of its records, books, papers, documents, and data, which are directly related to this Agreement, available to City, or to the authorized representative of the federal, state or local agency with statutory oversight authority, for the purposes of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies, and transcriptions.

8.5 Right To Inspect All Work, Equipment And Materials

The Contractor shall permit the City or any authorized representative of the City's Director of Transit to inspect all work, equipment and materials with regard to the provision of service under this Agreement during Contractor's normal business hours, upon reasonable advance notice.

8.6 Right To Observe Operations

The City reserves the right to observe operations by the Contractor pursuant to this Agreement at any reasonable time, i.e., maintenance, sensitivity training, loading and unloading eligible passengers, etc.

A. If any observed operations are deemed defective by the City, the City shall notify the Contractor in writing of such defect.

B. Upon receipt of a written notice of defect, the Contractor has 10 days to investigate the defect and provide reports to the City.

C. The response shall include a copy of the City's notice of defect, together with a written statement of any corrective action taken, and shall be subject to the City's reasonable approval.

D. If corrective actions are reasonably satisfactory, the City will advise the Contractor within 10 days. Otherwise, the City will notify the Contractor of the continuing defect within such 10-day period, and the City has an additional five (5) days to remedy the defect and failure to do so may be considered as a breach of this Agreement.

8.7 Confidentiality

Both parties will comply with the provisions of state and federal regulations in regard to confidentiality of eligible passenger records.

ARTICLE 9: METHOD OF BILLING AND PAYMENT

9.1 Billing Procedures

Contractor agrees that billings and payments made under this Agreement shall be processed in accordance with established budgeting, purchasing and accounting procedures of the City. After receipt of billing, payment shall be made as soon as procedures allow.

A. Monthly Billing

A monthly billing system will be used, and all billing, statements, and other necessary supporting documentation must be submitted by the 15th day of the month following the billing period.

B. Billing Content

All billings shall be substantially in the form of Exhibit 1. In addition, Wichita Transit may require copies of daily vehicle manifests to be submitted with monthly billing that indicate passenger pick up windows for eligible passengers and the actual time of vehicle arrival for passenger boarding. If Wichita Transit requires the submitting of daily vehicle manifests, trips provided to eligible passengers shall be highlighted on the manifests to make them easily differentiated from trips provided to persons who have not been granted ADA paratransit eligibility. If the Contractor is providing rides under the Access to Jobs program, those rides shall be totaled on monthly billing.

C. Billing Procedure
[Reserved]

D. Rate Of Reimbursement

Transportation reimbursements will be made on a unit of service basis pursuant to this Agreement. The reimbursement per unit of service for trips provided pursuant to this Agreement shall be $6.20 per ambulatory person and $10.50 per person who use a wheelchair or similar mobility device. Contractor will be paid based upon the status of the eligible passenger as either ambulatory or non-ambulatory (as determined in the certification issued by Wichita Transit).

E. Review Of Reimbursement Rates

The amount of reimbursement per unit of service will be reviewed during the last six months of 2012 and may be subject to revision starting January 1, 2013. Any change in the reimbursement rate must be agreed to in writing by all Parties prior to implementation.

F. No Show Trips And Missed Trips
[Reserved]

9.2 Support Documentation

Billing shall be supported with the documentation described above in Section 9.1.

9.3 Reimbursement Restrictions

Payments shall be made to the Contractor only for items and services authorized by this Agreement. The City reserves the right to disallow reimbursement for any item or service, which is not authorized by this Agreement.

9.4 Service By Contractor

A. General

Service is to be provided by the Contractor in a prompt and courteous manner. Passengers must be determined ADA paratransit-eligible before the Contractor provides paratransit rides pursuant to this Agreement. Passengers are to be picked up within a 30-minute pick-up window, and the unit of service or one-way trip shall not last longer than 90 minutes. If circumstances dictate that the aforementioned conditions cannot reasonably be met, the Contractor shall make note of the incident and reference it as part of the on-time performance or trip length reports discussed in subsection 8.3(C). As discussed in subsection 8.3(A) of this Agreement, the Contractor is to provide the City a complaints report.

B. Back-Up System

The Contractor must have a reasonable back-up system in place to ensure that eligible passengers are not stranded.

C. Acceptance Of Rides Referred By The City

When referred by the City, and upon reasonable notice, the Contractor agrees to accept subscription service ride requests by persons who are not already persons served by the Contractor. This is provided that acceptance of the referral will not negatively impact the Contractor's ability to meet on-time performance or trip length standards for existing eligible passengers or Contractor's other persons served.

D. Collection Of Fare From Eligible Passengers

To the extent required in Section 4.1(H), the Contractor shall collect and retain the standard ADA paratransit fare from eligible passengers.

E. Alcohol And Drug Testing

The Contractor shall comply with the federal drug and alcohol regulations as set forth in Appendix B of this Agreement. Pre-employment, post accident, and random tests shall be conducted for any and all safety-sensitive Contractor positions that perform duties under the terms of this Agreement.

F. Vehicle Specifications

All vehicles used in service pursuant to this Agreement shall be equipped with a two-way radio or other acceptable telecommunications device (including, but not limited to, cell phones) and shall, at all times, be maintained in a reasonable operating condition and shall be kept in clean and comfortable condition for the transportation of eligible passengers. Vehicles used to transport eligible passengers who use a wheelchair shall be equipped with an operable wheelchair lift or ramp. Regardless of the manner in which a vehicle is equipped, all rides will be compensated at the applicable ambulatory or nonambulatory rate

under Section 9.1.D, as the case may be. Compliance with vehicle specifications shall be subject to regular monitoring by the City or the designated representative of Wichita Transit.

G. Ada Compliance

The Contractor must be in compliance with the federal Americans with Disabilities Act (ADA) requirements.

ARTICLE 10: LICENSES AND PERMITS

A. The Contractor shall procure and maintain all permits, licenses, certifications, bonds and insurance required by federal, state or local authority for carrying out this Agreement.

B. The Contractor shall maintain workers compensation insurance in amounts not less than minimum statutory requirements.

C. The Contractor shall notify the City immediately if any required license, permit, bond or insurance is cancelled, suspended, or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may be the basis for immediate termination of this Agreement by the City.

ARTICLE 11: INSURANCE

The Contractor shall provide to the City a Certificate of Insurance evidencing comprehensive general liability, professional liability, and comprehensive automobile liability coverage in the following minimum amounts:

A.	Bodily Injury	$500,000	each occurrence
B.	Property Damage	$500,000	each occurrence
C.	Bodily Injury	$500,000	each person
D.	Bodily Injury (owned, not owned, hired, renter or otherwise)		
	1. Bodily Injury	$500,000	each accident
	2. Property Damage	$500,000	each accident
E.	Workers Compensation	As statutorily required	

ARTICLE 12: SUBCONTRACTING

A. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City.

B. All approved subcontracts must conform to applicable requirements set forth in this Agreement.

C. If the City consents to the use of subcontractors, the Contractor shall remain fully responsible for all obligations of this Agreement, including indemnification of the City for all actions by subcontractors.

ARTICLE 13: TERMINATION OF AGREEMENT

13.1 Termination For Cause

If either party fails to fulfill, in a timely and proper manner, its obligations under this Agreement or if either party violates any of the terms, covenants, conditions, or stipulations of this Agreement, the nonbreaching party may terminate this Agreement by giving at least 10 days written termination notice to the breaching party. Such notice of termination shall specify the specific breach(s) and the date of the termination.

In the event of termination, such information prepared by the Contractor to carry out this Agreement, including data, studies, surveys, records, drawings, maps, and reports shall, continue to be made available to the City in accordance with Article 8 above. The Contractor shall be entitled to just and equitable compensation for any satisfactory work completed on such documents and other materials.

In spite of the above, the Contractor shall not be relieved of liability to the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the City from the Contractor are determined.

13.2 Termination Of Agreement On Other Grounds

Either party, upon 30 days written notice, may terminate this Agreement for any reason whatsoever. Written notice must state the effective date of the termination.

13.3 Expiration Of Contract Term

Subject to earlier termination as provided in Sections 13.1 and 13.2 above, this Agreement shall extend until December 31, 2012. If the Parties do not have a negotiated renewal agreement completed on or before that date, this Agreement shall continue under the last agreed terms on a month-to-month basis.

ARTICLE 14: NOTIFICATION

Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if in writing and delivered by public or private carrier, personal delivery, registered or certified mail (return receipt requested) or by means of telefacsimile or telecopier. Notices delivered in person or sent via telefacsimile or telecopier shall be effective as of the date the notice is delivered or sent. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be effective forty-eight hours after the date said notice is postmarked to the addressee.

Contractor: City of Wichita – Wichita Transit
Attn: Director of Transit
Address: 777 E. Waterman
Phone: (316) 352-4805
Fax: (316) 337-9287

Vendor: Contractor Name: CPRFK - Timberlines
Attn: Susan Robinson,
Address: 2021 N. Old Manor, Bldg. 701
Phone: 652-1578
Fax: 651-5214

ARTICLE 15: MISCELLANEOUS

15.1 The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right or remedy provide by this Agreement, shall not be construed as a future waiver or relinquishment of such term, provision, option, right or remedy. A waiver by either party of any term or provision of this Agreement shall not be deemed to have been made unless submitted in writing and signed by the waiving party.

15.2 This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and to their permitted successors and assigns.

15.3 In the event that any provision in this Agreement shall be adjudicated invalid under applicable laws, the invalid provision shall automatically be considered amended so as to conform to all applicable legal requirements. If the invalidity cannot be cured by amendment, the invalid provision shall be considered stricken and deleted. In either case, the validity or enforceability of the remaining provision of this Agreement shall remain intact.

15.4 Both parties to this Agreement represent and agree that (i) they have reviewed all aspects of this Agreement, (ii) they have been given the opportunity to review this Agreement with counsel, and (iii) they have carefully read and fully understand all provisions of this Agreement.

15.5 The Contractor and the City shall not be obligated to resolve any claim or dispute related to this Agreement by arbitration. Any reference to arbitration in the Agreement or its attached appendixes is deemed void. The Parties are free to negotiate, mediate, or litigate any dispute between them.

Appendix A

Exhibit 1

Monthly Reporting Form

Reporting Period: _____

On-Time Performance And Trip Length Compliance:

What was your on-time performance for the reporting period?

Early Arrival %	On Time %	Late Arrival %

What % of trips provided involved a client being on the van for more than 90 minutes? _____

Peak Hour Rides:

How many rides were provided to eligible passengers during the following times?

6:00 AM and 10:00 AM	2:00 PM and 6:00 PM

Wheelchair / Ambulatory Rides:

How many rides were provided to eligible passengers who use a wheelchair or similar mobility device and how may rides where provided to eligible passengers who are ambulatory.

Total Rides Provided	Number Of Ambulatory Rides	Number Of Wheelchair Rides

Access To Jobs Rides:

How many rides were provided to eligible passengers under the Access to Jobs Program? _____

New Freedom Rides:

How many rides were provided to eligible passengers under the New Freedom Program? _____

Passenger Fares Collected And Due:

What is the dollar value of passenger fares collected or due during the reporting period (number of eligible trips X $2.50)? $_____

Missed Trip Information:

Name Of Person	Number Of Missed Trips	Missed Trip Dates

No Show Information:

Name Of Person	Number Of No-Shows	No-Show Dates

Complaint Reporting:

Reason For Complaint	Number Of Incidents During Reporting Period
Late arrival	
Early arrival	
Length of time on van	
Driver rudeness	
Other	

Any Action Taken on Complaints

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

NAME OF CLIENT: _____

Nature of Complaint: _____

_____

Actions taken: _____

_____

Appendix B

Federal And State Regulations

The following additional provisions apply to this Agreement only to the extent that the subject matter of any given provision is relevant to the purposes of the Agreement. The Parties agree that the provisions found in subsections 1, 2, 3, 4, 6, 9, and 10 of Section 9 do not apply to this Agreement. Any inconsistency between the provisions of Appendixes A and B shall be resolved in favor of Appendix A. With respect to Section 10 below, the Parties agree that this is a “fee for service” contract and that no bids or proposals are being submitted in connection herewith. With respect to Section 12 below, the Parties agree that the dispute resolution provisions of Section 15.5 of Appendix A shall control. With respect to Section 13 below, no disadvantaged business goal is applicable to this Agreement. With respect to Section 15 below, the Parties agree that this Agreement does not involve international air transportation.

U. S. FEDERAL

1. Energy Conservation Requirements

   The Contractor agrees 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.

2. Clean Water Requirements

   A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

   B. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

3. Lobbying

   Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR, Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, gran,t or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with nonfederal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the (Purchaser).

4. Access To Records

   Contracts exceeding $100,000.

A. The Contractor agrees to provide the Purchaser, the FTA administrator, the Comptroller General of the United States, or any of their duly-authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

B. Where the Purchaser enters into a negotiated contract for other than a small purchase or under a simplified acquisition threshold and is an institution of higher education, a hospital or other nonprofit organization and is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, the FTA administrator, the Comptroller General of the United States, or any of their duly-authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

C. Where any Purchaser, which is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 U.S.C. 5325(a), enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation, and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

D. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

E. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly-authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

F. FTA does not require the inclusion of these requirements in subcontracts.

5. Federal Changes

Contractor shall, at all times, comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

6. Clean Air Requirements

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

7. No Government Obligation To Third Parties

A. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

8. Program Fraud And False Or Fraudulent Statements And Related Acts

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the federal fovernment deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

9. Termination

Contracts with nonprofit organizations and institutions of higher education in excess of $100,000 and all other contracts in excess of $10,000.

A. Termination for Convenience (General Provision)

The Purchaser may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Purchaser to be paid the Contractor. If the Contractor has any property in its possession belonging to the Purchaser, the Contractor will account for the same and dispose of it in the manner the Purchaser directs.

B. Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract or if the Contractor fails to comply with any other provisions of the contract, the Purchaser may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Purchaser that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Purchaser, after setting up a new delivery of performance schedule, may allow the Contractor to continue work or treat the termination as a termination for convenience.

C. Opportunity to Cure (General Provision)

The Purchaser, in its sole discretion, may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Purchaser's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Purchaser setting forth the nature of said breach or default, Purchaser shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Purchaser)from also pursuing all available remedies against Contractor and its sureties for said breach or default.

D. Waiver of Remedies for Any Breach

In the event that Purchaser elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Purchaser shall not limit Purchaser's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

E. Termination for Convenience (Professional or Transit Service Contracts)

The Purchaser, by written notice, may terminate this contract, in whole or in part, when it is in the government's interest. If this contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

F. Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.
If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

G. Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Purchaser's goods, the Contractor shall, upon direction of the Purchaser, protect and preserve the goods until surrendered to the Purchaser or its agent. The Contractor and Purchaser shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

H. Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Purchaser may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Purchaser resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Purchaser in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Purchaser, acts of another contractor in the performance of a contract with the Purchaser, epidemics, quarantine restrictions, strikes, freight embargoes; and

2) The Contractor, within 10 days from the beginning of any delay, notifies the Purchaser in writing of the causes of delay. If in the judgment of the Purchaser, the delay is excusable, the time for completing the work shall be extended. The judgment of the Purchaser shall be final and conclusive on the parties, but subject to appeal under the disputes clauses.

   If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Purchaser.

I. Termination for Convenience or Default (Architect and Engineering)

The Purchaser may terminate this contract in whole or in part, for the Purchaser's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and

effective date of the termination. Upon receipt of the notice, the Contractor shall (i) immediately discontinue all services affected (unless the notice directs otherwise) and (ii) deliver to the contracting officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Purchaser, the contracting officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Purchaser may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Purchaser.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

J. Termination for Convenience of Default (Cost-Type Contracts)

The Purchaser may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the Purchaser or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Purchaser, or property supplied to the Contractor by the Purchaser. If the termination is for default, the Purchaser may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Purchaser and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the Purchaser, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the Purchaser determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the Purchaser, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination of convenience.

10. Government-Wide Debarment And Suspension

<u>Certification Regarding Debarment, Suspension, and Other Responsibilities Matters Lower Tier Covered Transactions (Third Party Contracts over $100,000)</u>

<u>Instructions for Certification</u>

By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

A. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to

the federal government, Purchaser may pursue available remedies, including suspension and/or debarment.

B. The prospective lower tier participant shall provide immediate written notice to Purchaser if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

C. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the definitions and coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Purchaser for assistance in obtaining a copy of those regulations.

D. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Purchaser.

E. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list issued by U.S. General Service Administration.

F. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

G. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the federal government, Purchaser may pursue available remedies including suspension and/or debarment.

<u>Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction</u>

A. The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

B. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

11. Civil Rights Requirements

The following requirements apply to the underlying contract:

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

12. Breaches And Dispute Resolution

Contracts exceeding $100,000.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the Parties shall be decided in writing by the authorized representative of Purchaser's [title of employee]. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

Performance During Dispute - Unless otherwise directed by Purchase), Contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Purchaser and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the Purchaser is located.

Rights and Remedies - The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Purchaser, architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

13. Disadvantages Business Enterprises (DBE)

The federal fiscal year goal has been set by the Purchaser in an attempt to match projected procurements with available qualified disadvantaged businesses. The Purchaser’s goals for budgeted service contracts, bus parts, and other materials and supplies for Disadvantaged Business Enterprises have been established by the Purchaser as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this Request for Proposal.

If a specified DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, the Purchaser may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

This section is being developed to reflect the new rule in 49 CFR Part 26.

A. Policy - It is the policy of the Department of Transportation and the City that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106c of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURRA), shall have the maximum opportunity to participate in the performance of contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106c of the STURAA of 1987 apply to this contract.

   The Contractor agrees to ensure that DBEs, as defined in 49 CFR Part 23 and Section 106c of the STURRA of 1987, have the maximum opportunity to participate in the whole or in part with federal

funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of the Purchaser to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the Purchaser's procurement activities are encouraged.

B. DBE Obligation – The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

C. Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the Purchaser may declare the contractor noncompliance and in breach of contract.

D. The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the Purchaser's DBE program. These records and documents will be made available at reasonable times and places for inspection by an authorized representative of the Purchaser and will be submitted to the state upon request.

E. The Purchaser will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- Identification of qualified DBE
- Available listing of minority assistance agencies
- Holding bid conferences to emphasize requirements

F. DBE program definitions as used in the contract:

1) Disadvantage business means a "small business concern"

a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

c) Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

d) Whose management and daily business operations are controlled by one or more women individuals who own it.

2) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B – (Section 106(c)) Determinations of Business Size.

3) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

14. Incorporation Of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Purchase) requests which would cause the Purchaser to be in violation of the FTA terms and conditions.

15. Fly America

Applies ONLY to contracts involving international air transportation of persons or material.

The Contractor understands and agrees that the federal government will not participate in the costs of international air transportation of any persons involved in or property acquired for the project unless that air transportation is provided by U.S. flag carriers to extend services by U.S. flag carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974f. as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers." 41 C.F.R. §§ 301.131 through 301.143.

16. Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321, et seq., consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R.

Part 1500 *et seq*.; And joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

17. Access Requirements For Persons With Disabilities (ADA)

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101, et seq., which requires the provision of accessible facilities and services, and with the following federal regulations, including any amendments thereto:

A. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

B. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Assistance," 49 C.F.R. Part 27;

C. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

D. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

E. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

F. U.S. GSA regulations, "Accommodations for the Physically Handicapped'" 41 C.F.R. Subpart 101-19;

G. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

I. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

J. Any implementing requirements FTA may issue.

18. Notification Of Federal Participation

Applies ONLY to contracts for goods and services, including construction, valued at over $500,000.

In the announcement of any third party contract award for goods or services (including construction services) having aggregate value of $500,000 or more, the Contractor agrees to specify the amount of federal assistance to be used in financing that acquisition of goods and services and to the expressed amount of that federal assistance as a percentage of that total cost of that third-party contract.

STATE OF KANSAS

A. Agreement With Kansas Law

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

B. Disclaimer Of Liability

Neither the State of Kansas nor any agency thereof, nor the City, shall hold harmless or indemnify any Contractor beyond that for any liability or damage except for those occasioned by the acts or omissions of its own employees, and then only up to the limits of liability designated under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.). However, City agrees to indemnify and hold harmless Contractor to the maximum extent permitted by law.

C. Responsibility For Taxes

Neither the State of Kansas, nor the City, shall be responsible for, nor indemnify a Contractor for, any federal, state or local taxes that may be imposed or levied upon the subject matter of this contract.

PURCHASED ADA PARATRANSIT RIDES
CONTRACTOR AGREEMENT

This Agreement is entered into this _____ day of _____, 2011, by and between the City of Wichita - Wichita Transit (hereinafter referred to as "City") and Envision (hereinafter referred to as "Contractor"). Hereinafter, both "City" and "Contractor" shall be jointly referred to as "Parties."

WHEREAS, the purpose of the program is to provide for purchased ADA paratransit rides, and

WHEREAS, The Contractor agrees to provide ADA paratransit rides in a safe and professional nature, in accordance with the terms and conditions set forth in Appendix A hereto, to eligible passengers within the service area defined in Section 4.2 of Appendix A.

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

1. Term: This Agreement shall become a legal and binding contract upon execution of same by both Parties, effective retroactively from January 1, 2012, until terminated as provided in Article 13 of Appendix A.

2. Compensation: Parties expressly understand and agree that payments made to the Contractor pursuant to the terms of this Agreement shall be on a fee-for-service basis according to the rates outlined in Appendix A and according to the method of billing and payment as set forth in Appendix A.

3. Indemnification: The Contractor shall indemnify, defend and hold harmless the City and the City Council, directors, officers, employees, agents, legal representatives, heirs, successors and assigns (collectively referred to as "Indemnified Parties") from and against any and all losses, costs, injuries, claims, damages, expenses and liabilities, including attorneys' fees (without limitations), collectively referred to as "Liabilities," arising out of or resulting from (i) the provision by the Contractor of transportation services hereunder or (ii) the failure of the Contractor to fulfill any of its obligations pursuant to this Agreement; provided, however, that such duty to indemnify shall not include Liabilities arising from the acts or omissions of the Indemnified parties.

4. Duties: As listed in Appendix A, the Contractor and the City shall perform duties pursuant to this Agreement.

5. Local and Federal Compliance: The Parties shall comply with the requirements of all applicable federal, state, and local rules and regulations, standard assurances, and one-time submissions listed in Appendixes A and B.

6. Assignment: Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

7. Amendments: This Agreement may not be amended unless such amendment is in writing and signed by both Parties.

8. Incorporation of Appendixes: Appendixes A and B are attached hereto and made a part hereof.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the day and year first above written.

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST

City Clerk
City of Wichita, Kansas

APPROVED AS TO FORM

Department of Law
City of Wichita, Kansas

ENVISION
Non-Profit Organization

Linda K. Merrill, CEO

APPENDIX A
GENERAL CONTRACTUAL PROVISIONS FOR CONTRACTOR

ARTICLE 1: AUTHORITY TO CONTRACT

1.1 Affirmation Of Legal Authority

The Contractor assures it possesses legal authority to contract these services, that resolution, motion or similar action has been duly adopted or passed as an official act of the Contractor's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Contractor to act in connection with the application and to provide such additional information as may be required.

1.2 Required Documentation

Corporations, limited liability companies, or other forms of business requiring statutory conformance shall furnish evidence of good standing in the form of a certificate signed by the Kansas Secretary of State. A corporation shall furnish a copy of its corporate resolution evidencing the authority to sign this Agreement, executed by the corporation's secretary or president.

ARTICLE 2: RELATIONSHIP OF PARTIES

It is agreed that the legal relationship between Contractor and City is of a contractual nature. Both parties assert and believe that the Contractor is acting as an independent contractor in providing the services and performing the duties provided for by this Agreement. The Contractor is, at all times, acting as an independent contractor and not as an officer, agent, or employee of the City. As an independent contractor, the Contractor, and employees of the Contractor, will not be within the protection or coverage of City's worker's compensation insurance, subject to the provisions of K.S.A. 1997 Supp. 44-505, nor shall the Contractor, and employees of the Contractor, be entitled to any current or future benefits provided to employees of the City. Further, the City shall not be responsible for withholding of social security, federal, and/or state income tax or unemployment compensation from payments made by the City to the Contractor.

ARTICLE 3: SCOPE OF SERVICES

3.1 Purpose

It is mutually agreed by and between City and Contractor that the purposes of this Agreement are for the Contractor to efficiently provide eligible passengers a level of curb-to-curb paratransit service which is substantially equivalent to the curb-to-curb paratransit service presently operated by Wichita Transit, all under the terms and conditions described in this Agreement, and to provide Wichita Transit those operating statistics required for federal reporting. If the present volume of service provided by the Contractor pursuant to this Agreement substantially increases or decreases, the Parties agree to negotiate reasonable modifications to this Agreement (which may include termination of this Agreement). The Parties also agree that Contractor shall only provide service, which is compensable under this Agreement, during Wichita Transit regular operating hours.

The Parties agree that the terms of this Agreement apply only to purchased rides for eligible passengers, which are referred to Contractor by Wichita Transit for service during normal operating hours and conditions. To the extent that Contractor provides transportation services to

persons who may otherwise be eligible passengers (whether as a part of Contractor's programs or otherwise) outside of such hours, Contractor may do so upon the terms and conditions acceptable to Contractor, and such services are outside the scope of this Agreement.

3.2 Special Needs Of Eligible Passengers

All eligible passengers have one or more disabilities that preclude their use of regular fixed route transit. Many will require special assistance when boarding or leaving the paratransit vehicle. The Contractor shall be responsible for assuring that all drivers are capable, competent, courteous and sensitive to these special needs.

ARTICLE 4: GENERAL PROVISIONS

4.1 Definitions

A. Unit Of Service – One one-way trip equals one unit of service per eligible passenger. A round-trip taken by an eligible passenger equals two units of service. A unit of service is the basis for subsidy reimbursement.

B. Eligible Passenger(S) – Individuals who are certified and approved as ADA paratransit eligible by Wichita Transit, both ambulatory and nonambulatory.

C. Personal Care Attendant (PCA) – A person who has been approved to ride free of charge with an eligible passenger for the purpose of providing the passenger with mobility assistance. Qualified drivers employed by the Contractor may act as a PCA for eligible passengers who are also the clients of the Contractor (human service agency).

D. Equivalent Level Of Paratransit Service – The following criteria are used to evaluate the Contractor's performance relative to the level of paratransit service operated by Wichita Transit:

1. On-time performance for pick-ups. Actual pick-up times shall be evaluated relative to a 30-minute pick-up window.

2. Length of time an eligible passenger spends on the paratransit vehicle. Length of time shall be evaluated relative to a 90-minute maximum ride time.

E. No-Show – When an eligible passenger fails to board the vehicle when the vehicle arrives on time (within the 30-minute pick-up window). Pursuant to subsection 9.1(F) of this Agreement, subsidy reimbursement shall not be paid for "no-shows." Wichita Transit agrees to permit the Contractor to develop and enforce reasonable policies, which limit "no-shows."

F. 30-Minute Pick-Up Window – The 30-minute timeframe provided to the eligible passenger that indicates when the paratransit vehicle has been scheduled to arrive. Vehicles arriving within the 30-minute pick-up window are considered on time.

G. Missed Trip – When the vehicle arrives for the pick-up, at a time after the end of the 30-minute pick-up window, and the client does not board the van. Pursuant to subsection 9.1(F) of this Agreement, subsidy reimbursement shall not be paid for "missed trips".

H. Passenger Fare – For eligible passengers, the amount of money that the Contractor may collect from an eligible passenger with respect to a unit of service. Pursuant to subsection 9.4(D) of this Agreement, the appropriate passenger fare will be assumed by the Parties to

have been retained by the Contractor as partial payment. As required by The ADA, the passenger fare charged or collected from eligible passengers shall not be more that twice the price of regular bus fare.

I. Referred Ada Trip - A subscription service ride request referred to an agency by Wichita Transit. Possible Contractor acceptance of a referred trip is provided for in subsection of 9.4(C) of this Agreement.

J. Subscription Service – A trip to the same place at the same time at least twice a week for a minimum period of 30 days.

K. Unless otherwise indicated, all references to time periods, which are measured in "days," shall be deemed to refer to a day of ordinary operation for Wichita Transit.

4.2 Service Area

All transportation service provided pursuant to this Agreement shall be limited to trips within the corporate limits of the City of Wichita, within the Oaklawn Improvement District, or within that portion of The City of Bel Aire that lies within 3/4-mile of a fixed bus route operated by Wichita Transit.

4.3 Passenger Eligibility

The City, acting through Wichita Transit, shall establish a procedure to determine eligible passengers. No person shall be transported under this Agreement who has not first been determined by the City as eligible for the service.

4.4 Laws To Be Observed
[Reserved]

ARTICLE 5: PERSONNEL

5.1 Qualified Personnel

The Contractor represents that it has, or shall secure at its own expense, all personnel required to perform the transportation service provided under this Agreement. Except as provided in Section 6.3 below, such personnel shall not be employees of or have any other contractual relationship with the City. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this Agreement.

5.2 Minimum Wages
[Reserved]

5.3 Employee Conflict Of Interest

The Contractor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

5.4 Employee Background Checks

The parties to this Agreement recognize that those entities or persons providing government funded services are subject to public scrutiny. Consequently, by entering into this Agreement, the Contractor assumes an affirmative and ongoing duty during the term of this Agreement to guarantee and maintain compliance with requirements set forth in Subsection 5.5 below. Such compliance will require the use of Contractor customary criminal background checks, and such other background checks as may be reasonably requested by Wichita Transit from time to time, upon all personnel or agents providing services pursuant to this Agreement, or administering the funds conveyed under this Agreement.

5.5 Participant Safeguard

The Contractor certifies that none of its employees are:

A. Persons convicted of any felony, drug or drug related offense, crime of falsehood or dishonesty, or a crime against another person during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to provide services, administer this Agreement, or handle the funds conveyed under this Agreement;

B. Persons convicted of any sex offenses, crimes against children, or crimes of violence toward persons during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to interact in any way with persons served pursuant to this Agreement; and

C. Persons convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to operate a vehicle in which an eligible passenger is provided transportation pursuant to this Agreement. For purposes of this section, "serious traffic offense shall not include any offense deemed a "traffic infraction" under K.S.A. 8-2116 and 8-2118.

D. Any questions concerning the interpretation of this subsection and/or its application to an individual shall be referred to the City's Law Department. The Department of Law's decision shall be final for purposes of compliance with this Agreement. The term "conviction" shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and diversions appearing on the driving records maintained by the Kansas Department of Revenue.

ARTICLE 6: PROHIBITION OF CONFLICT OF INTEREST

6.1 Interest Of Public Officials And Others

No officer or employee of the City, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested. Nor shall any officer or employee of the City or any member of its governing body or other public official have any interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2 Interest Of Contractor
[Reserved]

6.3 Employee Conflicts

If either party becomes aware of situations in which a) an employee of the City shall also be an employee of the Contractor at the time of the Agreement, b) an employee of the Contractor seeks additional / alternative employment with the City during term of the Agreement, or c) an employee of the City seeks additional / alternative employment with the Contractor during term of the Agreement, such party shall immediately provide written notice of such situations to the other party. The City shall make every effort to assure that such employees do not have any authority to approve a) grant funds, b) agreements, or c) affiliate status to the Contractor or Contractor's competitors.

ARTICLE 7: FUNDING / CASH BASIS AND BUDGET LAWS

The right of the City 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 shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

ARTICLE 8: REPORTS, RECORDS AND INSPECTION

8.1 Documentation Of Costs

Proper invoices, vouchers, or other documentation evidencing in proper detail the nature and propriety of charges shall support all costs incurred by the Contractor for which the Contractor purports to be entitled to reimbursement. All checks, invoices, vouchers, payrolls, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to both parties to this Agreement.

8.2 Maintenance Of Records

Except as otherwise authorized by the City, the Contractor shall retain such documentation as listed in subsections 8.1 and 8.3 for a period of not less than three (3) years after the close of the calendar year which contains the time period to which a monthly billing relates. This is the case unless City notifies Contractor in writing of an action, including but not limited to, litigation or audit resolution proceedings, which necessitates maintenance of records beyond the minimum three (3)-year period.

8.3 Reports

During the term of this Agreement, the Contractor shall furnish reports and information to the City substantially in the form attached hereto as Exhibit 1. If the Contractor fails to provide all required reports in a timely, complete and accurate manner, the City may withhold payments to the Contractor until such time as all reports are furnished. Exhibit 1 is deemed to satisfactorily address the reporting requirements for subsections (A) through (K) below. Contractor will be paid based upon the status of the eligible passenger as either ambulatory or nonambulatory (as determined in the certification issued by Wichita Transit). However, Contractor shall report all applicable types of rides provided to such passenger (i.e., if one or more of the categories set forth in subsections G,

H, I, and J below applies to a passenger, then Contractor shall report the ride under each applicable category).

A. Complaint Records

The Contractor agrees to maintain complete records of all complaints received regarding service provided under this Agreement. The Contractor agrees to submit a service complaint report each time a request for reimbursement is submitted. Such report shall identify the general nature of complaints received during the billing period along with any actions taken by the Contractor. The Contractor agrees that complaint records used to prepare complaint reports are subject to review by the City to ensure the accuracy and validity of information reported.

B. Financial And Operating Data

The Contractor shall be responsible for providing financial and operating data as may be required by the City and/or necessary to comply with the requirements of the National Transit Database of the Urban Mass Transportation Act of 1964, as amended.

C. On-Time Performance And Trip Length Records

For the purpose of determining if the Contractor is providing a level of paratransit service equivalent to that provided by Wichita Transit, the Contractor agrees to maintain records of on-time performance and trip length for all eligible passengers provided paratransit service under this Agreement. The Contractor agrees to submit an on-time performance and trip length report each time a request for billing is submitted. For the billing period, the report shall identify the percentage of pick ups occurring before, during, and after the 30-minute pick-up window and the number of trips involving an eligible passenger ride of 90 minutes or greater. The Contractor agrees that on-time performance and trip length records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

D. Alcohol And Drug Test Reports

The Contractor agrees to submit to the City an annual report that identifies the Contractor's efforts to comply with FTA and U.S. DOT requirements for pre-employment, post-accident and random alcohol and drug testing of safety sensitive employees. The annual alcohol and drug testing report shall be submitted by January 30th following the close of the year to which it relates.

E. No-Show Records

For the purpose of eliminating trips referrals involving a passenger who demonstrates a pattern of "no-showing" for trips, the Contractor agrees to maintain records of no-shows recorded by passengers provided paratransit service under this Agreement. The Contractor agrees to submit a no-show report each time a request for billing is submitted. For the billing period, the report shall identify the number of no-shows per eligible passenger and the dates on which no-shows were recorded. The Contractor agrees that no-show records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

F. Missed Trips

For the purpose of reporting "missed trips," the Contractor agrees to maintain records of missed trips affecting passengers who are provided paratransit service under this Agreement. The Contractor agrees to submit a missed trip report each time a request for billing is submitted. For the billing period, the report shall identify the number of missed trips affecting eligible passengers and the dates on which missed trips were experienced. The Contractor agrees that missed trip records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

G. Ada Rides

In order to ensure that rides provided pursuant to this Agreement are provided to eligible passengers and that operating statistics needed for federal reporting are provided, the following is required:

1. Pursuant to subsection 9.1(B) of this Agreement, each month, the Contractor shall submit an alphabetical listing of those persons who have been provided service during the month who the Contractor has reported as being an eligible passenger (approved by Wichita Transit as ADA paratransit eligible).

2. Wichita Transit will check the names on the list against the database of persons who have been granted ADA paratransit eligibility. Wichita Transit will provide the Contractor with the names of those individuals who have not been determined as ADA paratransit eligible.

3. After receipt of the names of nonADA eligible persons, the Contractor may assist the subject individuals with completion of an ADA paratransit eligibility application or shall, in the future, discontinue reporting them as eligible passengers on monthly billing.

H. Access To Jobs Trips

In order to report the number of rides funded through the Access to Jobs program, and pursuant to 9.1(B) of this Agreement, the Contractor's monthly billing shall identify the number of rides funded by way of that program.

I. Peak Hour Rides

As required by subsection 9.1(B) of this Agreement, the Contractor shall provide as part of monthly billing the number of rides provided to eligible passengers between 6:00 AM and 10:00 AM and between 2:00 PM and 6:00 PM.

J. Ambulatory / Wheelchair Rides

As required by subsection 9.1(B) of this Agreement, the Contractor shall provide as part of monthly billing the number rides provided to ambulatory persons and the number or rides provided to persons using a wheelchair or similar mobility device.

K. New Freedom Trips

In order to report the number of rides funded through the New Freedom Program, and pursuant to subsection 9.1(B) of this Agreement, the Contractor's monthly billing shall identify the number of rides funded by way of that program. The parties acknowledge that the federal record keeping and reporting requirements under the New Freedom Program have not yet been developed. City agrees to inform Contractor of such requirements when City becomes aware of them. The parties agree to develop reasonable procedures under this Agreement to satisfy such requirements.

8.4 Availability Of Records

During the time period set forth in Section 8.2 above, the Contractor agrees to make any and all of its records, books, papers, documents, and data, which are directly related to this Agreement, available to City, or to the authorized representative of the federal, state or local agency with statutory oversight authority, for the purposes of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies, and transcriptions.

8.5 Right To Inspect All Work, Equipment And Materials

The Contractor shall permit the City or any authorized representative of the City's Director of Transit to inspect all work, equipment and materials with regard to the provision of service under this Agreement during Contractor's normal business hours, upon reasonable advance notice.

8.6 Right To Observe Operations

The City reserves the right to observe operations by the Contractor pursuant to this Agreement at any reasonable time, i.e., maintenance, sensitivity training, loading and unloading eligible passengers, etc.

A. If any observed operations are deemed defective by the City, the City shall notify the Contractor in writing of such defect.

B. Upon receipt of a written notice of defect, the Contractor has 10 days to investigate the defect and provide reports to the City.

C. The response shall include a copy of the City's notice of defect, together with a written statement of any corrective action taken, and shall be subject to the City's reasonable approval.

D. If corrective actions are reasonably satisfactory, the City will advise the Contractor within 10 days. Otherwise, the City will notify the Contractor of the continuing defect within such 10-day period, and the City has an additional five (5) days to remedy the defect and failure to do so may be considered as a breach of this Agreement.

8.7 Confidentiality

Both parties will comply with the provisions of state and federal regulations in regard to confidentiality of eligible passenger records.

ARTICLE 9: METHOD OF BILLING AND PAYMENT

9.1 Billing Procedures

Contractor agrees that billings and payments made under this Agreement shall be processed in accordance with established budgeting, purchasing and accounting procedures of the City. After receipt of billing, payment shall be made as soon as procedures allow.

A. Monthly Billing

A monthly billing system will be used, and all billing, statements, and other necessary supporting documentation must be submitted by the 15th day of the month following the billing period.

B. Billing Content

All billings shall be substantially in the form of Exhibit 1. In addition, Wichita Transit may require copies of daily vehicle manifests to be submitted with monthly billing that indicate passenger pick up windows for eligible passengers and the actual time of vehicle arrival for passenger boarding. If Wichita Transit requires the submitting of daily vehicle manifests, trips provided to eligible passengers shall be highlighted on the manifests to make them easily differentiated from trips provided to persons who have not been granted ADA paratransit eligibility. If the Contractor is providing rides under the Access to Jobs program, those rides shall be totaled on monthly billing.

C. Billing Procedure
[Reserved]

D. Rate Of Reimbursement

Transportation reimbursements will be made on a unit of service basis pursuant to this Agreement. The reimbursement per unit of service for trips provided pursuant to this Agreement shall be $6.20 per ambulatory person and $10.50 per person who use a wheelchair or similar mobility device. Contractor will be paid based upon the status of the eligible passenger as either ambulatory or non-ambulatory (as determined in the certification issued by Wichita Transit).

E. Review Of Reimbursement Rates

The amount of reimbursement per unit of service will be reviewed during the last six months of 2012 and may be subject to revision starting January 1, 2013. Any change in the reimbursement rate must be agreed to in writing by all Parties prior to implementation.

F. No Show Trips And Missed Trips
[Reserved]

9.2 Support Documentation

Billing shall be supported with the documentation described above in Section 9.1.

9.3 Reimbursement Restrictions

Payments shall be made to the Contractor only for items and services authorized by this Agreement. The City reserves the right to disallow reimbursement for any item or service, which is not authorized by this Agreement.

9.4 Service By Contractor

A. General

Service is to be provided by the Contractor in a prompt and courteous manner. Passengers must be determined ADA paratransit-eligible before the Contractor provides paratransit rides pursuant to this Agreement. Passengers are to be picked up within a 30-minute pick-up window, and the unit of service or one-way trip shall not last longer than 90 minutes. If circumstances dictate that the aforementioned conditions cannot reasonably be met, the Contractor shall make note of the incident and reference it as part of the on-time performance or trip length reports discussed in subsection 8.3(C). As discussed in subsection 8.3(A) of this Agreement, the Contractor is to provide the City a complaints report.

B. Back-Up System

The Contractor must have a reasonable back-up system in place to ensure that eligible passengers are not stranded.

C. Acceptance Of Rides Referred By The City

When referred by the City, and upon reasonable notice, the Contractor agrees to accept subscription service ride requests by persons who are not already persons served by the Contractor. This is provided that acceptance of the referral will not negatively impact the Contractor's ability to meet on-time performance or trip length standards for existing eligible passengers or Contractor's other persons served.

D. Collection Of Fare From Eligible Passengers

To the extent required in Section 4.1(H), the Contractor shall collect and retain the standard ADA paratransit fare from eligible passengers.

E. Alcohol And Drug Testing

The Contractor shall comply with the federal drug and alcohol regulations as set forth in Appendix B of this Agreement. Pre-employment, post accident, and random tests shall be conducted for any and all safety-sensitive Contractor positions that perform duties under the terms of this Agreement.

F. Vehicle Specifications

All vehicles used in service pursuant to this Agreement shall be equipped with a two-way radio or other acceptable telecommunications device (including, but not limited to, cell phones) and shall, at all times, be maintained in a reasonable operating condition and shall be kept in clean and comfortable condition for the transportation of eligible passengers. Vehicles used to transport eligible passengers who use a wheelchair shall be equipped with an operable wheelchair lift or ramp. Regardless of the manner in which a vehicle is equipped, all rides will be compensated at the applicable ambulatory or nonambulatory rate

under Section 9.1.D, as the case may be. Compliance with vehicle specifications shall be subject to regular monitoring by the City or the designated representative of Wichita Transit.

G. Ada Compliance

The Contractor must be in compliance with the federal Americans with Disabilities Act (ADA) requirements.

ARTICLE 10: LICENSES AND PERMITS

A. The Contractor shall procure and maintain all permits, licenses, certifications, bonds and insurance required by federal, state or local authority for carrying out this Agreement.

B. The Contractor shall maintain workers compensation insurance in amounts not less than minimum statutory requirements.

C. The Contractor shall notify the City immediately if any required license, permit, bond or insurance is cancelled, suspended, or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may be the basis for immediate termination of this Agreement by the City.

ARTICLE 11: INSURANCE

The Contractor shall provide to the City a Certificate of Insurance evidencing comprehensive general liability, professional liability, and comprehensive automobile liability coverage in the following minimum amounts:

A.	Bodily Injury	$500,000	each occurrence
B.	Property Damage	$500,000	each occurrence
C.	Bodily Injury	$500,000	each person
D.	Bodily Injury (owned, not owned, hired, renter or otherwise)		
	1. Bodily Injury	$500,000	each accident
	2. Property Damage	$500,000	each accident
E.	Workers Compensation	As statutorily required	

ARTICLE 12: SUBCONTRACTING

A. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City.

B. All approved subcontracts must conform to applicable requirements set forth in this Agreement.

C. If the City consents to the use of subcontractors, the Contractor shall remain fully responsible for all obligations of this Agreement, including indemnification of the City for all actions by subcontractors.

ARTICLE 13: TERMINATION OF AGREEMENT

13.1 Termination For Cause

If either party fails to fulfill, in a timely and proper manner, its obligations under this Agreement or if either party violates any of the terms, covenants, conditions, or stipulations of this Agreement, the nonbreaching party may terminate this Agreement by giving at least 10 days written termination notice to the breaching party. Such notice of termination shall specify the specific breach(s) and the date of the termination.

In the event of termination, such information prepared by the Contractor to carry out this Agreement, including data, studies, surveys, records, drawings, maps, and reports shall, continue to be made available to the City in accordance with Article 8 above. The Contractor shall be entitled to just and equitable compensation for any satisfactory work completed on such documents and other materials.

In spite of the above, the Contractor shall not be relieved of liability to the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the City from the Contractor are determined.

13.2 Termination Of Agreement On Other Grounds

Either party, upon 30 days written notice, may terminate this Agreement for any reason whatsoever. Written notice must state the effective date of the termination.

13.3 Expiration Of Contract Term

Subject to earlier termination as provided in Sections 13.1 and 13.2 above, this Agreement shall extend until December 31, 2012. If the Parties do not have a negotiated renewal agreement completed on or before that date, this Agreement shall continue under the last agreed terms on a month-to-month basis.

ARTICLE 14: NOTIFICATION

Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if in writing and delivered by public or private carrier, personal delivery, registered or certified mail (return receipt requested) or by means of telefacsimile or telecopier. Notices delivered in person or sent via telefacsimile or telecopier shall be effective as of the date the notice is delivered or sent. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be effective forty-eight hours after the date said notice is postmarked to the addressee.

Contractor: City of Wichita – Wichita Transit
Attn: Director of Transit
Address: 777 E. Waterman
Phone: (316) 352-4805
Fax: (316) 337-9287

Vendor: Contractor Name: Envision
Attn: Linda Merrill
Address: 610 N. Main
Phone: 267-2244
Fax: 440-1540

ARTICLE 15: MISCELLANEOUS

15.1 The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right or remedy provide by this Agreement, shall not be construed as a future waiver or relinquishment of such term, provision, option, right or remedy. A waiver by either party of any term or provision of this Agreement shall not be deemed to have been made unless submitted in writing and signed by the waiving party.

15.2 This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and to their permitted successors and assigns.

15.3 In the event that any provision in this Agreement shall be adjudicated invalid under applicable laws, the invalid provision shall automatically be considered amended so as to conform to all applicable legal requirements. If the invalidity cannot be cured by amendment, the invalid provision shall be considered stricken and deleted. In either case, the validity or enforceability of the remaining provision of this Agreement shall remain intact.

15.4 Both parties to this Agreement represent and agree that (i) they have reviewed all aspects of this Agreement, (ii) they have been given the opportunity to review this Agreement with counsel, and (iii) they have carefully read and fully understand all provisions of this Agreement.

15.5 The Contractor and the City shall not be obligated to resolve any claim or dispute related to this Agreement by arbitration. Any reference to arbitration in the Agreement or its attached appendixes is deemed void. The Parties are free to negotiate, mediate, or litigate any dispute between them.

Appendix A

Exhibit 1

Monthly Reporting Form

Reporting Period: _____

On-Time Performance And Trip Length Compliance:

What was your on-time performance for the reporting period?

Early Arrival %	On Time %	Late Arrival %

What % of trips provided involved a client being on the van for more than 90 minutes? _____

Peak Hour Rides:

How many rides were provided to eligible passengers during the following times?

6:00 AM and 10:00 AM	2:00 PM and 6:00 PM

Wheelchair / Ambulatory Rides:

How many rides were provided to eligible passengers who use a wheelchair or similar mobility device and how may rides where provided to eligible passengers who are ambulatory.

Total Rides Provided	Number Of Ambulatory Rides	Number Of Wheelchair Rides

Access To Jobs Rides:

How many rides were provided to eligible passengers under the Access to Jobs Program? _____

New Freedom Rides:

How many rides were provided to eligible passengers under the New Freedom Program? _____

Passenger Fares Collected And Due:

What is the dollar value of passenger fares collected or due during the reporting period (number of eligible trips X $2.50)? $_____

Missed Trip Information:

Name Of Person	Number Of Missed Trips	Missed Trip Dates

No Show Information:

Name Of Person	Number Of No-Shows	No-Show Dates

Complaint Reporting:

Reason For Complaint	Number Of Incidents During Reporting Period
Late arrival	
Early arrival	
Length of time on van	
Driver rudeness	
Other	

Any Action Taken on Complaints

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

NAME OF CLIENT: _____

Nature of Complaint: _____

_____

Actions taken: _____

_____

Appendix B

Federal And State Regulations

The following additional provisions apply to this Agreement only to the extent that the subject matter of any given provision is relevant to the purposes of the Agreement. The Parties agree that the provisions found in subsections 1, 2, 3, 4, 6, 9, and 10 of Section 9 do not apply to this Agreement. Any inconsistency between the provisions of Appendixes A and B shall be resolved in favor of Appendix A. With respect to Section 10 below, the Parties agree that this is a “fee for service” contract and that no bids or proposals are being submitted in connection herewith. With respect to Section 12 below, the Parties agree that the dispute resolution provisions of Section 15.5 of Appendix A shall control. With respect to Section 13 below, no disadvantaged business goal is applicable to this Agreement. With respect to Section 15 below, the Parties agree that this Agreement does not involve international air transportation.

U. S. FEDERAL

1. Energy Conservation Requirements

   The Contractor agrees 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.

2. Clean Water Requirements

   A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

   B. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

3. Lobbying

   Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR, Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, gran,t or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with nonfederal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the (Purchaser).

4. Access To Records

   Contracts exceeding $100,000.

A. The Contractor agrees to provide the Purchaser, the FTA administrator, the Comptroller General of the United States, or any of their duly-authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

B. Where the Purchaser enters into a negotiated contract for other than a small purchase or under a simplified acquisition threshold and is an institution of higher education, a hospital or other nonprofit organization and is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, the FTA administrator, the Comptroller General of the United States, or any of their duly-authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

C. Where any Purchaser, which is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 U.S.C. 5325(a), enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation, and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

D. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

E. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly-authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

F. FTA does not require the inclusion of these requirements in subcontracts.

5. Federal Changes

Contractor shall, at all times, comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

6. Clean Air Requirements

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

7. No Government Obligation To Third Parties

A. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

8. Program Fraud And False Or Fraudulent Statements And Related Acts

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the federal fovernment deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

9. Termination

Contracts with nonprofit organizations and institutions of higher education in excess of $100,000 and all other contracts in excess of $10,000.

A. Termination for Convenience (General Provision)

The Purchaser may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Purchaser to be paid the Contractor. If the Contractor has any property in its possession belonging to the Purchaser, the Contractor will account for the same and dispose of it in the manner the Purchaser directs.

B. Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract or if the Contractor fails to comply with any other provisions of the contract, the Purchaser may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Purchaser that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Purchaser, after setting up a new delivery of performance schedule, may allow the Contractor to continue work or treat the termination as a termination for convenience.

C. Opportunity to Cure (General Provision)

The Purchaser, in its sole discretion, may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Purchaser's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Purchaser setting forth the nature of said breach or default, Purchaser shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Purchaser)from also pursuing all available remedies against Contractor and its sureties for said breach or default.

D. Waiver of Remedies for Any Breach

In the event that Purchaser elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Purchaser shall not limit Purchaser's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

E. Termination for Convenience (Professional or Transit Service Contracts)

The Purchaser, by written notice, may terminate this contract, in whole or in part, when it is in the government's interest. If this contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

F. Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.
If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

G. Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Purchaser's goods, the Contractor shall, upon direction of the Purchaser, protect and preserve the goods until surrendered to the Purchaser or its agent. The Contractor and Purchaser shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

H. Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Purchaser may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Purchaser resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Purchaser in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Purchaser, acts of another contractor in the performance of a contract with the Purchaser, epidemics, quarantine restrictions, strikes, freight embargoes; and

2) The Contractor, within 10 days from the beginning of any delay, notifies the Purchaser in writing of the causes of delay. If in the judgment of the Purchaser, the delay is excusable, the time for completing the work shall be extended. The judgment of the Purchaser shall be final and conclusive on the parties, but subject to appeal under the disputes clauses.

   If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Purchaser.

I. Termination for Convenience or Default (Architect and Engineering)

The Purchaser may terminate this contract in whole or in part, for the Purchaser's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and

effective date of the termination. Upon receipt of the notice, the Contractor shall (i) immediately discontinue all services affected (unless the notice directs otherwise) and (ii) deliver to the contracting officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Purchaser, the contracting officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Purchaser may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Purchaser.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

J. Termination for Convenience of Default (Cost-Type Contracts)

The Purchaser may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the Purchaser or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Purchaser, or property supplied to the Contractor by the Purchaser. If the termination is for default, the Purchaser may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Purchaser and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the Purchaser, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the Purchaser determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the Purchaser, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination of convenience.

10. Government-Wide Debarment And Suspension

<u>Certification Regarding Debarment, Suspension, and Other Responsibilities Matters Lower Tier Covered Transactions (Third Party Contracts over $100,000)</u>

<u>Instructions for Certification</u>

By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

A. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to

the federal government, Purchaser may pursue available remedies, including suspension and/or debarment.

B. The prospective lower tier participant shall provide immediate written notice to Purchaser if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

C. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the definitions and coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Purchaser for assistance in obtaining a copy of those regulations.

D. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Purchaser.

E. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list issued by U.S. General Service Administration.

F. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

G. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the federal government, Purchaser may pursue available remedies including suspension and/or debarment.

<u>Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction</u>

A. The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

B. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

11. Civil Rights Requirements

The following requirements apply to the underlying contract:

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

12. Breaches And Dispute Resolution

Contracts exceeding $100,000.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the Parties shall be decided in writing by the authorized representative of Purchaser's [title of employee]. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

Performance During Dispute - Unless otherwise directed by Purchase), Contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Purchaser and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the Purchaser is located.

Rights and Remedies - The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Purchaser, architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

13. Disadvantages Business Enterprises (DBE)

The federal fiscal year goal has been set by the Purchaser in an attempt to match projected procurements with available qualified disadvantaged businesses. The Purchaser’s goals for budgeted service contracts, bus parts, and other materials and supplies for Disadvantaged Business Enterprises have been established by the Purchaser as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this Request for Proposal.

If a specified DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, the Purchaser may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

This section is being developed to reflect the new rule in 49 CFR Part 26.

A. Policy - It is the policy of the Department of Transportation and the City that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106c of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURRA), shall have the maximum opportunity to participate in the performance of contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106c of the STURAA of 1987 apply to this contract.

   The Contractor agrees to ensure that DBEs, as defined in 49 CFR Part 23 and Section 106c of the STURRA of 1987, have the maximum opportunity to participate in the whole or in part with federal

funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of the Purchaser to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the Purchaser's procurement activities are encouraged.

B. DBE Obligation – The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

C. Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the Purchaser may declare the contractor noncompliance and in breach of contract.

D. The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the Purchaser's DBE program. These records and documents will be made available at reasonable times and places for inspection by an authorized representative of the Purchaser and will be submitted to the state upon request.

E. The Purchaser will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- Identification of qualified DBE
- Available listing of minority assistance agencies
- Holding bid conferences to emphasize requirements

F. DBE program definitions as used in the contract:

1) Disadvantage business means a "small business concern"

a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

c) Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

d) Whose management and daily business operations are controlled by one or more women individuals who own it.

2) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B – (Section 106(c)) Determinations of Business Size.

3) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

14. Incorporation Of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Purchase) requests which would cause the Purchaser to be in violation of the FTA terms and conditions.

15. Fly America

Applies ONLY to contracts involving international air transportation of persons or material.

The Contractor understands and agrees that the federal government will not participate in the costs of international air transportation of any persons involved in or property acquired for the project unless that air transportation is provided by U.S. flag carriers to extend services by U.S. flag carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974f. as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers." 41 C.F.R. §§ 301.131 through 301.143.

16. Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321, et seq., consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R.

Part 1500 *et seq*.; And joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

17. Access Requirements For Persons With Disabilities (ADA)

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101, et seq., which requires the provision of accessible facilities and services, and with the following federal regulations, including any amendments thereto:

A. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

B. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Assistance," 49 C.F.R. Part 27;

C. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

D. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

E. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

F. U.S. GSA regulations, "Accommodations for the Physically Handicapped'" 41 C.F.R. Subpart 101-19;

G. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

I. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

J. Any implementing requirements FTA may issue.

18. Notification Of Federal Participation

Applies ONLY to contracts for goods and services, including construction, valued at over $500,000.

In the announcement of any third party contract award for goods or services (including construction services) having aggregate value of $500,000 or more, the Contractor agrees to specify the amount of federal assistance to be used in financing that acquisition of goods and services and to the expressed amount of that federal assistance as a percentage of that total cost of that third-party contract.

STATE OF KANSAS

A. Agreement With Kansas Law

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

B. Disclaimer Of Liability

Neither the State of Kansas nor any agency thereof, nor the City, shall hold harmless or indemnify any Contractor beyond that for any liability or damage except for those occasioned by the acts or omissions of its own employees, and then only up to the limits of liability designated under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.). However, City agrees to indemnify and hold harmless Contractor to the maximum extent permitted by law.

C. Responsibility For Taxes

Neither the State of Kansas, nor the City, shall be responsible for, nor indemnify a Contractor for, any federal, state or local taxes that may be imposed or levied upon the subject matter of this contract.

,PURCHASED ADA PARATRANSIT RIDES
CONTRACTOR AGREEMENT

This Agreement is entered into this _____ day of _____, 2011, by and between the City of Wichita - Wichita Transit (hereinafter referred to as "City") and Kansas Elks Training Center for the Handicapped (hereinafter referred to as "Contractor"). Hereinafter, both "City" and "Contractor" shall be jointly referred to as "Parties."

WHEREAS, the purpose of the program is to provide for purchased ADA paratransit rides, and

WHEREAS, The Contractor agrees to provide ADA paratransit rides in a safe and professional nature, in accordance with the terms and conditions set forth in Appendix A hereto, to eligible passengers within the service area defined in Section 4.2 of Appendix A.

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

1. Term: This Agreement shall become a legal and binding contract upon execution of same by both Parties, effective retroactively from January 1, 2012, until terminated as provided in Article 13 of Appendix A.

2. Compensation: Parties expressly understand and agree that payments made to the Contractor pursuant to the terms of this Agreement shall be on a fee-for-service basis according to the rates outlined in Appendix A and according to the method of billing and payment as set forth in Appendix A.

3. Indemnification: The Contractor shall indemnify, defend and hold harmless the City and the City Council, directors, officers, employees, agents, legal representatives, heirs, successors and assigns (collectively referred to as "Indemnified Parties") from and against any and all losses, costs, injuries, claims, damages, expenses and liabilities, including attorneys' fees (without limitations), collectively referred to as "Liabilities," arising out of or resulting from (i) the provision by the Contractor of transportation services hereunder or (ii) the failure of the Contractor to fulfill any of its obligations pursuant to this Agreement; provided, however, that such duty to indemnify shall not include Liabilities arising from the acts or omissions of the Indemnified parties.

4. Duties: As listed in Appendix A, the Contractor and the City shall perform duties pursuant to this Agreement.

5. Local and Federal Compliance: The Parties shall comply with the requirements of all applicable federal, state, and local rules and regulations, standard assurances, and one-time submissions listed in Appendixes A and B.

6. Assignment: Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

7. Amendments: This Agreement may not be amended unless such amendment is in writing and signed by both Parties.

8. Incorporation of Appendixes: Appendixes A and B are attached hereto and made a part hereof.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the day and year first above written.

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST

City Clerk
City of Wichita, Kansas

APPROVED AS TO FORM

Department of Law
City of Wichita, Kansas

KANSAS ELKS TRAINING FOR
THE HANDICAPPED
Non-Profit Organization

Ron Pasmore, CEO

APPENDIX A
GENERAL CONTRACTUAL PROVISIONS FOR CONTRACTOR

ARTICLE 1: AUTHORITY TO CONTRACT

1.1 Affirmation Of Legal Authority

The Contractor assures it possesses legal authority to contract these services, that resolution, motion or similar action has been duly adopted or passed as an official act of the Contractor's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Contractor to act in connection with the application and to provide such additional information as may be required.

1.2 Required Documentation

Corporations, limited liability companies, or other forms of business requiring statutory conformance shall furnish evidence of good standing in the form of a certificate signed by the Kansas Secretary of State. A corporation shall furnish a copy of its corporate resolution evidencing the authority to sign this Agreement, executed by the corporation's secretary or president.

ARTICLE 2: RELATIONSHIP OF PARTIES

It is agreed that the legal relationship between Contractor and City is of a contractual nature. Both parties assert and believe that the Contractor is acting as an independent contractor in providing the services and performing the duties provided for by this Agreement. The Contractor is, at all times, acting as an independent contractor and not as an officer, agent, or employee of the City. As an independent contractor, the Contractor, and employees of the Contractor, will not be within the protection or coverage of City's worker's compensation insurance, subject to the provisions of K.S.A. 1997 Supp. 44-505, nor shall the Contractor, and employees of the Contractor, be entitled to any current or future benefits provided to employees of the City. Further, the City shall not be responsible for withholding of social security, federal, and/or state income tax or unemployment compensation from payments made by the City to the Contractor.

ARTICLE 3: SCOPE OF SERVICES

3.1 Purpose

It is mutually agreed by and between City and Contractor that the purposes of this Agreement are for the Contractor to efficiently provide eligible passengers a level of curb-to-curb paratransit service which is substantially equivalent to the curb-to-curb paratransit service presently operated by Wichita Transit, all under the terms and conditions described in this Agreement, and to provide Wichita Transit those operating statistics required for federal reporting. If the present volume of service provided by the Contractor pursuant to this Agreement substantially increases or decreases, the Parties agree to negotiate reasonable modifications to this Agreement (which may include termination of this Agreement). The Parties also agree that Contractor shall only provide service, which is compensable under this Agreement, during Wichita Transit regular operating hours.

The Parties agree that the terms of this Agreement apply only to purchased rides for eligible passengers, which are referred to Contractor by Wichita Transit for service during normal operating hours and conditions. To the extent that Contractor provides transportation services to

persons who may otherwise be eligible passengers (whether as a part of Contractor's programs or otherwise) outside of such hours, Contractor may do so upon the terms and conditions acceptable to Contractor, and such services are outside the scope of this Agreement.

3.2 Special Needs Of Eligible Passengers

All eligible passengers have one or more disabilities that preclude their use of regular fixed route transit. Many will require special assistance when boarding or leaving the paratransit vehicle. The Contractor shall be responsible for assuring that all drivers are capable, competent, courteous and sensitive to these special needs.

ARTICLE 4: GENERAL PROVISIONS

4.1 Definitions

A. Unit Of Service – One one-way trip equals one unit of service per eligible passenger. A round-trip taken by an eligible passenger equals two units of service. A unit of service is the basis for subsidy reimbursement.

B. Eligible Passenger(S) – Individuals who are certified and approved as ADA paratransit eligible by Wichita Transit, both ambulatory and nonambulatory.

C. Personal Care Attendant (PCA) – A person who has been approved to ride free of charge with an eligible passenger for the purpose of providing the passenger with mobility assistance. Qualified drivers employed by the Contractor may act as a PCA for eligible passengers who are also the clients of the Contractor (human service agency).

D. Equivalent Level Of Paratransit Service – The following criteria are used to evaluate the Contractor's performance relative to the level of paratransit service operated by Wichita Transit:

1. On-time performance for pick-ups. Actual pick-up times shall be evaluated relative to a 30-minute pick-up window.

2. Length of time an eligible passenger spends on the paratransit vehicle. Length of time shall be evaluated relative to a 90-minute maximum ride time.

E. No-Show – When an eligible passenger fails to board the vehicle when the vehicle arrives on time (within the 30-minute pick-up window). Pursuant to subsection 9.1(F) of this Agreement, subsidy reimbursement shall not be paid for "no-shows." Wichita Transit agrees to permit the Contractor to develop and enforce reasonable policies, which limit "no-shows."

F. 30-Minute Pick-Up Window – The 30-minute timeframe provided to the eligible passenger that indicates when the paratransit vehicle has been scheduled to arrive. Vehicles arriving within the 30-minute pick-up window are considered on time.

G. Missed Trip – When the vehicle arrives for the pick-up, at a time after the end of the 30-minute pick-up window, and the client does not board the van. Pursuant to subsection 9.1(F) of this Agreement, subsidy reimbursement shall not be paid for "missed trips".

H. Passenger Fare – For eligible passengers, the amount of money that the Contractor may collect from an eligible passenger with respect to a unit of service. Pursuant to subsection 9.4(D) of this Agreement, the appropriate passenger fare will be assumed by the Parties to

have been retained by the Contractor as partial payment. As required by The ADA, the passenger fare charged or collected from eligible passengers shall not be more that twice the price of regular bus fare.

I. Referred Ada Trip - A subscription service ride request referred to an agency by Wichita Transit. Possible Contractor acceptance of a referred trip is provided for in subsection of 9.4(C) of this Agreement.

J. Subscription Service – A trip to the same place at the same time at least twice a week for a minimum period of 30 days.

K. Unless otherwise indicated, all references to time periods, which are measured in "days," shall be deemed to refer to a day of ordinary operation for Wichita Transit.

4.2 Service Area

All transportation service provided pursuant to this Agreement shall be limited to trips within the corporate limits of the City of Wichita, within the Oaklawn Improvement District, or within that portion of The City of Bel Aire that lies within 3/4-mile of a fixed bus route operated by Wichita Transit.

4.3 Passenger Eligibility

The City, acting through Wichita Transit, shall establish a procedure to determine eligible passengers. No person shall be transported under this Agreement who has not first been determined by the City as eligible for the service.

4.4 Laws To Be Observed
[Reserved]

ARTICLE 5: PERSONNEL

5.1 Qualified Personnel

The Contractor represents that it has, or shall secure at its own expense, all personnel required to perform the transportation service provided under this Agreement. Except as provided in Section 6.3 below, such personnel shall not be employees of or have any other contractual relationship with the City. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this Agreement.

5.2 Minimum Wages
[Reserved]

5.3 Employee Conflict Of Interest

The Contractor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

5.4 Employee Background Checks

The parties to this Agreement recognize that those entities or persons providing government funded services are subject to public scrutiny. Consequently, by entering into this Agreement, the Contractor assumes an affirmative and ongoing duty during the term of this Agreement to guarantee and maintain compliance with requirements set forth in Subsection 5.5 below. Such compliance will require the use of Contractor customary criminal background checks, and such other background checks as may be reasonably requested by Wichita Transit from time to time, upon all personnel or agents providing services pursuant to this Agreement, or administering the funds conveyed under this Agreement.

5.5 Participant Safeguard

The Contractor certifies that none of its employees are:

A. Persons convicted of any felony, drug or drug related offense, crime of falsehood or dishonesty, or a crime against another person during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to provide services, administer this Agreement, or handle the funds conveyed under this Agreement;

B. Persons convicted of any sex offenses, crimes against children, or crimes of violence toward persons during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to interact in any way with persons served pursuant to this Agreement; and

C. Persons convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to operate a vehicle in which an eligible passenger is provided transportation pursuant to this Agreement. For purposes of this section, "serious traffic offense shall not include any offense deemed a "traffic infraction" under K.S.A. 8-2116 and 8-2118.

D. Any questions concerning the interpretation of this subsection and/or its application to an individual shall be referred to the City's Law Department. The Department of Law's decision shall be final for purposes of compliance with this Agreement. The term "conviction" shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and diversions appearing on the driving records maintained by the Kansas Department of Revenue.

ARTICLE 6: PROHIBITION OF CONFLICT OF INTEREST

6.1 Interest Of Public Officials And Others

No officer or employee of the City, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested. Nor shall any officer or employee of the City or any member of its governing body or other public official have any interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2 Interest Of Contractor
[Reserved]

6.3 Employee Conflicts

If either party becomes aware of situations in which a) an employee of the City shall also be an employee of the Contractor at the time of the Agreement, b) an employee of the Contractor seeks additional / alternative employment with the City during term of the Agreement, or c) an employee of the City seeks additional / alternative employment with the Contractor during term of the Agreement, such party shall immediately provide written notice of such situations to the other party. The City shall make every effort to assure that such employees do not have any authority to approve a) grant funds, b) agreements, or c) affiliate status to the Contractor or Contractor's competitors.

ARTICLE 7: FUNDING / CASH BASIS AND BUDGET LAWS

The right of the City 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 shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

ARTICLE 8: REPORTS, RECORDS AND INSPECTION

8.1 Documentation Of Costs

Proper invoices, vouchers, or other documentation evidencing in proper detail the nature and propriety of charges shall support all costs incurred by the Contractor for which the Contractor purports to be entitled to reimbursement. All checks, invoices, vouchers, payrolls, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to both parties to this Agreement.

8.2 Maintenance Of Records

Except as otherwise authorized by the City, the Contractor shall retain such documentation as listed in subsections 8.1 and 8.3 for a period of not less than three (3) years after the close of the calendar year which contains the time period to which a monthly billing relates. This is the case unless City notifies Contractor in writing of an action, including but not limited to, litigation or audit resolution proceedings, which necessitates maintenance of records beyond the minimum three (3)-year period.

8.3 Reports

During the term of this Agreement, the Contractor shall furnish reports and information to the City substantially in the form attached hereto as Exhibit 1. If the Contractor fails to provide all required reports in a timely, complete and accurate manner, the City may withhold payments to the Contractor until such time as all reports are furnished. Exhibit 1 is deemed to satisfactorily address the reporting requirements for subsections (A) through (K) below. Contractor will be paid based upon the status of the eligible passenger as either ambulatory or nonambulatory (as determined in the certification issued by Wichita Transit). However, Contractor shall report all applicable types of rides provided to such passenger (i.e., if one or more of the categories set forth in subsections G,

H, I, and J below applies to a passenger, then Contractor shall report the ride under each applicable category).

A. Complaint Records

The Contractor agrees to maintain complete records of all complaints received regarding service provided under this Agreement. The Contractor agrees to submit a service complaint report each time a request for reimbursement is submitted. Such report shall identify the general nature of complaints received during the billing period along with any actions taken by the Contractor. The Contractor agrees that complaint records used to prepare complaint reports are subject to review by the City to ensure the accuracy and validity of information reported.

B. Financial And Operating Data

The Contractor shall be responsible for providing financial and operating data as may be required by the City and/or necessary to comply with the requirements of the National Transit Database of the Urban Mass Transportation Act of 1964, as amended.

C. On-Time Performance And Trip Length Records

For the purpose of determining if the Contractor is providing a level of paratransit service equivalent to that provided by Wichita Transit, the Contractor agrees to maintain records of on-time performance and trip length for all eligible passengers provided paratransit service under this Agreement. The Contractor agrees to submit an on-time performance and trip length report each time a request for billing is submitted. For the billing period, the report shall identify the percentage of pick ups occurring before, during, and after the 30-minute pick-up window and the number of trips involving an eligible passenger ride of 90 minutes or greater. The Contractor agrees that on-time performance and trip length records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

D. Alcohol And Drug Test Reports

The Contractor agrees to submit to the City an annual report that identifies the Contractor's efforts to comply with FTA and U.S. DOT requirements for pre-employment, post-accident and random alcohol and drug testing of safety sensitive employees. The annual alcohol and drug testing report shall be submitted by January 30th following the close of the year to which it relates.

E. No-Show Records

For the purpose of eliminating trips referrals involving a passenger who demonstrates a pattern of "no-showing" for trips, the Contractor agrees to maintain records of no-shows recorded by passengers provided paratransit service under this Agreement. The Contractor agrees to submit a no-show report each time a request for billing is submitted. For the billing period, the report shall identify the number of no-shows per eligible passenger and the dates on which no-shows were recorded. The Contractor agrees that no-show records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

F. Missed Trips

For the purpose of reporting "missed trips," the Contractor agrees to maintain records of missed trips affecting passengers who are provided paratransit service under this Agreement. The Contractor agrees to submit a missed trip report each time a request for billing is submitted. For the billing period, the report shall identify the number of missed trips affecting eligible passengers and the dates on which missed trips were experienced. The Contractor agrees that missed trip records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

G. Ada Rides

In order to ensure that rides provided pursuant to this Agreement are provided to eligible passengers and that operating statistics needed for federal reporting are provided, the following is required:

1. Pursuant to subsection 9.1(B) of this Agreement, each month, the Contractor shall submit an alphabetical listing of those persons who have been provided service during the month who the Contractor has reported as being an eligible passenger (approved by Wichita Transit as ADA paratransit eligible).

2. Wichita Transit will check the names on the list against the database of persons who have been granted ADA paratransit eligibility. Wichita Transit will provide the Contractor with the names of those individuals who have not been determined as ADA paratransit eligible.

3. After receipt of the names of nonADA eligible persons, the Contractor may assist the subject individuals with completion of an ADA paratransit eligibility application or shall, in the future, discontinue reporting them as eligible passengers on monthly billing.

H. Access To Jobs Trips

In order to report the number of rides funded through the Access to Jobs program, and pursuant to 9.1(B) of this Agreement, the Contractor's monthly billing shall identify the number of rides funded by way of that program.

I. Peak Hour Rides

As required by subsection 9.1(B) of this Agreement, the Contractor shall provide as part of monthly billing the number of rides provided to eligible passengers between 6:00 AM and 10:00 AM and between 2:00 PM and 6:00 PM.

J. Ambulatory / Wheelchair Rides

As required by subsection 9.1(B) of this Agreement, the Contractor shall provide as part of monthly billing the number rides provided to ambulatory persons and the number or rides provided to persons using a wheelchair or similar mobility device.

K. New Freedom Trips

In order to report the number of rides funded through the New Freedom Program, and pursuant to subsection 9.1(B) of this Agreement, the Contractor's monthly billing shall identify the number of rides funded by way of that program. The parties acknowledge that the federal record keeping and reporting requirements under the New Freedom Program have not yet been developed. City agrees to inform Contractor of such requirements when City becomes aware of them. The parties agree to develop reasonable procedures under this Agreement to satisfy such requirements.

8.4 Availability Of Records

During the time period set forth in Section 8.2 above, the Contractor agrees to make any and all of its records, books, papers, documents, and data, which are directly related to this Agreement, available to City, or to the authorized representative of the federal, state or local agency with statutory oversight authority, for the purposes of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies, and transcriptions.

8.5 Right To Inspect All Work, Equipment And Materials

The Contractor shall permit the City or any authorized representative of the City's Director of Transit to inspect all work, equipment and materials with regard to the provision of service under this Agreement during Contractor's normal business hours, upon reasonable advance notice.

8.6 Right To Observe Operations

The City reserves the right to observe operations by the Contractor pursuant to this Agreement at any reasonable time, i.e., maintenance, sensitivity training, loading and unloading eligible passengers, etc.

A. If any observed operations are deemed defective by the City, the City shall notify the Contractor in writing of such defect.

B. Upon receipt of a written notice of defect, the Contractor has 10 days to investigate the defect and provide reports to the City.

C. The response shall include a copy of the City's notice of defect, together with a written statement of any corrective action taken, and shall be subject to the City's reasonable approval.

D. If corrective actions are reasonably satisfactory, the City will advise the Contractor within 10 days. Otherwise, the City will notify the Contractor of the continuing defect within such 10-day period, and the City has an additional five (5) days to remedy the defect and failure to do so may be considered as a breach of this Agreement.

8.7 Confidentiality

Both parties will comply with the provisions of state and federal regulations in regard to confidentiality of eligible passenger records.

ARTICLE 9: METHOD OF BILLING AND PAYMENT

9.1 Billing Procedures

Contractor agrees that billings and payments made under this Agreement shall be processed in accordance with established budgeting, purchasing and accounting procedures of the City. After receipt of billing, payment shall be made as soon as procedures allow.

A. Monthly Billing

A monthly billing system will be used, and all billing, statements, and other necessary supporting documentation must be submitted by the 15th day of the month following the billing period.

B. Billing Content

All billings shall be substantially in the form of Exhibit 1. In addition, Wichita Transit may require copies of daily vehicle manifests to be submitted with monthly billing that indicate passenger pick up windows for eligible passengers and the actual time of vehicle arrival for passenger boarding. If Wichita Transit requires the submitting of daily vehicle manifests, trips provided to eligible passengers shall be highlighted on the manifests to make them easily differentiated from trips provided to persons who have not been granted ADA paratransit eligibility. If the Contractor is providing rides under the Access to Jobs program, those rides shall be totaled on monthly billing.

C. Billing Procedure
[Reserved]

D. Rate Of Reimbursement

Transportation reimbursements will be made on a unit of service basis pursuant to this Agreement. The reimbursement per unit of service for trips provided pursuant to this Agreement shall be $6.20 per ambulatory person and $10.50 per person who use a wheelchair or similar mobility device. Contractor will be paid based upon the status of the eligible passenger as either ambulatory or non-ambulatory (as determined in the certification issued by Wichita Transit).

E. Review Of Reimbursement Rates

The amount of reimbursement per unit of service will be reviewed during the last six months of 2012 and may be subject to revision starting January 1, 2013. Any change in the reimbursement rate must be agreed to in writing by all Parties prior to implementation.

F. No Show Trips And Missed Trips
[Reserved]

9.2 Support Documentation

Billing shall be supported with the documentation described above in Section 9.1.

9.3 Reimbursement Restrictions

Payments shall be made to the Contractor only for items and services authorized by this Agreement. The City reserves the right to disallow reimbursement for any item or service, which is not authorized by this Agreement.

9.4 Service By Contractor

A. General

Service is to be provided by the Contractor in a prompt and courteous manner. Passengers must be determined ADA paratransit-eligible before the Contractor provides paratransit rides pursuant to this Agreement. Passengers are to be picked up within a 30-minute pick-up window, and the unit of service or one-way trip shall not last longer than 90 minutes. If circumstances dictate that the aforementioned conditions cannot reasonably be met, the Contractor shall make note of the incident and reference it as part of the on-time performance or trip length reports discussed in subsection 8.3(C). As discussed in subsection 8.3(A) of this Agreement, the Contractor is to provide the City a complaints report.

B. Back-Up System

The Contractor must have a reasonable back-up system in place to ensure that eligible passengers are not stranded.

C. Acceptance Of Rides Referred By The City

When referred by the City, and upon reasonable notice, the Contractor agrees to accept subscription service ride requests by persons who are not already persons served by the Contractor. This is provided that acceptance of the referral will not negatively impact the Contractor's ability to meet on-time performance or trip length standards for existing eligible passengers or Contractor's other persons served.

D. Collection Of Fare From Eligible Passengers

To the extent required in Section 4.1(H), the Contractor shall collect and retain the standard ADA paratransit fare from eligible passengers.

E. Alcohol And Drug Testing

The Contractor shall comply with the federal drug and alcohol regulations as set forth in Appendix B of this Agreement. Pre-employment, post accident, and random tests shall be conducted for any and all safety-sensitive Contractor positions that perform duties under the terms of this Agreement.

F. Vehicle Specifications

All vehicles used in service pursuant to this Agreement shall be equipped with a two-way radio or other acceptable telecommunications device (including, but not limited to, cell phones) and shall, at all times, be maintained in a reasonable operating condition and shall be kept in clean and comfortable condition for the transportation of eligible passengers. Vehicles used to transport eligible passengers who use a wheelchair shall be equipped with an operable wheelchair lift or ramp. Regardless of the manner in which a vehicle is equipped, all rides will be compensated at the applicable ambulatory or nonambulatory rate

under Section 9.1.D, as the case may be. Compliance with vehicle specifications shall be subject to regular monitoring by the City or the designated representative of Wichita Transit.

G. Ada Compliance

The Contractor must be in compliance with the federal Americans with Disabilities Act (ADA) requirements.

ARTICLE 10: LICENSES AND PERMITS

A. The Contractor shall procure and maintain all permits, licenses, certifications, bonds and insurance required by federal, state or local authority for carrying out this Agreement.

B. The Contractor shall maintain workers compensation insurance in amounts not less than minimum statutory requirements.

C. The Contractor shall notify the City immediately if any required license, permit, bond or insurance is cancelled, suspended, or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may be the basis for immediate termination of this Agreement by the City.

ARTICLE 11: INSURANCE

The Contractor shall provide to the City a Certificate of Insurance evidencing comprehensive general liability, professional liability, and comprehensive automobile liability coverage in the following minimum amounts:

A.	Bodily Injury	$500,000	each occurrence
B.	Property Damage	$500,000	each occurrence
C.	Bodily Injury	$500,000	each person
D.	Bodily Injury (owned, not owned, hired, renter or otherwise)		
	1. Bodily Injury	$500,000	each accident
	2. Property Damage	$500,000	each accident
E.	Workers Compensation	As statutorily required	

ARTICLE 12: SUBCONTRACTING

A. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City.

B. All approved subcontracts must conform to applicable requirements set forth in this Agreement.

C. If the City consents to the use of subcontractors, the Contractor shall remain fully responsible for all obligations of this Agreement, including indemnification of the City for all actions by subcontractors.

ARTICLE 13: TERMINATION OF AGREEMENT

13.1 Termination For Cause

If either party fails to fulfill, in a timely and proper manner, its obligations under this Agreement or if either party violates any of the terms, covenants, conditions, or stipulations of this Agreement, the nonbreaching party may terminate this Agreement by giving at least 10 days written termination notice to the breaching party. Such notice of termination shall specify the specific breach(s) and the date of the termination.

In the event of termination, such information prepared by the Contractor to carry out this Agreement, including data, studies, surveys, records, drawings, maps, and reports shall, continue to be made available to the City in accordance with Article 8 above. The Contractor shall be entitled to just and equitable compensation for any satisfactory work completed on such documents and other materials.

In spite of the above, the Contractor shall not be relieved of liability to the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the City from the Contractor are determined.

13.2 Termination Of Agreement On Other Grounds

Either party, upon 30 days written notice, may terminate this Agreement for any reason whatsoever. Written notice must state the effective date of the termination.

13.3 Expiration Of Contract Term

Subject to earlier termination as provided in Sections 13.1 and 13.2 above, this Agreement shall extend until December 31, 2012. If the Parties do not have a negotiated renewal agreement completed on or before that date, this Agreement shall continue under the last agreed terms on a month-to-month basis.

ARTICLE 14: NOTIFICATION

Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if in writing and delivered by public or private carrier, personal delivery, registered or certified mail (return receipt requested) or by means of telefacsimile or telecopier. Notices delivered in person or sent via telefacsimile or telecopier shall be effective as of the date the notice is delivered or sent. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be effective forty-eight hours after the date said notice is postmarked to the addressee.

Contractor: City of Wichita – Wichita Transit
Attn: Director of Transit
Address: 777 E. Waterman
Phone: (316) 352-4805
Fax: (316) 337-9287

Vendor: Contractor Name: Kansas Elks Training Center for the Handicapped
Attn: Ron Pasmore
Address: 1006 E. Waterman
Phone: 383-8882
Fax: 383-8883

ARTICLE 15: MISCELLANEOUS

15.1 The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right or remedy provide by this Agreement, shall not be construed as a future waiver or relinquishment of such term, provision, option, right or remedy. A waiver by either party of any term or provision of this Agreement shall not be deemed to have been made unless submitted in writing and signed by the waiving party.

15.2 This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and to their permitted successors and assigns.

15.3 In the event that any provision in this Agreement shall be adjudicated invalid under applicable laws, the invalid provision shall automatically be considered amended so as to conform to all applicable legal requirements. If the invalidity cannot be cured by amendment, the invalid provision shall be considered stricken and deleted. In either case, the validity or enforceability of the remaining provision of this Agreement shall remain intact.

15.4 Both parties to this Agreement represent and agree that (i) they have reviewed all aspects of this Agreement, (ii) they have been given the opportunity to review this Agreement with counsel, and (iii) they have carefully read and fully understand all provisions of this Agreement.

15.5 The Contractor and the City shall not be obligated to resolve any claim or dispute related to this Agreement by arbitration. Any reference to arbitration in the Agreement or its attached appendixes is deemed void. The Parties are free to negotiate, mediate, or litigate any dispute between them.

Appendix A

Exhibit 1

Monthly Reporting Form

Reporting Period: _____

On-Time Performance And Trip Length Compliance:

What was your on-time performance for the reporting period?

Early Arrival %	On Time %	Late Arrival %

What % of trips provided involved a client being on the van for more than 90 minutes? _____

Peak Hour Rides:

How many rides were provided to eligible passengers during the following times?

6:00 AM and 10:00 AM	2:00 PM and 6:00 PM

Wheelchair / Ambulatory Rides:

How many rides were provided to eligible passengers who use a wheelchair or similar mobility device and how may rides where provided to eligible passengers who are ambulatory.

Total Rides Provided	Number Of Ambulatory Rides	Number Of Wheelchair Rides

Access To Jobs Rides:

How many rides were provided to eligible passengers under the Access to Jobs Program? _____

New Freedom Rides:

How many rides were provided to eligible passengers under the New Freedom Program? _____

Passenger Fares Collected And Due:

What is the dollar value of passenger fares collected or due during the reporting period (number of eligible trips X $2.50)? $_____

Missed Trip Information:

Name Of Person	Number Of Missed Trips	Missed Trip Dates

No Show Information:

Name Of Person	Number Of No-Shows	No-Show Dates

Complaint Reporting:

Reason For Complaint	Number Of Incidents During Reporting Period
Late arrival	
Early arrival	
Length of time on van	
Driver rudeness	
Other	

Any Action Taken on Complaints

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

NAME OF CLIENT: _____

Nature of Complaint: _____

_____

Actions taken: _____

_____

Appendix B

Federal And State Regulations

The following additional provisions apply to this Agreement only to the extent that the subject matter of any given provision is relevant to the purposes of the Agreement. The Parties agree that the provisions found in subsections 1, 2, 3, 4, 6, 9, and 10 of Section 9 do not apply to this Agreement. Any inconsistency between the provisions of Appendixes A and B shall be resolved in favor of Appendix A. With respect to Section 10 below, the Parties agree that this is a “fee for service” contract and that no bids or proposals are being submitted in connection herewith. With respect to Section 12 below, the Parties agree that the dispute resolution provisions of Section 15.5 of Appendix A shall control. With respect to Section 13 below, no disadvantaged business goal is applicable to this Agreement. With respect to Section 15 below, the Parties agree that this Agreement does not involve international air transportation.

U. S. FEDERAL

1. Energy Conservation Requirements

   The Contractor agrees 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.

2. Clean Water Requirements

   A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

   B. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

3. Lobbying

   Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR, Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, gran,t or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with nonfederal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the (Purchaser).

4. Access To Records

   Contracts exceeding $100,000.

A. The Contractor agrees to provide the Purchaser, the FTA administrator, the Comptroller General of the United States, or any of their duly-authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

B. Where the Purchaser enters into a negotiated contract for other than a small purchase or under a simplified acquisition threshold and is an institution of higher education, a hospital or other nonprofit organization and is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, the FTA administrator, the Comptroller General of the United States, or any of their duly-authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

C. Where any Purchaser, which is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 U.S.C. 5325(a), enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation, and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

D. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

E. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly-authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

F. FTA does not require the inclusion of these requirements in subcontracts.

5. Federal Changes

Contractor shall, at all times, comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

6. Clean Air Requirements

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

7. No Government Obligation To Third Parties

A. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

8. Program Fraud And False Or Fraudulent Statements And Related Acts

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the federal fovernment deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

9. Termination

Contracts with nonprofit organizations and institutions of higher education in excess of $100,000 and all other contracts in excess of $10,000.

A. Termination for Convenience (General Provision)

The Purchaser may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Purchaser to be paid the Contractor. If the Contractor has any property in its possession belonging to the Purchaser, the Contractor will account for the same and dispose of it in the manner the Purchaser directs.

B. Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract or if the Contractor fails to comply with any other provisions of the contract, the Purchaser may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Purchaser that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Purchaser, after setting up a new delivery of performance schedule, may allow the Contractor to continue work or treat the termination as a termination for convenience.

C. Opportunity to Cure (General Provision)

The Purchaser, in its sole discretion, may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Purchaser's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Purchaser setting forth the nature of said breach or default, Purchaser shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Purchaser)from also pursuing all available remedies against Contractor and its sureties for said breach or default.

D. Waiver of Remedies for Any Breach

In the event that Purchaser elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Purchaser shall not limit Purchaser's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

E. Termination for Convenience (Professional or Transit Service Contracts)

The Purchaser, by written notice, may terminate this contract, in whole or in part, when it is in the government's interest. If this contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

F. Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.
If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

G. Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Purchaser's goods, the Contractor shall, upon direction of the Purchaser, protect and preserve the goods until surrendered to the Purchaser or its agent. The Contractor and Purchaser shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

H. Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Purchaser may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Purchaser resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Purchaser in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Purchaser, acts of another contractor in the performance of a contract with the Purchaser, epidemics, quarantine restrictions, strikes, freight embargoes; and

2) The Contractor, within 10 days from the beginning of any delay, notifies the Purchaser in writing of the causes of delay. If in the judgment of the Purchaser, the delay is excusable, the time for completing the work shall be extended. The judgment of the Purchaser shall be final and conclusive on the parties, but subject to appeal under the disputes clauses.

   If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Purchaser.

I. Termination for Convenience or Default (Architect and Engineering)

The Purchaser may terminate this contract in whole or in part, for the Purchaser's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and

effective date of the termination. Upon receipt of the notice, the Contractor shall (i) immediately discontinue all services affected (unless the notice directs otherwise) and (ii) deliver to the contracting officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Purchaser, the contracting officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Purchaser may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Purchaser.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

J. Termination for Convenience of Default (Cost-Type Contracts)

The Purchaser may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the Purchaser or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Purchaser, or property supplied to the Contractor by the Purchaser. If the termination is for default, the Purchaser may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Purchaser and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the Purchaser, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the Purchaser determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the Purchaser, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination of convenience.

10. Government-Wide Debarment And Suspension

<u>Certification Regarding Debarment, Suspension, and Other Responsibilities Matters Lower Tier Covered Transactions (Third Party Contracts over $100,000)</u>

<u>Instructions for Certification</u>

By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

A. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to

the federal government, Purchaser may pursue available remedies, including suspension and/or debarment.

B. The prospective lower tier participant shall provide immediate written notice to Purchaser if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

C. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the definitions and coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Purchaser for assistance in obtaining a copy of those regulations.

D. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Purchaser.

E. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list issued by U.S. General Service Administration.

F. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

G. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the federal government, Purchaser may pursue available remedies including suspension and/or debarment.

<u>Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction</u>

A. The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

B. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

11. Civil Rights Requirements

The following requirements apply to the underlying contract:

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

12. Breaches And Dispute Resolution

Contracts exceeding $100,000.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the Parties shall be decided in writing by the authorized representative of Purchaser's [title of employee]. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

Performance During Dispute - Unless otherwise directed by Purchase), Contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Purchaser and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the Purchaser is located.

Rights and Remedies - The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Purchaser, architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

13. Disadvantages Business Enterprises (DBE)

The federal fiscal year goal has been set by the Purchaser in an attempt to match projected procurements with available qualified disadvantaged businesses. The Purchaser’s goals for budgeted service contracts, bus parts, and other materials and supplies for Disadvantaged Business Enterprises have been established by the Purchaser as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this Request for Proposal.

If a specified DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, the Purchaser may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

This section is being developed to reflect the new rule in 49 CFR Part 26.

A. Policy - It is the policy of the Department of Transportation and the City that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106c of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURRA), shall have the maximum opportunity to participate in the performance of contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106c of the STURAA of 1987 apply to this contract.

   The Contractor agrees to ensure that DBEs, as defined in 49 CFR Part 23 and Section 106c of the STURRA of 1987, have the maximum opportunity to participate in the whole or in part with federal

funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of the Purchaser to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the Purchaser's procurement activities are encouraged.

B. DBE Obligation – The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

C. Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the Purchaser may declare the contractor noncompliance and in breach of contract.

D. The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the Purchaser's DBE program. These records and documents will be made available at reasonable times and places for inspection by an authorized representative of the Purchaser and will be submitted to the state upon request.

E. The Purchaser will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- Identification of qualified DBE
- Available listing of minority assistance agencies
- Holding bid conferences to emphasize requirements

F. DBE program definitions as used in the contract:

1) Disadvantage business means a "small business concern"

a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

c) Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

d) Whose management and daily business operations are controlled by one or more women individuals who own it.

2) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B – (Section 106(c)) Determinations of Business Size.

3) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

   a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

   b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

   c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

   d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

   e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

14. Incorporation Of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Purchase) requests which would cause the Purchaser to be in violation of the FTA terms and conditions.

15. Fly America

Applies ONLY to contracts involving international air transportation of persons or material.

The Contractor understands and agrees that the federal government will not participate in the costs of international air transportation of any persons involved in or property acquired for the project unless that air transportation is provided by U.S. flag carriers to extend services by U.S. flag carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974f. as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers." 41 C.F.R. §§ 301.131 through 301.143.

16. Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321, et seq., consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R.

Part 1500 *et seq*.; And joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

17. Access Requirements For Persons With Disabilities (ADA)

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101, et seq., which requires the provision of accessible facilities and services, and with the following federal regulations, including any amendments thereto:

A. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

B. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Assistance," 49 C.F.R. Part 27;

C. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

D. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

E. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

F. U.S. GSA regulations, "Accommodations for the Physically Handicapped'" 41 C.F.R. Subpart 101-19;

G. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

I. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

J. Any implementing requirements FTA may issue.

18. Notification Of Federal Participation

Applies ONLY to contracts for goods and services, including construction, valued at over $500,000.

In the announcement of any third party contract award for goods or services (including construction services) having aggregate value of $500,000 or more, the Contractor agrees to specify the amount of federal assistance to be used in financing that acquisition of goods and services and to the expressed amount of that federal assistance as a percentage of that total cost of that third-party contract.

STATE OF KANSAS

A. Agreement With Kansas Law

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

B. Disclaimer Of Liability

Neither the State of Kansas nor any agency thereof, nor the City, shall hold harmless or indemnify any Contractor beyond that for any liability or damage except for those occasioned by the acts or omissions of its own employees, and then only up to the limits of liability designated under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.). However, City agrees to indemnify and hold harmless Contractor to the maximum extent permitted by law.

C. Responsibility For Taxes

Neither the State of Kansas, nor the City, shall be responsible for, nor indemnify a Contractor for, any federal, state or local taxes that may be imposed or levied upon the subject matter of this contract.

,PURCHASED ADA PARATRANSIT RIDES
CONTRACTOR AGREEMENT

This Agreement is entered into this _____ day of _____, 2011, by and between the City of Wichita - Wichita Transit (hereinafter referred to as "City") and ResCare Kansas, Inc. (hereinafter referred to as "Contractor"). Hereinafter, both "City" and "Contractor" shall be jointly referred to as "Parties."

WHEREAS, the purpose of the program is to provide for purchased ADA paratransit rides, and

WHEREAS, The Contractor agrees to provide ADA paratransit rides in a safe and professional nature, in accordance with the terms and conditions set forth in Appendix A hereto, to eligible passengers within the service area defined in Section 4.2 of Appendix A.

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

1. Term: This Agreement shall become a legal and binding contract upon execution of same by both Parties, effective retroactively from January 1, 2012, until terminated as provided in Article 13 of Appendix A.

2. Compensation: Parties expressly understand and agree that payments made to the Contractor pursuant to the terms of this Agreement shall be on a fee-for-service basis according to the rates outlined in Appendix A and according to the method of billing and payment as set forth in Appendix A.

3. Indemnification: The Contractor shall indemnify, defend and hold harmless the City and the City Council, directors, officers, employees, agents, legal representatives, heirs, successors and assigns (collectively referred to as "Indemnified Parties") from and against any and all losses, costs, injuries, claims, damages, expenses and liabilities, including attorneys' fees (without limitations), collectively referred to as "Liabilities," arising out of or resulting from (i) the provision by the Contractor of transportation services hereunder or (ii) the failure of the Contractor to fulfill any of its obligations pursuant to this Agreement; provided, however, that such duty to indemnify shall not include Liabilities arising from the acts or omissions of the Indemnified parties.

4. Duties: As listed in Appendix A, the Contractor and the City shall perform duties pursuant to this Agreement.

5. Local and Federal Compliance: The Parties shall comply with the requirements of all applicable federal, state, and local rules and regulations, standard assurances, and one-time submissions listed in Appendixes A and B.

6. Assignment: Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

7. Amendments: This Agreement may not be amended unless such amendment is in writing and signed by both Parties.

8. Incorporation of Appendixes: Appendixes A and B are attached hereto and made a part hereof.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the day and year first above written.

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST

City Clerk
City of Wichita, Kansas

APPROVED AS TO FORM

Department of Law
City of Wichita, Kansas

ResCare Kansas, Inc.

Jane Steur, Senior Vice-President

APPENDIX A
GENERAL CONTRACTUAL PROVISIONS FOR CONTRACTOR

ARTICLE 1: AUTHORITY TO CONTRACT

1.1 Affirmation Of Legal Authority

The Contractor assures it possesses legal authority to contract these services, that resolution, motion or similar action has been duly adopted or passed as an official act of the Contractor's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Contractor to act in connection with the application and to provide such additional information as may be required.

1.2 Required Documentation

Corporations, limited liability companies, or other forms of business requiring statutory conformance shall furnish evidence of good standing in the form of a certificate signed by the Kansas Secretary of State. A corporation shall furnish a copy of its corporate resolution evidencing the authority to sign this Agreement, executed by the corporation's secretary or president.

ARTICLE 2: RELATIONSHIP OF PARTIES

It is agreed that the legal relationship between Contractor and City is of a contractual nature. Both parties assert and believe that the Contractor is acting as an independent contractor in providing the services and performing the duties provided for by this Agreement. The Contractor is, at all times, acting as an independent contractor and not as an officer, agent, or employee of the City. As an independent contractor, the Contractor, and employees of the Contractor, will not be within the protection or coverage of City's worker's compensation insurance, subject to the provisions of K.S.A. 1997 Supp. 44-505, nor shall the Contractor, and employees of the Contractor, be entitled to any current or future benefits provided to employees of the City. Further, the City shall not be responsible for withholding of social security, federal, and/or state income tax or unemployment compensation from payments made by the City to the Contractor.

ARTICLE 3: SCOPE OF SERVICES

3.1 Purpose

It is mutually agreed by and between City and Contractor that the purposes of this Agreement are for the Contractor to efficiently provide eligible passengers a level of curb-to-curb paratransit service which is substantially equivalent to the curb-to-curb paratransit service presently operated by Wichita Transit, all under the terms and conditions described in this Agreement, and to provide Wichita Transit those operating statistics required for federal reporting. If the present volume of service provided by the Contractor pursuant to this Agreement substantially increases or decreases, the Parties agree to negotiate reasonable modifications to this Agreement (which may include termination of this Agreement). The Parties also agree that Contractor shall only provide service, which is compensable under this Agreement, during Wichita Transit regular operating hours.

The Parties agree that the terms of this Agreement apply only to purchased rides for eligible passengers, which are referred to Contractor by Wichita Transit for service during normal operating hours and conditions. To the extent that Contractor provides transportation services to

persons who may otherwise be eligible passengers (whether as a part of Contractor's programs or otherwise) outside of such hours, Contractor may do so upon the terms and conditions acceptable to Contractor, and such services are outside the scope of this Agreement.

3.2 Special Needs Of Eligible Passengers

All eligible passengers have one or more disabilities that preclude their use of regular fixed route transit. Many will require special assistance when boarding or leaving the paratransit vehicle. The Contractor shall be responsible for assuring that all drivers are capable, competent, courteous and sensitive to these special needs.

ARTICLE 4: GENERAL PROVISIONS

4.1 Definitions

A. Unit Of Service – One one-way trip equals one unit of service per eligible passenger. A round-trip taken by an eligible passenger equals two units of service. A unit of service is the basis for subsidy reimbursement.

B. Eligible Passenger(S) – Individuals who are certified and approved as ADA paratransit eligible by Wichita Transit, both ambulatory and nonambulatory.

C. Personal Care Attendant (PCA) – A person who has been approved to ride free of charge with an eligible passenger for the purpose of providing the passenger with mobility assistance. Qualified drivers employed by the Contractor may act as a PCA for eligible passengers who are also the clients of the Contractor (human service agency).

D. Equivalent Level Of Paratransit Service – The following criteria are used to evaluate the Contractor's performance relative to the level of paratransit service operated by Wichita Transit:

1. On-time performance for pick-ups. Actual pick-up times shall be evaluated relative to a 30-minute pick-up window.

2. Length of time an eligible passenger spends on the paratransit vehicle. Length of time shall be evaluated relative to a 90-minute maximum ride time.

E. No-Show – When an eligible passenger fails to board the vehicle when the vehicle arrives on time (within the 30-minute pick-up window). Pursuant to subsection 9.1(F) of this Agreement, subsidy reimbursement shall not be paid for "no-shows." Wichita Transit agrees to permit the Contractor to develop and enforce reasonable policies, which limit "no-shows."

F. 30-Minute Pick-Up Window – The 30-minute timeframe provided to the eligible passenger that indicates when the paratransit vehicle has been scheduled to arrive. Vehicles arriving within the 30-minute pick-up window are considered on time.

G. Missed Trip – When the vehicle arrives for the pick-up, at a time after the end of the 30-minute pick-up window, and the client does not board the van. Pursuant to subsection 9.1(F) of this Agreement, subsidy reimbursement shall not be paid for "missed trips".

H. Passenger Fare – For eligible passengers, the amount of money that the Contractor may collect from an eligible passenger with respect to a unit of service. Pursuant to subsection 9.4(D) of this Agreement, the appropriate passenger fare will be assumed by the Parties to

have been retained by the Contractor as partial payment. As required by The ADA, the passenger fare charged or collected from eligible passengers shall not be more that twice the price of regular bus fare.

I. Referred Ada Trip - A subscription service ride request referred to an agency by Wichita Transit. Possible Contractor acceptance of a referred trip is provided for in subsection of 9.4(C) of this Agreement.

J. Subscription Service – A trip to the same place at the same time at least twice a week for a minimum period of 30 days.

K. Unless otherwise indicated, all references to time periods, which are measured in "days," shall be deemed to refer to a day of ordinary operation for Wichita Transit.

4.2 Service Area

All transportation service provided pursuant to this Agreement shall be limited to trips within the corporate limits of the City of Wichita, within the Oaklawn Improvement District, or within that portion of The City of Bel Aire that lies within 3/4-mile of a fixed bus route operated by Wichita Transit.

4.3 Passenger Eligibility

The City, acting through Wichita Transit, shall establish a procedure to determine eligible passengers. No person shall be transported under this Agreement who has not first been determined by the City as eligible for the service.

4.4 Laws To Be Observed
[Reserved]

ARTICLE 5: PERSONNEL

5.1 Qualified Personnel

The Contractor represents that it has, or shall secure at its own expense, all personnel required to perform the transportation service provided under this Agreement. Except as provided in Section 6.3 below, such personnel shall not be employees of or have any other contractual relationship with the City. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this Agreement.

5.2 Minimum Wages
[Reserved]

5.3 Employee Conflict Of Interest

The Contractor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

5.4 Employee Background Checks

The parties to this Agreement recognize that those entities or persons providing government funded services are subject to public scrutiny. Consequently, by entering into this Agreement, the Contractor assumes an affirmative and ongoing duty during the term of this Agreement to guarantee and maintain compliance with requirements set forth in Subsection 5.5 below. Such compliance will require the use of Contractor customary criminal background checks, and such other background checks as may be reasonably requested by Wichita Transit from time to time, upon all personnel or agents providing services pursuant to this Agreement, or administering the funds conveyed under this Agreement.

5.5 Participant Safeguard

The Contractor certifies that none of its employees are:

A. Persons convicted of any felony, drug or drug related offense, crime of falsehood or dishonesty, or a crime against another person during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to provide services, administer this Agreement, or handle the funds conveyed under this Agreement;

B. Persons convicted of any sex offenses, crimes against children, or crimes of violence toward persons during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to interact in any way with persons served pursuant to this Agreement; and

C. Persons convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to operate a vehicle in which an eligible passenger is provided transportation pursuant to this Agreement. For purposes of this section, "serious traffic offense shall not include any offense deemed a "traffic infraction" under K.S.A. 8-2116 and 8-2118.

D. Any questions concerning the interpretation of this subsection and/or its application to an individual shall be referred to the City's Law Department. The Department of Law's decision shall be final for purposes of compliance with this Agreement. The term "conviction" shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and diversions appearing on the driving records maintained by the Kansas Department of Revenue.

ARTICLE 6: PROHIBITION OF CONFLICT OF INTEREST

6.1 Interest Of Public Officials And Others

No officer or employee of the City, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested. Nor shall any officer or employee of the City or any member of its governing body or other public official have any interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2 Interest Of Contractor
[Reserved]

6.3 Employee Conflicts

If either party becomes aware of situations in which a) an employee of the City shall also be an employee of the Contractor at the time of the Agreement, b) an employee of the Contractor seeks additional / alternative employment with the City during term of the Agreement, or c) an employee of the City seeks additional / alternative employment with the Contractor during term of the Agreement, such party shall immediately provide written notice of such situations to the other party. The City shall make every effort to assure that such employees do not have any authority to approve a) grant funds, b) agreements, or c) affiliate status to the Contractor or Contractor's competitors.

ARTICLE 7: FUNDING / CASH BASIS AND BUDGET LAWS

The right of the City 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 shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

ARTICLE 8: REPORTS, RECORDS AND INSPECTION

8.1 Documentation Of Costs

Proper invoices, vouchers, or other documentation evidencing in proper detail the nature and propriety of charges shall support all costs incurred by the Contractor for which the Contractor purports to be entitled to reimbursement. All checks, invoices, vouchers, payrolls, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to both parties to this Agreement.

8.2 Maintenance Of Records

Except as otherwise authorized by the City, the Contractor shall retain such documentation as listed in subsections 8.1 and 8.3 for a period of not less than three (3) years after the close of the calendar year which contains the time period to which a monthly billing relates. This is the case unless City notifies Contractor in writing of an action, including but not limited to, litigation or audit resolution proceedings, which necessitates maintenance of records beyond the minimum three (3)-year period.

8.3 Reports

During the term of this Agreement, the Contractor shall furnish reports and information to the City substantially in the form attached hereto as Exhibit 1. If the Contractor fails to provide all required reports in a timely, complete and accurate manner, the City may withhold payments to the Contractor until such time as all reports are furnished. Exhibit 1 is deemed to satisfactorily address the reporting requirements for subsections (A) through (K) below. Contractor will be paid based upon the status of the eligible passenger as either ambulatory or nonambulatory (as determined in the certification issued by Wichita Transit). However, Contractor shall report all applicable types of rides provided to such passenger (i.e., if one or more of the categories set forth in subsections G,

H, I, and J below applies to a passenger, then Contractor shall report the ride under each applicable category).

A. Complaint Records

The Contractor agrees to maintain complete records of all complaints received regarding service provided under this Agreement. The Contractor agrees to submit a service complaint report each time a request for reimbursement is submitted. Such report shall identify the general nature of complaints received during the billing period along with any actions taken by the Contractor. The Contractor agrees that complaint records used to prepare complaint reports are subject to review by the City to ensure the accuracy and validity of information reported.

B. Financial And Operating Data

The Contractor shall be responsible for providing financial and operating data as may be required by the City and/or necessary to comply with the requirements of the National Transit Database of the Urban Mass Transportation Act of 1964, as amended.

C. On-Time Performance And Trip Length Records

For the purpose of determining if the Contractor is providing a level of paratransit service equivalent to that provided by Wichita Transit, the Contractor agrees to maintain records of on-time performance and trip length for all eligible passengers provided paratransit service under this Agreement. The Contractor agrees to submit an on-time performance and trip length report each time a request for billing is submitted. For the billing period, the report shall identify the percentage of pick ups occurring before, during, and after the 30-minute pick-up window and the number of trips involving an eligible passenger ride of 90 minutes or greater. The Contractor agrees that on-time performance and trip length records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

D. Alcohol And Drug Test Reports

The Contractor agrees to submit to the City an annual report that identifies the Contractor's efforts to comply with FTA and U.S. DOT requirements for pre-employment, post-accident and random alcohol and drug testing of safety sensitive employees. The annual alcohol and drug testing report shall be submitted by January 30th following the close of the year to which it relates.

E. No-Show Records

For the purpose of eliminating trips referrals involving a passenger who demonstrates a pattern of "no-showing" for trips, the Contractor agrees to maintain records of no-shows recorded by passengers provided paratransit service under this Agreement. The Contractor agrees to submit a no-show report each time a request for billing is submitted. For the billing period, the report shall identify the number of no-shows per eligible passenger and the dates on which no-shows were recorded. The Contractor agrees that no-show records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

F. Missed Trips

For the purpose of reporting "missed trips," the Contractor agrees to maintain records of missed trips affecting passengers who are provided paratransit service under this Agreement. The Contractor agrees to submit a missed trip report each time a request for billing is submitted. For the billing period, the report shall identify the number of missed trips affecting eligible passengers and the dates on which missed trips were experienced. The Contractor agrees that missed trip records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

G. Ada Rides

In order to ensure that rides provided pursuant to this Agreement are provided to eligible passengers and that operating statistics needed for federal reporting are provided, the following is required:

1. Pursuant to subsection 9.1(B) of this Agreement, each month, the Contractor shall submit an alphabetical listing of those persons who have been provided service during the month who the Contractor has reported as being an eligible passenger (approved by Wichita Transit as ADA paratransit eligible).

2. Wichita Transit will check the names on the list against the database of persons who have been granted ADA paratransit eligibility. Wichita Transit will provide the Contractor with the names of those individuals who have not been determined as ADA paratransit eligible.

3. After receipt of the names of nonADA eligible persons, the Contractor may assist the subject individuals with completion of an ADA paratransit eligibility application or shall, in the future, discontinue reporting them as eligible passengers on monthly billing.

H. Access To Jobs Trips

In order to report the number of rides funded through the Access to Jobs program, and pursuant to 9.1(B) of this Agreement, the Contractor's monthly billing shall identify the number of rides funded by way of that program.

I. Peak Hour Rides

As required by subsection 9.1(B) of this Agreement, the Contractor shall provide as part of monthly billing the number of rides provided to eligible passengers between 6:00 AM and 10:00 AM and between 2:00 PM and 6:00 PM.

J. Ambulatory / Wheelchair Rides

As required by subsection 9.1(B) of this Agreement, the Contractor shall provide as part of monthly billing the number rides provided to ambulatory persons and the number or rides provided to persons using a wheelchair or similar mobility device.

K. New Freedom Trips

In order to report the number of rides funded through the New Freedom Program, and pursuant to subsection 9.1(B) of this Agreement, the Contractor's monthly billing shall identify the number of rides funded by way of that program. The parties acknowledge that the federal record keeping and reporting requirements under the New Freedom Program have not yet been developed. City agrees to inform Contractor of such requirements when City becomes aware of them. The parties agree to develop reasonable procedures under this Agreement to satisfy such requirements.

8.4 Availability Of Records

During the time period set forth in Section 8.2 above, the Contractor agrees to make any and all of its records, books, papers, documents, and data, which are directly related to this Agreement, available to City, or to the authorized representative of the federal, state or local agency with statutory oversight authority, for the purposes of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies, and transcriptions.

8.5 Right To Inspect All Work, Equipment And Materials

The Contractor shall permit the City or any authorized representative of the City's Director of Transit to inspect all work, equipment and materials with regard to the provision of service under this Agreement during Contractor's normal business hours, upon reasonable advance notice.

8.6 Right To Observe Operations

The City reserves the right to observe operations by the Contractor pursuant to this Agreement at any reasonable time, i.e., maintenance, sensitivity training, loading and unloading eligible passengers, etc.

A. If any observed operations are deemed defective by the City, the City shall notify the Contractor in writing of such defect.

B. Upon receipt of a written notice of defect, the Contractor has 10 days to investigate the defect and provide reports to the City.

C. The response shall include a copy of the City's notice of defect, together with a written statement of any corrective action taken, and shall be subject to the City's reasonable approval.

D. If corrective actions are reasonably satisfactory, the City will advise the Contractor within 10 days. Otherwise, the City will notify the Contractor of the continuing defect within such 10-day period, and the City has an additional five (5) days to remedy the defect and failure to do so may be considered as a breach of this Agreement.

8.7 Confidentiality

Both parties will comply with the provisions of state and federal regulations in regard to confidentiality of eligible passenger records.

ARTICLE 9: METHOD OF BILLING AND PAYMENT

9.1 Billing Procedures

Contractor agrees that billings and payments made under this Agreement shall be processed in accordance with established budgeting, purchasing and accounting procedures of the City. After receipt of billing, payment shall be made as soon as procedures allow.

A. Monthly Billing

A monthly billing system will be used, and all billing, statements, and other necessary supporting documentation must be submitted by the 15th day of the month following the billing period.

B. Billing Content

All billings shall be substantially in the form of Exhibit 1. In addition, Wichita Transit may require copies of daily vehicle manifests to be submitted with monthly billing that indicate passenger pick up windows for eligible passengers and the actual time of vehicle arrival for passenger boarding. If Wichita Transit requires the submitting of daily vehicle manifests, trips provided to eligible passengers shall be highlighted on the manifests to make them easily differentiated from trips provided to persons who have not been granted ADA paratransit eligibility. If the Contractor is providing rides under the Access to Jobs program, those rides shall be totaled on monthly billing.

C. Billing Procedure
[Reserved]

D. Rate Of Reimbursement

Transportation reimbursements will be made on a unit of service basis pursuant to this Agreement. The reimbursement per unit of service for trips provided pursuant to this Agreement shall be $6.20 per ambulatory person and $10.50 per person who use a wheelchair or similar mobility device. Contractor will be paid based upon the status of the eligible passenger as either ambulatory or non-ambulatory (as determined in the certification issued by Wichita Transit).

E. Review Of Reimbursement Rates

The amount of reimbursement per unit of service will be reviewed during the last six months of 2012 and may be subject to revision starting January 1, 2013. Any change in the reimbursement rate must be agreed to in writing by all Parties prior to implementation.

F. No Show Trips And Missed Trips
[Reserved]

9.2 Support Documentation

Billing shall be supported with the documentation described above in Section 9.1.

9.3 Reimbursement Restrictions

Payments shall be made to the Contractor only for items and services authorized by this Agreement. The City reserves the right to disallow reimbursement for any item or service, which is not authorized by this Agreement.

9.4 Service By Contractor

A. General

Service is to be provided by the Contractor in a prompt and courteous manner. Passengers must be determined ADA paratransit-eligible before the Contractor provides paratransit rides pursuant to this Agreement. Passengers are to be picked up within a 30-minute pick-up window, and the unit of service or one-way trip shall not last longer than 90 minutes. If circumstances dictate that the aforementioned conditions cannot reasonably be met, the Contractor shall make note of the incident and reference it as part of the on-time performance or trip length reports discussed in subsection 8.3(C). As discussed in subsection 8.3(A) of this Agreement, the Contractor is to provide the City a complaints report.

B. Back-Up System

The Contractor must have a reasonable back-up system in place to ensure that eligible passengers are not stranded.

C. Acceptance Of Rides Referred By The City

When referred by the City, and upon reasonable notice, the Contractor agrees to accept subscription service ride requests by persons who are not already persons served by the Contractor. This is provided that acceptance of the referral will not negatively impact the Contractor's ability to meet on-time performance or trip length standards for existing eligible passengers or Contractor's other persons served.

D. Collection Of Fare From Eligible Passengers

To the extent required in Section 4.1(H), the Contractor shall collect and retain the standard ADA paratransit fare from eligible passengers.

E. Alcohol And Drug Testing

The Contractor shall comply with the federal drug and alcohol regulations as set forth in Appendix B of this Agreement. Pre-employment, post accident, and random tests shall be conducted for any and all safety-sensitive Contractor positions that perform duties under the terms of this Agreement.

F. Vehicle Specifications

All vehicles used in service pursuant to this Agreement shall be equipped with a two-way radio or other acceptable telecommunications device (including, but not limited to, cell phones) and shall, at all times, be maintained in a reasonable operating condition and shall be kept in clean and comfortable condition for the transportation of eligible passengers. Vehicles used to transport eligible passengers who use a wheelchair shall be equipped with an operable wheelchair lift or ramp. Regardless of the manner in which a vehicle is equipped, all rides will be compensated at the applicable ambulatory or nonambulatory rate

under Section 9.1.D, as the case may be. Compliance with vehicle specifications shall be subject to regular monitoring by the City or the designated representative of Wichita Transit.

G. Ada Compliance

The Contractor must be in compliance with the federal Americans with Disabilities Act (ADA) requirements.

ARTICLE 10: LICENSES AND PERMITS

A. The Contractor shall procure and maintain all permits, licenses, certifications, bonds and insurance required by federal, state or local authority for carrying out this Agreement.

B. The Contractor shall maintain workers compensation insurance in amounts not less than minimum statutory requirements.

C. The Contractor shall notify the City immediately if any required license, permit, bond or insurance is cancelled, suspended, or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may be the basis for immediate termination of this Agreement by the City.

ARTICLE 11: INSURANCE

The Contractor shall provide to the City a Certificate of Insurance evidencing comprehensive general liability, professional liability, and comprehensive automobile liability coverage in the following minimum amounts:

A.	Bodily Injury	$500,000	each occurrence
B.	Property Damage	$500,000	each occurrence
C.	Bodily Injury	$500,000	each person
D.	Bodily Injury (owned, not owned, hired, renter or otherwise)		
	1. Bodily Injury	$500,000	each accident
	2. Property Damage	$500,000	each accident
E.	Workers Compensation	As statutorily required	

ARTICLE 12: SUBCONTRACTING

A. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City.

B. All approved subcontracts must conform to applicable requirements set forth in this Agreement.

C. If the City consents to the use of subcontractors, the Contractor shall remain fully responsible for all obligations of this Agreement, including indemnification of the City for all actions by subcontractors.

ARTICLE 13: TERMINATION OF AGREEMENT

13.1 Termination For Cause

If either party fails to fulfill, in a timely and proper manner, its obligations under this Agreement or if either party violates any of the terms, covenants, conditions, or stipulations of this Agreement, the nonbreaching party may terminate this Agreement by giving at least 10 days written termination notice to the breaching party. Such notice of termination shall specify the specific breach(s) and the date of the termination.

In the event of termination, such information prepared by the Contractor to carry out this Agreement, including data, studies, surveys, records, drawings, maps, and reports shall, continue to be made available to the City in accordance with Article 8 above. The Contractor shall be entitled to just and equitable compensation for any satisfactory work completed on such documents and other materials.

In spite of the above, the Contractor shall not be relieved of liability to the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the City from the Contractor are determined.

13.2 Termination Of Agreement On Other Grounds

Either party, upon 30 days written notice, may terminate this Agreement for any reason whatsoever. Written notice must state the effective date of the termination.

13.3 Expiration Of Contract Term

Subject to earlier termination as provided in Sections 13.1 and 13.2 above, this Agreement shall extend until December 31, 2012. If the Parties do not have a negotiated renewal agreement completed on or before that date, this Agreement shall continue under the last agreed terms on a month-to-month basis.

ARTICLE 14: NOTIFICATION

Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if in writing and delivered by public or private carrier, personal delivery, registered or certified mail (return receipt requested) or by means of telefacsimile or telecopier. Notices delivered in person or sent via telefacsimile or telecopier shall be effective as of the date the notice is delivered or sent. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be effective forty-eight hours after the date said notice is postmarked to the addressee.

Contractor: City of Wichita – Wichita Transit
Attn: Director of Transit
Address: 777 E. Waterman
Phone: (316) 352-4805
Fax: (316) 337-9287

Vendor: Contractor Name: ResCare Kansas, Inc.
Attn: Jane Steur
Address: 901 S. MoPac Expy., Bldg. 2, Suite 450, Austin, Texas 78746
Phone: 512-498-2730
Fax: 512-498-2777

ARTICLE 15: MISCELLANEOUS

15.1 The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right or remedy provide by this Agreement, shall not be construed as a future waiver or relinquishment of such term, provision, option, right or remedy. A waiver by either party of any term or provision of this Agreement shall not be deemed to have been made unless submitted in writing and signed by the waiving party.

15.2 This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and to their permitted successors and assigns.

15.3 In the event that any provision in this Agreement shall be adjudicated invalid under applicable laws, the invalid provision shall automatically be considered amended so as to conform to all applicable legal requirements. If the invalidity cannot be cured by amendment, the invalid provision shall be considered stricken and deleted. In either case, the validity or enforceability of the remaining provision of this Agreement shall remain intact.

15.4 Both parties to this Agreement represent and agree that (i) they have reviewed all aspects of this Agreement, (ii) they have been given the opportunity to review this Agreement with counsel, and (iii) they have carefully read and fully understand all provisions of this Agreement.

15.5 The Contractor and the City shall not be obligated to resolve any claim or dispute related to this Agreement by arbitration. Any reference to arbitration in the Agreement or its attached appendixes is deemed void. The Parties are free to negotiate, mediate, or litigate any dispute between them.

Appendix A

Exhibit 1

Monthly Reporting Form

Reporting Period: _____

On-Time Performance And Trip Length Compliance:

What was your on-time performance for the reporting period?

Early Arrival %	On Time %	Late Arrival %

What % of trips provided involved a client being on the van for more than 90 minutes? _____

Peak Hour Rides:

How many rides were provided to eligible passengers during the following times?

6:00 AM and 10:00 AM	2:00 PM and 6:00 PM

Wheelchair / Ambulatory Rides:

How many rides were provided to eligible passengers who use a wheelchair or similar mobility device and how may rides where provided to eligible passengers who are ambulatory.

Total Rides Provided	Number Of Ambulatory Rides	Number Of Wheelchair Rides

Access To Jobs Rides:

How many rides were provided to eligible passengers under the Access to Jobs Program? _____

New Freedom Rides:

How many rides were provided to eligible passengers under the New Freedom Program? _____

Passenger Fares Collected And Due:

What is the dollar value of passenger fares collected or due during the reporting period (number of eligible trips X $2.50)? $_____

Missed Trip Information:

Name Of Person	Number Of Missed Trips	Missed Trip Dates

No Show Information:

Name Of Person	Number Of No-Shows	No-Show Dates

Complaint Reporting:

Reason For Complaint	Number Of Incidents During Reporting Period
Late arrival	
Early arrival	
Length of time on van	
Driver rudeness	
Other	

Any Action Taken on Complaints

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

NAME OF CLIENT: _____

Nature of Complaint: _____

_____

Actions taken: _____

_____

Appendix B

Federal And State Regulations

The following additional provisions apply to this Agreement only to the extent that the subject matter of any given provision is relevant to the purposes of the Agreement. The Parties agree that the provisions found in subsections 1, 2, 3, 4, 6, 9, and 10 of Section 9 do not apply to this Agreement. Any inconsistency between the provisions of Appendixes A and B shall be resolved in favor of Appendix A. With respect to Section 10 below, the Parties agree that this is a “fee for service” contract and that no bids or proposals are being submitted in connection herewith. With respect to Section 12 below, the Parties agree that the dispute resolution provisions of Section 15.5 of Appendix A shall control. With respect to Section 13 below, no disadvantaged business goal is applicable to this Agreement. With respect to Section 15 below, the Parties agree that this Agreement does not involve international air transportation.

U. S. FEDERAL

1. Energy Conservation Requirements

   The Contractor agrees 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.

2. Clean Water Requirements

   A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

   B. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

3. Lobbying

   Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR, Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, gran,t or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with nonfederal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the (Purchaser).

4. Access To Records

   Contracts exceeding $100,000.

A. The Contractor agrees to provide the Purchaser, the FTA administrator, the Comptroller General of the United States, or any of their duly-authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

B. Where the Purchaser enters into a negotiated contract for other than a small purchase or under a simplified acquisition threshold and is an institution of higher education, a hospital or other nonprofit organization and is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, the FTA administrator, the Comptroller General of the United States, or any of their duly-authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

C. Where any Purchaser, which is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 U.S.C. 5325(a), enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation, and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

D. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

E. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly-authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

F. FTA does not require the inclusion of these requirements in subcontracts.

5. Federal Changes

Contractor shall, at all times, comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

6. Clean Air Requirements

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

7. No Government Obligation To Third Parties

A. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

8. Program Fraud And False Or Fraudulent Statements And Related Acts

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the federal fovernment deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

9. Termination

Contracts with nonprofit organizations and institutions of higher education in excess of $100,000 and all other contracts in excess of $10,000.

A. Termination for Convenience (General Provision)

The Purchaser may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Purchaser to be paid the Contractor. If the Contractor has any property in its possession belonging to the Purchaser, the Contractor will account for the same and dispose of it in the manner the Purchaser directs.

B. Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract or if the Contractor fails to comply with any other provisions of the contract, the Purchaser may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Purchaser that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Purchaser, after setting up a new delivery of performance schedule, may allow the Contractor to continue work or treat the termination as a termination for convenience.

C. Opportunity to Cure (General Provision)

The Purchaser, in its sole discretion, may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Purchaser's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Purchaser setting forth the nature of said breach or default, Purchaser shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Purchaser)from also pursuing all available remedies against Contractor and its sureties for said breach or default.

D. Waiver of Remedies for Any Breach

In the event that Purchaser elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Purchaser shall not limit Purchaser's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

E. Termination for Convenience (Professional or Transit Service Contracts)

The Purchaser, by written notice, may terminate this contract, in whole or in part, when it is in the government's interest. If this contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

F. Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.
If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

G. Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Purchaser's goods, the Contractor shall, upon direction of the Purchaser, protect and preserve the goods until surrendered to the Purchaser or its agent. The Contractor and Purchaser shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

H. Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Purchaser may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Purchaser resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Purchaser in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Purchaser, acts of another contractor in the performance of a contract with the Purchaser, epidemics, quarantine restrictions, strikes, freight embargoes; and

2) The Contractor, within 10 days from the beginning of any delay, notifies the Purchaser in writing of the causes of delay. If in the judgment of the Purchaser, the delay is excusable, the time for completing the work shall be extended. The judgment of the Purchaser shall be final and conclusive on the parties, but subject to appeal under the disputes clauses.

   If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Purchaser.

I. Termination for Convenience or Default (Architect and Engineering)

The Purchaser may terminate this contract in whole or in part, for the Purchaser's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and

effective date of the termination. Upon receipt of the notice, the Contractor shall (i) immediately discontinue all services affected (unless the notice directs otherwise) and (ii) deliver to the contracting officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Purchaser, the contracting officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Purchaser may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Purchaser.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

J. Termination for Convenience of Default (Cost-Type Contracts)

The Purchaser may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the Purchaser or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Purchaser, or property supplied to the Contractor by the Purchaser. If the termination is for default, the Purchaser may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Purchaser and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the Purchaser, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the Purchaser determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the Purchaser, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination of convenience.

10. Government-Wide Debarment And Suspension

<u>Certification Regarding Debarment, Suspension, and Other Responsibilities Matters Lower Tier Covered Transactions (Third Party Contracts over $100,000)</u>

<u>Instructions for Certification</u>

By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

A. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to

the federal government, Purchaser may pursue available remedies, including suspension and/or debarment.

B. The prospective lower tier participant shall provide immediate written notice to Purchaser if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

C. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the definitions and coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Purchaser for assistance in obtaining a copy of those regulations.

D. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Purchaser.

E. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list issued by U.S. General Service Administration.

F. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

G. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the federal government, Purchaser may pursue available remedies including suspension and/or debarment.

<u>Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction</u>

A. The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

B. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

11. Civil Rights Requirements

The following requirements apply to the underlying contract:

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

12. Breaches And Dispute Resolution

Contracts exceeding $100,000.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the Parties shall be decided in writing by the authorized representative of Purchaser's [title of employee]. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

Performance During Dispute - Unless otherwise directed by Purchase), Contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Purchaser and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the Purchaser is located.

Rights and Remedies - The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Purchaser, architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

13. Disadvantages Business Enterprises (DBE)

The federal fiscal year goal has been set by the Purchaser in an attempt to match projected procurements with available qualified disadvantaged businesses. The Purchaser’s goals for budgeted service contracts, bus parts, and other materials and supplies for Disadvantaged Business Enterprises have been established by the Purchaser as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this Request for Proposal.

If a specified DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, the Purchaser may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

This section is being developed to reflect the new rule in 49 CFR Part 26.

A. Policy - It is the policy of the Department of Transportation and the City that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106c of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURRA), shall have the maximum opportunity to participate in the performance of contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106c of the STURAA of 1987 apply to this contract.

   The Contractor agrees to ensure that DBEs, as defined in 49 CFR Part 23 and Section 106c of the STURRA of 1987, have the maximum opportunity to participate in the whole or in part with federal

funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of the Purchaser to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the Purchaser's procurement activities are encouraged.

B. DBE Obligation – The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

C. Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the Purchaser may declare the contractor noncompliance and in breach of contract.

D. The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the Purchaser's DBE program. These records and documents will be made available at reasonable times and places for inspection by an authorized representative of the Purchaser and will be submitted to the state upon request.

E. The Purchaser will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- Identification of qualified DBE
- Available listing of minority assistance agencies
- Holding bid conferences to emphasize requirements

F. DBE program definitions as used in the contract:

1) Disadvantage business means a "small business concern"

a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

c) Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

d) Whose management and daily business operations are controlled by one or more women individuals who own it.

2) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B – (Section 106(c)) Determinations of Business Size.

3) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

14. Incorporation Of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Purchase) requests which would cause the Purchaser to be in violation of the FTA terms and conditions.

15. Fly America

Applies ONLY to contracts involving international air transportation of persons or material.

The Contractor understands and agrees that the federal government will not participate in the costs of international air transportation of any persons involved in or property acquired for the project unless that air transportation is provided by U.S. flag carriers to extend services by U.S. flag carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974f. as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers." 41 C.F.R. §§ 301.131 through 301.143.

16. Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321, et seq., consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R.

Part 1500 *et seq*.; And joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

17. Access Requirements For Persons With Disabilities (ADA)

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101, et seq., which requires the provision of accessible facilities and services, and with the following federal regulations, including any amendments thereto:

A. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

B. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Assistance," 49 C.F.R. Part 27;

C. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

D. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

E. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

F. U.S. GSA regulations, "Accommodations for the Physically Handicapped'" 41 C.F.R. Subpart 101-19;

G. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

I. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

J. Any implementing requirements FTA may issue.

18. Notification Of Federal Participation

Applies ONLY to contracts for goods and services, including construction, valued at over $500,000.

In the announcement of any third party contract award for goods or services (including construction services) having aggregate value of $500,000 or more, the Contractor agrees to specify the amount of federal assistance to be used in financing that acquisition of goods and services and to the expressed amount of that federal assistance as a percentage of that total cost of that third-party contract.

STATE OF KANSAS

A. Agreement With Kansas Law

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

B. Disclaimer Of Liability

Neither the State of Kansas nor any agency thereof, nor the City, shall hold harmless or indemnify any Contractor beyond that for any liability or damage except for those occasioned by the acts or omissions of its own employees, and then only up to the limits of liability designated under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.). However, City agrees to indemnify and hold harmless Contractor to the maximum extent permitted by law.

C. Responsibility For Taxes

Neither the State of Kansas, nor the City, shall be responsible for, nor indemnify a Contractor for, any federal, state or local taxes that may be imposed or levied upon the subject matter of this contract.

,PURCHASED ADA PARATRANSIT RIDES
CONTRACTOR AGREEMENT

This Agreement is entered into this _____ day of _____, 2011, by and between the City of Wichita - Wichita Transit (hereinafter referred to as "City") and Starkey, Inc. (hereinafter referred to as "Contractor"). Hereinafter, both "City" and "Contractor" shall be jointly referred to as "Parties."

WHEREAS, the purpose of the program is to provide for purchased ADA paratransit rides, and

WHEREAS, The Contractor agrees to provide ADA paratransit rides in a safe and professional nature, in accordance with the terms and conditions set forth in Appendix A hereto, to eligible passengers within the service area defined in Section 4.2 of Appendix A.

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

1. Term: This Agreement shall become a legal and binding contract upon execution of same by both Parties, effective retroactively from January 1, 2012, until terminated as provided in Article 13 of Appendix A.

2. Compensation: Parties expressly understand and agree that payments made to the Contractor pursuant to the terms of this Agreement shall be on a fee-for-service basis according to the rates outlined in Appendix A and according to the method of billing and payment as set forth in Appendix A.

3. Indemnification: The Contractor shall indemnify, defend and hold harmless the City and the City Council, directors, officers, employees, agents, legal representatives, heirs, successors and assigns (collectively referred to as "Indemnified Parties") from and against any and all losses, costs, injuries, claims, damages, expenses and liabilities, including attorneys' fees (without limitations), collectively referred to as "Liabilities," arising out of or resulting from (i) the provision by the Contractor of transportation services hereunder or (ii) the failure of the Contractor to fulfill any of its obligations pursuant to this Agreement; provided, however, that such duty to indemnify shall not include Liabilities arising from the acts or omissions of the Indemnified parties.

4. Duties: As listed in Appendix A, the Contractor and the City shall perform duties pursuant to this Agreement.

5. Local and Federal Compliance: The Parties shall comply with the requirements of all applicable federal, state, and local rules and regulations, standard assurances, and one-time submissions listed in Appendixes A and B.

6. Assignment: Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

7. Amendments: This Agreement may not be amended unless such amendment is in writing and signed by both Parties.

8. Incorporation of Appendixes: Appendixes A and B are attached hereto and made a part hereof.

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the day and year first above written.

CITY OF WICHITA, KANSAS

Carl Brewer, Mayor

ATTEST

City Clerk
City of Wichita, Kansas

APPROVED AS TO FORM

Department of Law
City of Wichita, Kansas

STARKEY, INC.

Carolyn Risley Hill, CEO

APPENDIX A
GENERAL CONTRACTUAL PROVISIONS FOR CONTRACTOR

ARTICLE 1: AUTHORITY TO CONTRACT

1.1 Affirmation Of Legal Authority

The Contractor assures it possesses legal authority to contract these services, that resolution, motion or similar action has been duly adopted or passed as an official act of the Contractor's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the Contractor to act in connection with the application and to provide such additional information as may be required.

1.2 Required Documentation

Corporations, limited liability companies, or other forms of business requiring statutory conformance shall furnish evidence of good standing in the form of a certificate signed by the Kansas Secretary of State. A corporation shall furnish a copy of its corporate resolution evidencing the authority to sign this Agreement, executed by the corporation's secretary or president.

ARTICLE 2: RELATIONSHIP OF PARTIES

It is agreed that the legal relationship between Contractor and City is of a contractual nature. Both parties assert and believe that the Contractor is acting as an independent contractor in providing the services and performing the duties provided for by this Agreement. The Contractor is, at all times, acting as an independent contractor and not as an officer, agent, or employee of the City. As an independent contractor, the Contractor, and employees of the Contractor, will not be within the protection or coverage of City's worker's compensation insurance, subject to the provisions of K.S.A. 1997 Supp. 44-505, nor shall the Contractor, and employees of the Contractor, be entitled to any current or future benefits provided to employees of the City. Further, the City shall not be responsible for withholding of social security, federal, and/or state income tax or unemployment compensation from payments made by the City to the Contractor.

ARTICLE 3: SCOPE OF SERVICES

3.1 Purpose

It is mutually agreed by and between City and Contractor that the purposes of this Agreement are for the Contractor to efficiently provide eligible passengers a level of curb-to-curb paratransit service which is substantially equivalent to the curb-to-curb paratransit service presently operated by Wichita Transit, all under the terms and conditions described in this Agreement, and to provide Wichita Transit those operating statistics required for federal reporting. If the present volume of service provided by the Contractor pursuant to this Agreement substantially increases or decreases, the Parties agree to negotiate reasonable modifications to this Agreement (which may include termination of this Agreement). The Parties also agree that Contractor shall only provide service, which is compensable under this Agreement, during Wichita Transit regular operating hours.

The Parties agree that the terms of this Agreement apply only to purchased rides for eligible passengers, which are referred to Contractor by Wichita Transit for service during normal operating hours and conditions. To the extent that Contractor provides transportation services to

persons who may otherwise be eligible passengers (whether as a part of Contractor's programs or otherwise) outside of such hours, Contractor may do so upon the terms and conditions acceptable to Contractor, and such services are outside the scope of this Agreement.

3.2 Special Needs Of Eligible Passengers

All eligible passengers have one or more disabilities that preclude their use of regular fixed route transit. Many will require special assistance when boarding or leaving the paratransit vehicle. The Contractor shall be responsible for assuring that all drivers are capable, competent, courteous and sensitive to these special needs.

ARTICLE 4: GENERAL PROVISIONS

4.1 Definitions

A. Unit Of Service – One one-way trip equals one unit of service per eligible passenger. A round-trip taken by an eligible passenger equals two units of service. A unit of service is the basis for subsidy reimbursement.

B. Eligible Passenger(S) – Individuals who are certified and approved as ADA paratransit eligible by Wichita Transit, both ambulatory and nonambulatory.

C. Personal Care Attendant (PCA) – A person who has been approved to ride free of charge with an eligible passenger for the purpose of providing the passenger with mobility assistance. Qualified drivers employed by the Contractor may act as a PCA for eligible passengers who are also the clients of the Contractor (human service agency).

D. Equivalent Level Of Paratransit Service – The following criteria are used to evaluate the Contractor's performance relative to the level of paratransit service operated by Wichita Transit:

1. On-time performance for pick-ups. Actual pick-up times shall be evaluated relative to a 30-minute pick-up window.

2. Length of time an eligible passenger spends on the paratransit vehicle. Length of time shall be evaluated relative to a 90-minute maximum ride time.

E. No-Show – When an eligible passenger fails to board the vehicle when the vehicle arrives on time (within the 30-minute pick-up window). Pursuant to subsection 9.1(F) of this Agreement, subsidy reimbursement shall not be paid for "no-shows." Wichita Transit agrees to permit the Contractor to develop and enforce reasonable policies, which limit "no-shows."

F. 30-Minute Pick-Up Window – The 30-minute timeframe provided to the eligible passenger that indicates when the paratransit vehicle has been scheduled to arrive. Vehicles arriving within the 30-minute pick-up window are considered on time.

G. Missed Trip – When the vehicle arrives for the pick-up, at a time after the end of the 30-minute pick-up window, and the client does not board the van. Pursuant to subsection 9.1(F) of this Agreement, subsidy reimbursement shall not be paid for "missed trips".

H. Passenger Fare – For eligible passengers, the amount of money that the Contractor may collect from an eligible passenger with respect to a unit of service. Pursuant to subsection 9.4(D) of this Agreement, the appropriate passenger fare will be assumed by the Parties to

have been retained by the Contractor as partial payment. As required by The ADA, the passenger fare charged or collected from eligible passengers shall not be more that twice the price of regular bus fare.

I. Referred Ada Trip - A subscription service ride request referred to an agency by Wichita Transit. Possible Contractor acceptance of a referred trip is provided for in subsection of 9.4(C) of this Agreement.

J. Subscription Service – A trip to the same place at the same time at least twice a week for a minimum period of 30 days.

K. Unless otherwise indicated, all references to time periods, which are measured in "days," shall be deemed to refer to a day of ordinary operation for Wichita Transit.

4.2 Service Area

All transportation service provided pursuant to this Agreement shall be limited to trips within the corporate limits of the City of Wichita, within the Oaklawn Improvement District, or within that portion of The City of Bel Aire that lies within 3/4-mile of a fixed bus route operated by Wichita Transit.

4.3 Passenger Eligibility

The City, acting through Wichita Transit, shall establish a procedure to determine eligible passengers. No person shall be transported under this Agreement who has not first been determined by the City as eligible for the service.

4.4 Laws To Be Observed
[Reserved]

ARTICLE 5: PERSONNEL

5.1 Qualified Personnel

The Contractor represents that it has, or shall secure at its own expense, all personnel required to perform the transportation service provided under this Agreement. Except as provided in Section 6.3 below, such personnel shall not be employees of or have any other contractual relationship with the City. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this Agreement.

5.2 Minimum Wages
[Reserved]

5.3 Employee Conflict Of Interest

The Contractor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

5.4 Employee Background Checks

The parties to this Agreement recognize that those entities or persons providing government funded services are subject to public scrutiny. Consequently, by entering into this Agreement, the Contractor assumes an affirmative and ongoing duty during the term of this Agreement to guarantee and maintain compliance with requirements set forth in Subsection 5.5 below. Such compliance will require the use of Contractor customary criminal background checks, and such other background checks as may be reasonably requested by Wichita Transit from time to time, upon all personnel or agents providing services pursuant to this Agreement, or administering the funds conveyed under this Agreement.

5.5 Participant Safeguard

The Contractor certifies that none of its employees are:

A. Persons convicted of any felony, drug or drug related offense, crime of falsehood or dishonesty, or a crime against another person during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to provide services, administer this Agreement, or handle the funds conveyed under this Agreement;

B. Persons convicted of any sex offenses, crimes against children, or crimes of violence toward persons during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to interact in any way with persons served pursuant to this Agreement; and

C. Persons convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the ten-year period concluding on the date of execution of this Agreement, and during the term of this Agreement, Contractor shall not permit any such employee to operate a vehicle in which an eligible passenger is provided transportation pursuant to this Agreement. For purposes of this section, "serious traffic offense shall not include any offense deemed a "traffic infraction" under K.S.A. 8-2116 and 8-2118.

D. Any questions concerning the interpretation of this subsection and/or its application to an individual shall be referred to the City's Law Department. The Department of Law's decision shall be final for purposes of compliance with this Agreement. The term "conviction" shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and diversions appearing on the driving records maintained by the Kansas Department of Revenue.

ARTICLE 6: PROHIBITION OF CONFLICT OF INTEREST

6.1 Interest Of Public Officials And Others

No officer or employee of the City, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement shall participate in any decision relating to this Agreement which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested. Nor shall any officer or employee of the City or any member of its governing body or other public official have any interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2 Interest Of Contractor
[Reserved]

6.3 Employee Conflicts

If either party becomes aware of situations in which a) an employee of the City shall also be an employee of the Contractor at the time of the Agreement, b) an employee of the Contractor seeks additional / alternative employment with the City during term of the Agreement, or c) an employee of the City seeks additional / alternative employment with the Contractor during term of the Agreement, such party shall immediately provide written notice of such situations to the other party. The City shall make every effort to assure that such employees do not have any authority to approve a) grant funds, b) agreements, or c) affiliate status to the Contractor or Contractor's competitors.

ARTICLE 7: FUNDING / CASH BASIS AND BUDGET LAWS

The right of the City 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 shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

ARTICLE 8: REPORTS, RECORDS AND INSPECTION

8.1 Documentation Of Costs

Proper invoices, vouchers, or other documentation evidencing in proper detail the nature and propriety of charges shall support all costs incurred by the Contractor for which the Contractor purports to be entitled to reimbursement. All checks, invoices, vouchers, payrolls, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible to both parties to this Agreement.

8.2 Maintenance Of Records

Except as otherwise authorized by the City, the Contractor shall retain such documentation as listed in subsections 8.1 and 8.3 for a period of not less than three (3) years after the close of the calendar year which contains the time period to which a monthly billing relates. This is the case unless City notifies Contractor in writing of an action, including but not limited to, litigation or audit resolution proceedings, which necessitates maintenance of records beyond the minimum three (3)-year period.

8.3 Reports

During the term of this Agreement, the Contractor shall furnish reports and information to the City substantially in the form attached hereto as Exhibit 1. If the Contractor fails to provide all required reports in a timely, complete and accurate manner, the City may withhold payments to the Contractor until such time as all reports are furnished. Exhibit 1 is deemed to satisfactorily address the reporting requirements for subsections (A) through (K) below. Contractor will be paid based upon the status of the eligible passenger as either ambulatory or nonambulatory (as determined in the certification issued by Wichita Transit). However, Contractor shall report all applicable types of rides provided to such passenger (i.e., if one or more of the categories set forth in subsections G,

H, I, and J below applies to a passenger, then Contractor shall report the ride under each applicable category).

A. Complaint Records

The Contractor agrees to maintain complete records of all complaints received regarding service provided under this Agreement. The Contractor agrees to submit a service complaint report each time a request for reimbursement is submitted. Such report shall identify the general nature of complaints received during the billing period along with any actions taken by the Contractor. The Contractor agrees that complaint records used to prepare complaint reports are subject to review by the City to ensure the accuracy and validity of information reported.

B. Financial And Operating Data

The Contractor shall be responsible for providing financial and operating data as may be required by the City and/or necessary to comply with the requirements of the National Transit Database of the Urban Mass Transportation Act of 1964, as amended.

C. On-Time Performance And Trip Length Records

For the purpose of determining if the Contractor is providing a level of paratransit service equivalent to that provided by Wichita Transit, the Contractor agrees to maintain records of on-time performance and trip length for all eligible passengers provided paratransit service under this Agreement. The Contractor agrees to submit an on-time performance and trip length report each time a request for billing is submitted. For the billing period, the report shall identify the percentage of pick ups occurring before, during, and after the 30-minute pick-up window and the number of trips involving an eligible passenger ride of 90 minutes or greater. The Contractor agrees that on-time performance and trip length records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

D. Alcohol And Drug Test Reports

The Contractor agrees to submit to the City an annual report that identifies the Contractor's efforts to comply with FTA and U.S. DOT requirements for pre-employment, post-accident and random alcohol and drug testing of safety sensitive employees. The annual alcohol and drug testing report shall be submitted by January 30th following the close of the year to which it relates.

E. No-Show Records

For the purpose of eliminating trips referrals involving a passenger who demonstrates a pattern of "no-showing" for trips, the Contractor agrees to maintain records of no-shows recorded by passengers provided paratransit service under this Agreement. The Contractor agrees to submit a no-show report each time a request for billing is submitted. For the billing period, the report shall identify the number of no-shows per eligible passenger and the dates on which no-shows were recorded. The Contractor agrees that no-show records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

F. Missed Trips

For the purpose of reporting "missed trips," the Contractor agrees to maintain records of missed trips affecting passengers who are provided paratransit service under this Agreement. The Contractor agrees to submit a missed trip report each time a request for billing is submitted. For the billing period, the report shall identify the number of missed trips affecting eligible passengers and the dates on which missed trips were experienced. The Contractor agrees that missed trip records used to prepare the report are subject to review by the City to ensure the accuracy and validity of information reported.

G. Ada Rides

In order to ensure that rides provided pursuant to this Agreement are provided to eligible passengers and that operating statistics needed for federal reporting are provided, the following is required:

1. Pursuant to subsection 9.1(B) of this Agreement, each month, the Contractor shall submit an alphabetical listing of those persons who have been provided service during the month who the Contractor has reported as being an eligible passenger (approved by Wichita Transit as ADA paratransit eligible).

2. Wichita Transit will check the names on the list against the database of persons who have been granted ADA paratransit eligibility. Wichita Transit will provide the Contractor with the names of those individuals who have not been determined as ADA paratransit eligible.

3. After receipt of the names of nonADA eligible persons, the Contractor may assist the subject individuals with completion of an ADA paratransit eligibility application or shall, in the future, discontinue reporting them as eligible passengers on monthly billing.

H. Access To Jobs Trips

In order to report the number of rides funded through the Access to Jobs program, and pursuant to 9.1(B) of this Agreement, the Contractor's monthly billing shall identify the number of rides funded by way of that program.

I. Peak Hour Rides

As required by subsection 9.1(B) of this Agreement, the Contractor shall provide as part of monthly billing the number of rides provided to eligible passengers between 6:00 AM and 10:00 AM and between 2:00 PM and 6:00 PM.

J. Ambulatory / Wheelchair Rides

As required by subsection 9.1(B) of this Agreement, the Contractor shall provide as part of monthly billing the number rides provided to ambulatory persons and the number or rides provided to persons using a wheelchair or similar mobility device.

K. New Freedom Trips

In order to report the number of rides funded through the New Freedom Program, and pursuant to subsection 9.1(B) of this Agreement, the Contractor's monthly billing shall identify the number of rides funded by way of that program. The parties acknowledge that the federal record keeping and reporting requirements under the New Freedom Program have not yet been developed. City agrees to inform Contractor of such requirements when City becomes aware of them. The parties agree to develop reasonable procedures under this Agreement to satisfy such requirements.

8.4 Availability Of Records

During the time period set forth in Section 8.2 above, the Contractor agrees to make any and all of its records, books, papers, documents, and data, which are directly related to this Agreement, available to City, or to the authorized representative of the federal, state or local agency with statutory oversight authority, for the purposes of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies, and transcriptions.

8.5 Right To Inspect All Work, Equipment And Materials

The Contractor shall permit the City or any authorized representative of the City's Director of Transit to inspect all work, equipment and materials with regard to the provision of service under this Agreement during Contractor's normal business hours, upon reasonable advance notice.

8.6 Right To Observe Operations

The City reserves the right to observe operations by the Contractor pursuant to this Agreement at any reasonable time, i.e., maintenance, sensitivity training, loading and unloading eligible passengers, etc.

A. If any observed operations are deemed defective by the City, the City shall notify the Contractor in writing of such defect.

B. Upon receipt of a written notice of defect, the Contractor has 10 days to investigate the defect and provide reports to the City.

C. The response shall include a copy of the City's notice of defect, together with a written statement of any corrective action taken, and shall be subject to the City's reasonable approval.

D. If corrective actions are reasonably satisfactory, the City will advise the Contractor within 10 days. Otherwise, the City will notify the Contractor of the continuing defect within such 10-day period, and the City has an additional five (5) days to remedy the defect and failure to do so may be considered as a breach of this Agreement.

8.7 Confidentiality

Both parties will comply with the provisions of state and federal regulations in regard to confidentiality of eligible passenger records.

ARTICLE 9: METHOD OF BILLING AND PAYMENT

9.1 Billing Procedures

Contractor agrees that billings and payments made under this Agreement shall be processed in accordance with established budgeting, purchasing and accounting procedures of the City. After receipt of billing, payment shall be made as soon as procedures allow.

A. Monthly Billing

A monthly billing system will be used, and all billing, statements, and other necessary supporting documentation must be submitted by the 15th day of the month following the billing period.

B. Billing Content

All billings shall be substantially in the form of Exhibit 1. In addition, Wichita Transit may require copies of daily vehicle manifests to be submitted with monthly billing that indicate passenger pick up windows for eligible passengers and the actual time of vehicle arrival for passenger boarding. If Wichita Transit requires the submitting of daily vehicle manifests, trips provided to eligible passengers shall be highlighted on the manifests to make them easily differentiated from trips provided to persons who have not been granted ADA paratransit eligibility. If the Contractor is providing rides under the Access to Jobs program, those rides shall be totaled on monthly billing.

C. Billing Procedure
[Reserved]

D. Rate Of Reimbursement

Transportation reimbursements will be made on a unit of service basis pursuant to this Agreement. The reimbursement per unit of service for trips provided pursuant to this Agreement shall be $6.20 per ambulatory person and $10.50 per person who use a wheelchair or similar mobility device. Contractor will be paid based upon the status of the eligible passenger as either ambulatory or non-ambulatory (as determined in the certification issued by Wichita Transit).

E. Review Of Reimbursement Rates

The amount of reimbursement per unit of service will be reviewed during the last six months of 2012 and may be subject to revision starting January 1, 2013. Any change in the reimbursement rate must be agreed to in writing by all Parties prior to implementation.

F. No Show Trips And Missed Trips
[Reserved]

9.2 Support Documentation

Billing shall be supported with the documentation described above in Section 9.1.

9.3 Reimbursement Restrictions

Payments shall be made to the Contractor only for items and services authorized by this Agreement. The City reserves the right to disallow reimbursement for any item or service, which is not authorized by this Agreement.

9.4 Service By Contractor

A. General

Service is to be provided by the Contractor in a prompt and courteous manner. Passengers must be determined ADA paratransit-eligible before the Contractor provides paratransit rides pursuant to this Agreement. Passengers are to be picked up within a 30-minute pick-up window, and the unit of service or one-way trip shall not last longer than 90 minutes. If circumstances dictate that the aforementioned conditions cannot reasonably be met, the Contractor shall make note of the incident and reference it as part of the on-time performance or trip length reports discussed in subsection 8.3(C). As discussed in subsection 8.3(A) of this Agreement, the Contractor is to provide the City a complaints report.

B. Back-Up System

The Contractor must have a reasonable back-up system in place to ensure that eligible passengers are not stranded.

C. Acceptance Of Rides Referred By The City

When referred by the City, and upon reasonable notice, the Contractor agrees to accept subscription service ride requests by persons who are not already persons served by the Contractor. This is provided that acceptance of the referral will not negatively impact the Contractor's ability to meet on-time performance or trip length standards for existing eligible passengers or Contractor's other persons served.

D. Collection Of Fare From Eligible Passengers

To the extent required in Section 4.1(H), the Contractor shall collect and retain the standard ADA paratransit fare from eligible passengers.

E. Alcohol And Drug Testing

The Contractor shall comply with the federal drug and alcohol regulations as set forth in Appendix B of this Agreement. Pre-employment, post accident, and random tests shall be conducted for any and all safety-sensitive Contractor positions that perform duties under the terms of this Agreement.

F. Vehicle Specifications

All vehicles used in service pursuant to this Agreement shall be equipped with a two-way radio or other acceptable telecommunications device (including, but not limited to, cell phones) and shall, at all times, be maintained in a reasonable operating condition and shall be kept in clean and comfortable condition for the transportation of eligible passengers. Vehicles used to transport eligible passengers who use a wheelchair shall be equipped with an operable wheelchair lift or ramp. Regardless of the manner in which a vehicle is equipped, all rides will be compensated at the applicable ambulatory or nonambulatory rate

under Section 9.1.D, as the case may be. Compliance with vehicle specifications shall be subject to regular monitoring by the City or the designated representative of Wichita Transit.

G. Ada Compliance

The Contractor must be in compliance with the federal Americans with Disabilities Act (ADA) requirements.

ARTICLE 10: LICENSES AND PERMITS

A. The Contractor shall procure and maintain all permits, licenses, certifications, bonds and insurance required by federal, state or local authority for carrying out this Agreement.

B. The Contractor shall maintain workers compensation insurance in amounts not less than minimum statutory requirements.

C. The Contractor shall notify the City immediately if any required license, permit, bond or insurance is cancelled, suspended, or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may be the basis for immediate termination of this Agreement by the City.

ARTICLE 11: INSURANCE

The Contractor shall provide to the City a Certificate of Insurance evidencing comprehensive general liability, professional liability, and comprehensive automobile liability coverage in the following minimum amounts:

A.	Bodily Injury	$500,000	each occurrence
B.	Property Damage	$500,000	each occurrence
C.	Bodily Injury	$500,000	each person
D.	Bodily Injury (owned, not owned, hired, renter or otherwise)		
	1. Bodily Injury	$500,000	each accident
	2. Property Damage	$500,000	each accident
E.	Workers Compensation	As statutorily required	

ARTICLE 12: SUBCONTRACTING

A. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the City.

B. All approved subcontracts must conform to applicable requirements set forth in this Agreement.

C. If the City consents to the use of subcontractors, the Contractor shall remain fully responsible for all obligations of this Agreement, including indemnification of the City for all actions by subcontractors.

ARTICLE 13: TERMINATION OF AGREEMENT

13.1 Termination For Cause

If either party fails to fulfill, in a timely and proper manner, its obligations under this Agreement or if either party violates any of the terms, covenants, conditions, or stipulations of this Agreement, the nonbreaching party may terminate this Agreement by giving at least 10 days written termination notice to the breaching party. Such notice of termination shall specify the specific breach(s) and the date of the termination.

In the event of termination, such information prepared by the Contractor to carry out this Agreement, including data, studies, surveys, records, drawings, maps, and reports shall, continue to be made available to the City in accordance with Article 8 above. The Contractor shall be entitled to just and equitable compensation for any satisfactory work completed on such documents and other materials.

In spite of the above, the Contractor shall not be relieved of liability to the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the City from the Contractor are determined.

13.2 Termination Of Agreement On Other Grounds

Either party, upon 30 days written notice, may terminate this Agreement for any reason whatsoever. Written notice must state the effective date of the termination.

13.3 Expiration Of Contract Term

Subject to earlier termination as provided in Sections 13.1 and 13.2 above, this Agreement shall extend until December 31, 2012. If the Parties do not have a negotiated renewal agreement completed on or before that date, this Agreement shall continue under the last agreed terms on a month-to-month basis.

ARTICLE 14: NOTIFICATION

Any formal notice required or permitted under this Agreement shall be deemed sufficiently given if in writing and delivered by public or private carrier, personal delivery, registered or certified mail (return receipt requested) or by means of telefacsimile or telecopier. Notices delivered in person or sent via telefacsimile or telecopier shall be effective as of the date the notice is delivered or sent. Notices sent by registered or certified mail (return receipt requested) shall be deemed to be effective forty-eight hours after the date said notice is postmarked to the addressee.

Contractor: City of Wichita – Wichita Transit
Attn: Director of Transit
Address: 777 E. Waterman
Phone: (316) 352-4805
Fax: (316) 337-9287

Vendor: Contractor Name: Starkey, Inc.
Attn: Carolyn Risley Hill, CEO
Address: 4500 W. Maple
Phone: 512-4105
Fax: 941-9328

ARTICLE 15: MISCELLANEOUS

15.1 The failure of either party to insist upon the strict performance of any of the terms or conditions of this Agreement or to exercise any option, right or remedy provide by this Agreement, shall not be construed as a future waiver or relinquishment of such term, provision, option, right or remedy. A waiver by either party of any term or provision of this Agreement shall not be deemed to have been made unless submitted in writing and signed by the waiving party.

15.2 This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and to their permitted successors and assigns.

15.3 In the event that any provision in this Agreement shall be adjudicated invalid under applicable laws, the invalid provision shall automatically be considered amended so as to conform to all applicable legal requirements. If the invalidity cannot be cured by amendment, the invalid provision shall be considered stricken and deleted. In either case, the validity or enforceability of the remaining provision of this Agreement shall remain intact.

15.4 Both parties to this Agreement represent and agree that (i) they have reviewed all aspects of this Agreement, (ii) they have been given the opportunity to review this Agreement with counsel, and (iii) they have carefully read and fully understand all provisions of this Agreement.

15.5 The Contractor and the City shall not be obligated to resolve any claim or dispute related to this Agreement by arbitration. Any reference to arbitration in the Agreement or its attached appendixes is deemed void. The Parties are free to negotiate, mediate, or litigate any dispute between them.

Appendix A

Exhibit 1

Monthly Reporting Form

Reporting Period: _____

On-Time Performance And Trip Length Compliance:

What was your on-time performance for the reporting period?

Early Arrival %	On Time %	Late Arrival %

What % of trips provided involved a client being on the van for more than 90 minutes? _____

Peak Hour Rides:

How many rides were provided to eligible passengers during the following times?

6:00 AM and 10:00 AM	2:00 PM and 6:00 PM

Wheelchair / Ambulatory Rides:

How many rides were provided to eligible passengers who use a wheelchair or similar mobility device and how may rides where provided to eligible passengers who are ambulatory.

Total Rides Provided	Number Of Ambulatory Rides	Number Of Wheelchair Rides

Access To Jobs Rides:

How many rides were provided to eligible passengers under the Access to Jobs Program? _____

New Freedom Rides:

How many rides were provided to eligible passengers under the New Freedom Program? _____

Passenger Fares Collected And Due:

What is the dollar value of passenger fares collected or due during the reporting period (number of eligible trips X $2.50)? $_____

Missed Trip Information:

Name Of Person	Number Of Missed Trips	Missed Trip Dates

No Show Information:

Name Of Person	Number Of No-Shows	No-Show Dates

Complaint Reporting:

Reason For Complaint	Number Of Incidents During Reporting Period
Late arrival	
Early arrival	
Length of time on van	
Driver rudeness	
Other	

Any Action Taken on Complaints

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

Name Of Client: _____

Nature of Complaint: _____

_____

Action taken: _____

_____

NAME OF CLIENT: _____

Nature of Complaint: _____

_____

Actions taken: _____

_____

Appendix B

Federal And State Regulations

The following additional provisions apply to this Agreement only to the extent that the subject matter of any given provision is relevant to the purposes of the Agreement. The Parties agree that the provisions found in subsections 1, 2, 3, 4, 6, 9, and 10 of Section 9 do not apply to this Agreement. Any inconsistency between the provisions of Appendixes A and B shall be resolved in favor of Appendix A. With respect to Section 10 below, the Parties agree that this is a “fee for service” contract and that no bids or proposals are being submitted in connection herewith. With respect to Section 12 below, the Parties agree that the dispute resolution provisions of Section 15.5 of Appendix A shall control. With respect to Section 13 below, no disadvantaged business goal is applicable to this Agreement. With respect to Section 15 below, the Parties agree that this Agreement does not involve international air transportation.

U. S. FEDERAL

1. Energy Conservation Requirements

   The Contractor agrees 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.

2. Clean Water Requirements

   A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

   B. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

3. Lobbying

   Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR, Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, gran,t or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with nonfederal funds with respect to that federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the (Purchaser).

4. Access To Records

   Contracts exceeding $100,000.

A. The Contractor agrees to provide the Purchaser, the FTA administrator, the Comptroller General of the United States, or any of their duly-authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

B. Where the Purchaser enters into a negotiated contract for other than a small purchase or under a simplified acquisition threshold and is an institution of higher education, a hospital or other nonprofit organization and is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, the FTA administrator, the Comptroller General of the United States, or any of their duly-authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

C. Where any Purchaser, which is the FTA recipient or a subgrantee of the FTA recipient in accordance with 49 U.S.C. 5325(a), enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation, and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

D. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

E. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly-authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

F. FTA does not require the inclusion of these requirements in subcontracts.

5. Federal Changes

Contractor shall, at all times, comply with all applicable FTA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor’s failure to so comply shall constitute a material breach of this contract.

6. Clean Air Requirements

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by FTA.

7. No Government Obligation To Third Parties

A. The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

8. Program Fraud And False Or Fraudulent Statements And Related Acts

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq . and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the federal government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the federal fovernment deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

9. Termination

Contracts with nonprofit organizations and institutions of higher education in excess of $100,000 and all other contracts in excess of $10,000.

A. Termination for Convenience (General Provision)

The Purchaser may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to Purchaser to be paid the Contractor. If the Contractor has any property in its possession belonging to the Purchaser, the Contractor will account for the same and dispose of it in the manner the Purchaser directs.

B. Termination for Default [Breach or Cause] (General Provision)

If the Contractor does not deliver supplies in accordance with the contract delivery schedule or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract or if the Contractor fails to comply with any other provisions of the contract, the Purchaser may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the Purchaser that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the Purchaser, after setting up a new delivery of performance schedule, may allow the Contractor to continue work or treat the termination as a termination for convenience.

C. Opportunity to Cure (General Provision)

The Purchaser, in its sole discretion, may, in the case of a termination for breach or default, allow the Contractor an appropriately short period of time in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If Contractor fails to remedy to Purchaser's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within ten (10) days after receipt by Contractor of written notice from Purchaser setting forth the nature of said breach or default, Purchaser shall have the right to terminate the contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude Purchaser)from also pursuing all available remedies against Contractor and its sureties for said breach or default.

D. Waiver of Remedies for Any Breach

In the event that Purchaser elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by Purchaser shall not limit Purchaser's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

E. Termination for Convenience (Professional or Transit Service Contracts)

The Purchaser, by written notice, may terminate this contract, in whole or in part, when it is in the government's interest. If this contract is terminated, the recipient shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

F. Termination for Default (Supplies and Service)

If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.
If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

G. Termination for Default (Transportation Services)

If the Contractor fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of default. The Contractor will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If this contract is terminated while the Contractor has possession of Purchaser's goods, the Contractor shall, upon direction of the Purchaser, protect and preserve the goods until surrendered to the Purchaser or its agent. The Contractor and Purchaser shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the dispute clause.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

H. Termination for Default (Construction)

If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, the Purchaser may terminate this contract for default. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, the Purchaser may take over the work and compete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Purchaser resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Purchaser in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of the Purchaser, acts of another contractor in the performance of a contract with the Purchaser, epidemics, quarantine restrictions, strikes, freight embargoes; and

2) The Contractor, within 10 days from the beginning of any delay, notifies the Purchaser in writing of the causes of delay. If in the judgment of the Purchaser, the delay is excusable, the time for completing the work shall be extended. The judgment of the Purchaser shall be final and conclusive on the parties, but subject to appeal under the disputes clauses.

   If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Purchaser.

I. Termination for Convenience or Default (Architect and Engineering)

The Purchaser may terminate this contract in whole or in part, for the Purchaser's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Purchaser shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and

effective date of the termination. Upon receipt of the notice, the Contractor shall (i) immediately discontinue all services affected (unless the notice directs otherwise) and (ii) deliver to the contracting officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

If the termination is for the convenience of the Purchaser, the contracting officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

If the termination is for failure of the Contractor to fulfill the contract obligations, the Purchaser may complete the work by contact or otherwise and the Contractor shall be liable for any additional cost incurred by the Purchaser.

If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Purchaser.

J. Termination for Convenience of Default (Cost-Type Contracts)

The Purchaser may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of the Purchaser or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from the Purchaser, or property supplied to the Contractor by the Purchaser. If the termination is for default, the Purchaser may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the Purchaser and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of the Purchaser, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, the Purchaser determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the Purchaser, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination of convenience.

10. Government-Wide Debarment And Suspension

<u>Certification Regarding Debarment, Suspension, and Other Responsibilities Matters Lower Tier Covered Transactions (Third Party Contracts over $100,000)</u>

<u>Instructions for Certification</u>

By signing and submitting this bid or proposal, the prospective lower tier participant is providing the signed certification set out below.

A. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to

the federal government, Purchaser may pursue available remedies, including suspension and/or debarment.

B. The prospective lower tier participant shall provide immediate written notice to Purchaser if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

C. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the definitions and coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact Purchaser for assistance in obtaining a copy of those regulations.

D. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by Purchaser.

E. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list issued by U.S. General Service Administration.

F. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

G. Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the federal government, Purchaser may pursue available remedies including suspension and/or debarment.

<u>Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction</u>

A. The prospective lower tier participant certifies, by submission of this bid or proposal, that neither it nor its "principals" [as defined at 49 C.F.R. § 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

B. When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

11. Civil Rights Requirements

The following requirements apply to the underlying contract:

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: 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. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

12. Breaches And Dispute Resolution

Contracts exceeding $100,000.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the Parties shall be decided in writing by the authorized representative of Purchaser's [title of employee]. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

Performance During Dispute - Unless otherwise directed by Purchase), Contractor shall continue performance under this contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Purchaser and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the Purchaser is located.

Rights and Remedies - The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Purchaser, architect or Contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

13. Disadvantages Business Enterprises (DBE)

The federal fiscal year goal has been set by the Purchaser in an attempt to match projected procurements with available qualified disadvantaged businesses. The Purchaser’s goals for budgeted service contracts, bus parts, and other materials and supplies for Disadvantaged Business Enterprises have been established by the Purchaser as set forth by the Department of Transportation Regulations 49 C.F.R. Part 23, March 31, 1980, and amended by Section 106(c) of the Surface Transportation Assistance Act of 1987, and is considered pertinent to any contract resulting from this Request for Proposal.

If a specified DBE goal is assigned to this contract, it will be clearly stated in the Special Specifications, and if the Contractor is found to have failed to exert sufficient, reasonable, and good faith efforts to involve DBEs in the work provided, the Purchaser may declare the Contractor noncompliant and in breach of contract. If a goal is not stated in the Special Specifications, it will be understood that no specific goal is assigned to this contract.

This section is being developed to reflect the new rule in 49 CFR Part 26.

A. Policy - It is the policy of the Department of Transportation and the City that Disadvantaged Business Enterprises, as defined in 49 CFR Part 23, and as amended in Section 106c of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURRA), shall have the maximum opportunity to participate in the performance of contract financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 and Section 106c of the STURAA of 1987 apply to this contract.

   The Contractor agrees to ensure that DBEs, as defined in 49 CFR Part 23 and Section 106c of the STURRA of 1987, have the maximum opportunity to participate in the whole or in part with federal

funds provided under this Agreement. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with the regulations to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, religion, sex, age or physical handicap in the award and performance of subcontracts.

It is further the policy of the Purchaser to promote the development and increase the participation of businesses owned and controlled by disadvantaged. DBE involvement in all phases of the Purchaser's procurement activities are encouraged.

B. DBE Obligation – The Contractor and its subcontractors agree to ensure that disadvantaged businesses have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under the Agreement. In that regard, all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 as amended, to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts.

C. Where the Contractor is found to have failed to exert sufficient reasonable and good faith efforts to involve DBE's in the work provided, the Purchaser may declare the contractor noncompliance and in breach of contract.

D. The Contractor will keep records and documents for a reasonable time following performance of this contract to indicate compliance with the Purchaser's DBE program. These records and documents will be made available at reasonable times and places for inspection by an authorized representative of the Purchaser and will be submitted to the state upon request.

E. The Purchaser will provide affirmative assistance as may be reasonable and necessary to assist the prime contractor in implementing their programs for DBE participation. The assistance may include the following upon request:

- Identification of qualified DBE
- Available listing of minority assistance agencies
- Holding bid conferences to emphasize requirements

F. DBE program definitions as used in the contract:

1) Disadvantage business means a "small business concern"

a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

c) Which is at least 51 percent owned by one or more women individuals, or in the case of any publicly owned business, at least 51% of the stock of which is owned by one or more women individuals; and

d) Whose management and daily business operations are controlled by one or more women individuals who own it.

2) "Small business concern" means a small business as defined by Section 3 of the Small Business Act and Appendix B – (Section 106(c)) Determinations of Business Size.

3) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, or women, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuba, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of Pacific, and the Northern Marianas;

e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

14. Incorporation Of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain standard terms and conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Purchase) requests which would cause the Purchaser to be in violation of the FTA terms and conditions.

15. Fly America

Applies ONLY to contracts involving international air transportation of persons or material.

The Contractor understands and agrees that the federal government will not participate in the costs of international air transportation of any persons involved in or property acquired for the project unless that air transportation is provided by U.S. flag carriers to extend services by U.S. flag carriers is available, consistent with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974f. as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations "Use of United States Flag Air Carriers." 41 C.F.R. §§ 301.131 through 301.143.

16. Environmental Protection

The Contractor agrees to comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321, et seq., consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements on environmental matters at 49 U.S.C. § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R.

Part 1500 *et seq*.; And joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

17. Access Requirements For Persons With Disabilities (ADA)

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, and with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101, et seq., which requires the provision of accessible facilities and services, and with the following federal regulations, including any amendments thereto:

A. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

B. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Assistance," 49 C.F.R. Part 27;

C. Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

D. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

E. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

F. U.S. GSA regulations, "Accommodations for the Physically Handicapped'" 41 C.F.R. Subpart 101-19;

G. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

I. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

J. Any implementing requirements FTA may issue.

18. Notification Of Federal Participation

Applies ONLY to contracts for goods and services, including construction, valued at over $500,000.

In the announcement of any third party contract award for goods or services (including construction services) having aggregate value of $500,000 or more, the Contractor agrees to specify the amount of federal assistance to be used in financing that acquisition of goods and services and to the expressed amount of that federal assistance as a percentage of that total cost of that third-party contract.

STATE OF KANSAS

A. Agreement With Kansas Law

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

B. Disclaimer Of Liability

Neither the State of Kansas nor any agency thereof, nor the City, shall hold harmless or indemnify any Contractor beyond that for any liability or damage except for those occasioned by the acts or omissions of its own employees, and then only up to the limits of liability designated under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.). However, City agrees to indemnify and hold harmless Contractor to the maximum extent permitted by law.

C. Responsibility For Taxes

Neither the State of Kansas, nor the City, shall be responsible for, nor indemnify a Contractor for, any federal, state or local taxes that may be imposed or levied upon the subject matter of this contract.

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: Reconstruction of Old Sanitary Sewers and Water Distribution Mains Replacement (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the projects.

Background: The 10-year Capital Improvement Program (CIP) contains annual projects for replacing failing water and sewer infrastructure.

Analysis: The Reconstruction of Old Sanitary Sewers Program helps to eliminate stoppages and backups, as well as decrease inflow and infiltration into the system. The Water Distribution Mains Replacement Program decreases the number of water main breaks, brings undersized mains to current standards and improves fire protection. Both programs reduce maintenance costs and improve customer service, and are also utilized for relocation/reconstruction of existing facilities in advance of or as part of CIP paving projects.

Financial Considerations: The Proposed CIP for 2012 contains a budget for $2,376,000 for 2012 Reconstruction of Old Sanitary Sewers and a budget for $2,856,110 for 2012 Water Distribution Mains Replacement.

Goal Impact: These projects address the Ensure Efficient Infrastructure goal by providing reliable water and sewer service to the Public Works and Utilities customers.

Legal Considerations: The resolutions have been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the projects, adopt the resolutions and authorize the necessary signatures.

Attachments: CIP Sheets, Resolutions and Notices of Intent.

CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE
To Initiate Project: x
To Revise Project:

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	12/13/2011	Reconstruction of Old Sanitary Sewer

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
S-4		2012	

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

12. Project Cost Estimate

ITEM	GO	SA	OTHER*	TOTAL
Right of Way				
Paving, grading & const.				
Bridge & Dam				
Drainage				
Sanitary Sewer			$2,210,000	$2,210,000
Sidewalk				
Water				
Multi-Use Path				
Totals			$2,276,000	$2,276,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

* future sewer revenue bonds and/or sewer utility cash reserves

13. Recommendation: Approve the project, NOI and adopt the resolution

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE
To Initiate Project: x
To Revise Project:

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	12/13/2011	Water Distribution Main Replacement

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
W-07		2012	

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

12. Project Cost Estimate

ITEM	GO	SA	OTHER*	TOTAL
Right of Way				
Paving, grading & const.				
Bridge & Dam				
Drainage				
Sanitary Sewer				
Sidewalk				
Water			$2,856,110	$2,856,110
Multi-Use Path				
Totals			$2,856,110	$2,856,110
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

* future water revenue bonds and/or water utility cash reserve

13. Recommendation: Approve the project, NOI and adopt the resolution

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

636244

(Published in the Wichita Eagle, on December 23, 2011.)

NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $ 2,856,110, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing Body of the City of Wichita, Kansas, by Resolution No. 11-283, duly adopted December 20, 2011, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Water Distribution Main Replacement Program (W-67) (called the "Project"). The total costs of the Project are estimated to **be** two million eight hundred fifty six thousand one hundred ten dollars ($2,856,110) .The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed $2,856,110 under the authority of K.S.A. 10-1201 et seq., as amended and supplemented, including by Charter Ordinance No. 211 of the City of Wichita, Kansas. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

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

BY ORDER of the Governing Body of the City of Wichita, Kansas, on December 20, 2011.

_____
CARL BREWER, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

620568

(Published in the Wichita Eagle, on December 23, 2011.)

NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $ 2,376,000, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF.

TO: THE RESIDENTS OF THE CITY OF WICHITA, KANSAS

You and each of you are hereby notified that the Governing Body of the City of Wichita, Kansas, by Resolution No. 11-284, duly adopted December 20, 2011, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Reconstruction of Old Sanitary Sewers Program (S-4) (called the "Project"). The total costs of the Project are estimated to be two million three hundred seventy six thousand dollars ($2,376,000) .The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed $2,376,000 under the authority of K.S.A. 10-1201 et seq., as amended and supplemented, including by Charter Ordinance No. 211 of the City of Wichita, Kansas. Such revenue bonds shall not be general obligation bonds of the City payable from taxation, but shall be payable only from the revenues derived from the operations of the Water and Sewer Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the City which will be available for that purpose.

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

BY ORDER of the Governing Body of the City of Wichita, Kansas, on December 20, 2011.

_____
CARL BREWER, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

RESOLUTION NO. 11- 284

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, DECLARING IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY, AND TO ISSUE REVENUE BONDS IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $2,376,000 EXCLUSIVE OF THE COST OF INTEREST ON BORROWED MONEY, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), has heretofore by Ordinance No. 39-888, adopted May 26, 1987 and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility"; and

WHEREAS, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 et seq., (the "Act"), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

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

SECTION 1. Pursuant to the laws of the State of Kansas, including K.S.A. 10-1201, *et. seq*,, as amended and supplemented by Charter Ordinance No. 211 of the City of Wichita, Kansas, it is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Reconstruction of Old Sanitary Sewers (S-4) (the "Project"). The total costs of the Project are estimated to be two million three hundred seventy six thousand dollars ($2,376,000) in 2012 exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the Project.

SECTION 2. It is hereby found and determined that the construction of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

SECTION 3. It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed two million three hundred seventy six thousand dollars ($2,376,000) in 2012 exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.

SECTION 4. It is hereby found and determined to be necessary, before such revenue bonds can be issued, to publish one time in the City's official newspaper a Notice of the Governing Body's intention to initiate and complete the Project and to issue such revenue bonds, such Notice to be in the form which is attached hereto and made a part hereof by reference as though fully set forth herein. If, within Fifteen (15) days from and after the date of the publication of the Notice, there

shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than Twenty Percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If a sufficient protest to the Project and the issuance of the revenue bonds is not filed within said Fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the sale and issuance of the revenue bonds.

SECTION 5. This Resolution shall be in force and take effect from and after its adoption and approval.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, not less than two-thirds of the members voting in favor thereof, on December 20, 2011.

(Seal)

_____
CARL BREWER, Mayor

ATTEST:

_____
KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

By_____
GARY E. REBENSTORF, Director of Law

RESOLUTION NO. 11-283

A RESOLUTION OF THE CITY OF WICHITA, KANSAS, DECLARING IT NECESSARY TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY, AND TO ISSUE REVENUE BONDS IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $2,856,000 EXCLUSIVE OF THE COST OF INTEREST ON BORROWED MONEY, FOR THE PURPOSE OF PAYING CERTAIN COSTS THEREOF, AND PROVIDING FOR THE GIVING OF NOTICE OF SUCH INTENTION IN THE MANNER REQUIRED BY LAW.

WHEREAS, the Governing Body of the City of Wichita, Kansas (the "City"), has heretofore by Ordinance No. 39-888, adopted May 26, 1987 and published in the official newspaper of the City on May 29, 1987, as required by law, authorized the combining of the City-owned and operated municipal water utility and municipal sewer utility thereby creating the "City of Wichita, Kansas Water and Sewer Utility"; and

WHEREAS, the City is authorized under the Constitution and laws of the State of Kansas, including K.S.A. 10-1201 et seq., (the "Act"), to issue revenue bonds to construct, reconstruct, alter, repair, improve, extend and enlarge the Utility;

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

SECTION 1. Pursuant to the laws of the State of Kansas, including K.S.A. 10-1201, *et. seq*,, as amended and supplemented by Charter Ordinance No. 211 of the City of Wichita, Kansas, it is hereby found and determined to be necessary and advisable to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, Distribution Main Replacement Program (W-67) (the "Project"). The total costs of the Project are estimated to be two million eight hundred fifty six thousand one hundred ten dollars ($2,856,110) in 2012, exclusive of the cost of interest on borrowed money. Available and unencumbered funds of the Utility will be used to pay a portion of the costs of the Project.

SECTION 2. It is hereby found and determined that the construction of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

SECTION 3. It is hereby found and determined to be necessary and advisable to issue revenue bonds of the City, in a total principal amount which shall not exceed two million eight hundred fifty six thousand one hundred ten dollars ($2,856,110) in 2012, exclusive of the cost of interest on borrowed money, under the authority of the Act, to pay certain costs of the Project, and the expenses of issuing such revenue bonds. Such revenue bonds shall not be general obligations of the City payable from taxation, but shall be payable from the revenues derived from the operations of the Utility. Costs of the Project in excess of the proceeds of such revenue bonds shall be paid from unencumbered moneys of the Utility which will be available for that purpose.

SECTION 4. It is hereby found and determined to be necessary, before such revenue bonds can be issued, to publish one time in the City's official newspaper a Notice of the Governing Body's intention to initiate and complete the Project and to issue such revenue bonds, such Notice to be in the form which is attached hereto and made a part hereof by reference as though fully set forth herein. If, within Fifteen (15) days from and after the date of the publication of the Notice, there

shall be filed in the Office of the City Clerk a written protest against the Project and the issuance of the revenue bonds, which protest is signed by not less than Twenty Percent (20%) of the qualified electors of the City, then the question of the Project and the issuance of the revenue bonds shall be submitted to the electors of the City at a special election which shall be called for that purpose as provided by law. If a sufficient protest to the Project and the issuance of the revenue bonds is not filed within said Fifteen (15) day period, then the Governing Body shall have the authority to authorize and proceed with the Project and the sale and issuance of the revenue bonds.

SECTION 5. This Resolution shall be in force and take effect from and after its adoption and approval.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, not less than two-thirds of the members voting in favor thereof, on December 20, 2011.

(Seal)

_____
CARL BREWER, Mayor

ATTEST:

_____
KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

By_____
GARY E. REBENSTORF, Director of Law

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: 2012 Insurance Program

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendation: Receive, file and ratify the report.

Background: Annually, the City places a number of insurance policies to provide coverage for risks to the City of Wichita, its assets and employees. These policies include property, data processing, boiler/machinery, burglary/theft, employee dishonesty, excess workers compensation, excess general liability, airport general liability, underground fuel storage, helicopter hull and helicopter general liability, fine arts, travel insurance, foreign travel and Wichita Public Building Commission (PBC). In addition, to administer the Risk Management program, various services are contracted including outside appraisal services, software support, medical bill review for worker's compensation, vehicle rental services for private claimants, and several medical service providers for workers compensation.

Analysis: To protect City assets, reduce the risk exposure and administer the Risk Management program, the City has placed the following insurance coverage and maintains the following contracts:

Purchased Insurance

Property Insurance - All City owned buildings (approximately 250) and contents are covered against named perils. The total insurance value is in excess of $732 million and is placed with Travelers Indemnity Insurance Company. The premium is $828,266 annually with a $2 million dollar deductible per occurrence for wind and hail only. All other policy deductibles are $100,000 or less. As a condition of renewal, wind and hail losses to Century II's roof will be adjusted at actual cash value until the current roofing system is replaced. At such time, wind and hail losses will be adjusted at replace cost value. The Travelers Property and Casualty Company of America quote is the lowest rate for this coverage and represents an 8.2% premium increase from 2011. The increase in cost is due to the addition of insurable assets reflected in the City's 2012 Statement of Values, the City's loss history, its geographical exposure to wind and hail storms and the insurance industry's inability to purchase affordable excess coverage.

The City maintains a separate policy for property, liability and boiler insurance on behalf of the Public Building Commission on the State Office Building. Property coverage limits are $35.5 million, with an additional $3.7 million in business interruption insurance. In addition, the Public Building Commission policy also includes general liability coverage of $2 million. Coverage is placed with Travelers Insurance Company with premiums totaling $53,367, a 9.4% increase in premium cost for 2012.

Worker's Compensation Excess Insurance - The City self-insures exposure to Worker's Compensation costs, as permitted under KSA 44-505(f). However, the City does purchase excess worker's compensation coverage (as required for self-insured's by KAR 51-14-4) with a retention of $750,000 per occurrence. Worker's compensation excess coverage for 2012 placed under Safety National will

experience a 9.1% increase for a premium totaling $175,800. Overall municipal market conditions, the City's helicopter and increased payroll are responsible for the increase.

Crime (Burglary/Theft) Policy - This policy covers losses due to employee theft, credit card theft, other theft or robbery, forgery of documents, computer fraud (fraudulent transfers of funds) and acceptance of counterfeit currency or money orders. Depending on the type of loss, policy limits range from $50,000 to $1 million. Rates increased by 3.3% for 2012, resulting in an annual premium cost of $10,522. This policy is placed with Hartford Fire Insurance Company.

Travel Accident Insurance - This policy provides insurance against the loss of life or limb of City employees and elected officials while traveling outside of the City, but within the United States. Class I employees (City Manager and City Council) are covered for travel anywhere in the world. Class II employees (all other City employees) are covered for bona fide business travel anywhere in the world while on official City business. The aggregate policy limit is $500,000, with the loss per individual limited to $100,000. If more than 5 individuals were subject to the aggregate limit, the policy limit would be split proportionately among the claimants. The premium cost is $1,700 annually, the same as 2011. The policy is placed with Zurich American Insurance Company.

International Package - This policy, written through ACE American Insurance Company, provides for coverage to include $1 million general and automobile liability limits, $1 million for repatriation, $250,000 limits for accidental death and dismemberment, $5,000 limits for employee dishonesty and money & securities, and an aggregate of $1,000,000 for kidnap and extortion. The 2012 premium for this policy is $4,941, the same as 2011.

Helicopter Liability - The City maintains liability and hull insurance on the MD 500E helicopter operated by the Police Department. The policy for 2012 written through Phoenix-Old Republic Insurance contains limits of $1.2 million for damage to the hull and $1 million for liability. Premiums for 2012 total $25,825, representing an 2.8% decrease over 2011.

Art Collection - The Wichita Art Museum maintains coverage on the fine arts collections. This policy provides $100 million in coverage for art within the museum, as well as $37.5 million for art in transit or at other locations. The coverage amount is less than the total estimated $175.3 million appraised value of the collection. However, the insurance coverage is based on a "Probable Maximum Loss" study performed by Huntington Block Insurance for fire and tornadoes that may affect the Wichita Art Museum. The study is based on the fact that not more than 2/3 of the art collection (or less) is actually displayed at any given time. The rest of the art collection is stored in a hardened vault and is protected from loss. Huntington Block's review indicates that $100 million dollars in coverage is adequate and appropriate. The premium for policy year 2012 is $40,000, the same as 2011. The policy is placed with 50% - 50% with ACE American Insurance Company and AXA Art Insurance Corporation.

Airport General Liability - The Airport maintains $100 million in general liability insurance coverage with a $1,000 deductible per occurrence. The policy is written through Chartis Aviation with an annual premium of $39,602, the same as 2011.

Airport Underground Storage Tanks - The Airport maintains environmental liability insurance on 24 underground storage tanks at the airport. Public Works & Utilities maintain one unit at the Hess Pump Station as well as Transit. Liability limits are $1 million per incident. The annual premium is $3,896, and placed through Great American Alliance Insurance company. This insurance protects against environmental loss only. In the event of an accidental property loss, coverage would be afforded through the City's Property and Casualty insurance policy. This coverage experienced a 0.8% rate decrease from that of 2011.

Federal Excess Liability - The City purchased a Federal Excess Liability insurance policy in June of 2007. This coverage does not cover the misuse of federal funds. The coverage applies to federal litigation and out of state lawsuits where the Kansas Tort Claims Act would not protect the City of Wichita. This coverage is often maintained in cities similar in size to Wichita to serve as a backstop for significantly high cost liability exposures. Some of these exposures include, but are not limited to: civil rights violations, discrimination, other federal actions and liability coverage for City vehicles when traveling outside the State of Kansas. Coverage consists of a $10 million limit with a $2 million retention. Premiums for this policy written through Chartis will total $227,620 and reflect a 3% increase from 2011.

Self Insured Risks

The City self-insures for general liability using a Tort Fund administered by the Department of Law. Funding for the Tort Fund is provided through the General Fund and Water and Sewer funds. Automobile liability is self-insured by the City, as is workers compensation (other than the excess coverage noted above).

Contracts

Corvel Corp. services are used for worker's compensation claims that require nurse case management and to re-price billings when utilization is through the provider's network. The nurse management contract is based on an hourly rate basis. For re-pricing Worker's Compensation medical bills, the City pays Corvel 25% of the savings plus $1.25 per line fee.

Heartland MRI is used for all imaging services required for diagnosis of work related injuries. The negotiated fee for these services is from $436 to $530 per MRI, including the read. This reflects an approximate 50% savings over the State of Kansas mandated fee schedule for these services. Other MRI vendors may be used, but only if dictated by medical necessity. All required physical therapy for work related injuries is provided by Via-Christi Occupational and Environmental Medicine on a negotiated fee structure.

Auto Damage Appraisers of Kansas provides damage estimates on private claimant's cars and vehicles and salvage valuations on all total losses. The City has also negotiated a rate of $26 per day with Enterprise Rent-A-Car when the City is required to provide substitute transportation while a private claimant's vehicle is being repaired.

The self-insured worker's compensation and automobile physical damage programs utilize Risk Master World software to log claims, initiate payments and prepare reports. The annual support software fee to CSC Financial Services Group is $23,013.85. An actuarial review of the Self Insurance Fund reserves is conducted annually. The current provider is Pinnacle Actuarial Resources, Inc, at an annual amount of $7,000.

On January 12, 2010, the City Council approved a contract for insurance placement services for property and casualty insurance with Lockton Companies, LLC. Lockton's contract fee for placement of all applicable 2012 insurance policies is $40,000.

Financial Considerations: The premiums for the insurance policies and related programs and services are included in the adopted budget. Several premium costs are re-allocated to departments through the establishment of auto liability, building and contents, and worker's compensation insurance rates. Coverage for the Police helicopter is budgeted and expended in the Police General Fund budget. Airport specific coverages are budgeted and expended in the Airport Fund. The Art Museum coverage is budgeted for insurance in its 2012 operating budget. Funding for the travel accident insurance and the crime policy is absorbed within the Self Insurance Fund. The total cost of premiums for 2012 increased by 6.3%. The majority of this increase can be attributed to a tightening of the property market and the

region's vulnerability to severe weather events.

Goal Impact: The City places a number of insurance policies and contracts to provide coverage for risk to the City of Wichita and its employees as a part of the Internal Perspective goal. These policies include property, data processing, boiler/machinery, burglary/theft, employee dishonesty, excess worker's compensation liability, airport general liability, underground fuel storage, helicopter hull, helicopter general liability and federal excess liability. The insurance policies and contracts protect City assets and reduce/avoid costs.

Legal Considerations: The City's liability on tort claims is limited under KSA 75-6105 to $500,000 per claim. The City is allowed to self-insure workers compensation based on KSA 505(f), although excess workers compensation coverage is required under KAR 51-14-4. City Code 2.64.020 (h) authorizes the Purchasing Manager to negotiate the purchase of insurance coverage.

Recommendation/Action: It is recommended the City Council receive, file and ratify the 2012 Insurance Program, subject to minor modifications and verification of coverage details.

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: Interlocal Agreements (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve the interlocal agreements.

Background: Each year, the Federal Transit Administration (FTA) provides grant money for use in providing urban public transportation services. The amount of funding is based upon a complex formula involving miles driven, passenger rides provided, population area, and density serviced, etc.

Analysis: The 2000 census figures enlarged the service area for which the City of Wichita is allowed to seek funds to include parts of Sedgwick County and other incorporated entities within the urbanized area (UZA). The City can request funds for public transportation services to enhance the programs of Sedgwick County and the urbanized area and pass through a portion of the total annual apportionment. For Fiscal Year 2012, the pass-through funds will be for a total of $250,000 for planning and preventive maintenance, of which Sedgwick County will receive $200,000 and the City of Derby will receive $50,000. All figures are 80% federal and 20% local match.

Financial Considerations: None. Sedgwick County and the City of Derby will pay the matching portions.

Goal Impact: Ensure an Efficient Infrastructure by maintaining and optimizing public facilities and assets.

Legal Considerations: The City will have no part in operating these transportation programs. It will give guidance for the federal reporting required under the grant. By the attached interlocal agreements, Sedgwick County and the City of Derby agree to adhere to all federal program requirements attached to the grant. The City's Law Department has reviewed and approved these agreements as to form.

Recommendations/Actions: It is recommended that the City Council approve the interlocal agreements.

Attachments: Interlocal agreements for Sedgwick County and the City of Derby

INTERLOCAL AGREEMENT
For PLANNING and PREVENTIVE MAINTENANCE

This interlocal agreement (Agreement) is entered into by and between the City of Wichita, Kansas ("WICHITA") and Sedgwick County, Kansas ("COUNTY").

WICHITA and COUNTY both operate public transportation services within the WICHITA metropolitan area, and are committed to continuing such services in a cooperative and coordinated manner. The purpose of this Agreement is to provide for allocation of federal funds available under the Urban Mass Transportation Act of 1964 ("Act") to provide on-going support to transit services provided by WICHITA and COUNTY. It is, therefore, mutually agreed as follows:

1. **Term.** The Agreement shall be effective upon execution by all parties hereto and shall be effective FY 2012, terminating after receipt of final payment, unless terminated earlier as allowed below.

2. **Operations and Management.** WICHITA and COUNTY shall each be solely responsible for the separate operation and management of their respected public transportation systems. WICHITA and COUNTY agree to act with due diligence and good faith in the exercise of the operation and management of their respective transit systems to comply with the terms of this Agreement and to work together in a mutually supportive manner to ensure the implementation of all provisions contained in this Agreement. WICHITA agrees to assist COUNTY in set-up guidance for proper reimbursement and payout documents, data submission for the National Transit Database, etc. COUNTY will be responsible for scheduling an annual meeting with WICHITA for review and future planning.

3. **Allocation of FY2012 Section 5307 Funds.** For FY2012, COUNTY shall be designated by WICHITA to be a subgrantee (pass-through) recipient to receive Section 5307 (CFDA 20.507) funding that is converted into Section 5307 funds to provide operations funding for dialysis rides outside the Wichita City limits. Section 5307 funding requires all subgrantee (pass-through) recipients to fund 20% of the total cost as a local match; the Federal Transit Administration (FTA) provides the remaining 80% federal portion for the total cost of the project. The total allocation for the operating functions for COUNTY's transportation system for FY2012 is **$200,000**; the federal portion is **$160,000** and COUNTY's portion is **$40,000** for the required 20% local match.

4. **Application for Section 5307 Funding.** WICHITA shall apply to the FTA for funding under Paragraph 3. The funds received by COUNTY shall be matched at an appropriate percentage (20% of the total allocation) by local funds secured by COUNTY and shall be available for use by COUNTY, as its governing body deems appropriate within the FTA requirements, as set out in Exhibit C and D attached.

5. **Future Section 5309 Applications.** WICHITA and COUNTY shall cooperate to pursue applications as may be appropriate for capital grants under Section 5309, which shall include funds for capital acquisitions by COUNTY.

6. **Carryover of Funds.** Funds allocated to COUNTY pursuant to Paragraphs 4 and 5 may be carried over.

7. **Future Allocation of 5307 Funds.** Based on the availability of SECTION 5307 funds, COUNTYY may be subject to less apportionment than the $160,000 Federal portion available for allocation in a fiscal year. This will be determined during the annual planning meeting.

8. **Compliance with Laws.** WICHITA and COUNTY hereby agree, in the performance of this Agreement, to comply with all applicable federal, state, and local laws, including specifically all relevant requirements of the Act, as appropriate, which may separately and individually apply to their respective jurisdictions.

9. **Extension of Agreement.** WICHITA and COUNTY may extend this Agreement on a year-to-year basis with written approval of both parties. Funds are secured in the agreement year and subject to be spent within FTA requirements.

10. **Establishment and Maintenance of Records.** COUNTY shall establish and maintain records as prescribed by WICHITA, with respect to all matters covered by this Agreement. Except as otherwise authorized by WICHITA, COUNTYY shall retain such financial and nonfinancial related records for a period of three (3) years after receipt of the final payment under this Agreement or termination of this Agreement. However, if any litigation, claim, negotiation, audit, oversight or other action involving the records has been started before the expiration of the three-year period, the records must be retained until the completion of the action and resolution of issues which arise from it or until the end of the regular three-year period, whichever is later.

11. **Reports and Information.** COUNTY, at such times and in such forms as WICHITA or its designates and authorized representative(s) may require, shall furnish to WICHITA, the FTA, or their designated and authorized representative(s) such statements, records, reports, data, and information as they may request pertaining to matters covered by this Agreement.

12. **Audits and Inspections.** COUNTY shall, at anytime, and as often as WICHITA may deem necessary, make available to WICHITA, or its designated and authorized representative(s), for examination of all its records and data pertaining to matters covered by this Agreement for the purpose of making audits, oversights, examinations, excerpts, and transcriptions. COUNTY is required to provide WICHITA with access to their single audit report.

13. Per OMB Circular A-133: **Pass-through Entity Responsibilities**. A pass-through entity shall perform the following for the federal awards it makes:

    a. Identify federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the federal award.

    b. Advise subrecipients of requirements imposed on them by federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

    c. Monitor the activities of subrecipients as necessary to ensure that federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

    d. Ensure that subrecipients expending $300,000 *($500,000 for fiscal years ending after December 31, 2003)* or more in federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

e. Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

f. Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

g. Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

14. **Discrimination.**

a. **Discrimination Prohibited.** No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, national origin, ancestry, religion, physical handicap, sex, or age. (Reference Title VI of the Civil Rights Act of 1964 – Pub. L. 88-352). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of COUNTY receiving funds pursuant to this Agreement.

b. COUNTY further agrees to implement and comply with the "Revised Nondiscrimination and Equal Employment Opportunity Statement" for contracts or Agreements as provided in Exhibit A attached hereto and to specifically comply with the requirements of the Americans with Disabilities Act of 1990, as amended.

15. **Payments.**

a. **Compensation and Method of Payment.** Compensation and method of payment to COUNTY relative to conducting the operations of the project activities and services as herein described will be carried out as specified in Exhibit B attached hereto and will be administered under the established accounting and fiscal policies of WICHITA.

b. **Total Payments.** Total payments to COUNTY will be in the contracted amount of $160,000 FTA portion starting January 1, 2012, unless carryover money remains, then carryover money will be drawn down first.

c. **Restriction on Disbursements.** No grant funds shall be disbursed to COUNTY or a contractor except pursuant to a written contract that incorporates by reference the general conditions of this Agreement.

16. **Termination Clause.** Whenever either of the parties hereto determines that termination of this Agreement is in such party's best interest, then the Agreement may be terminated by giving written notification to the other party. A determination may include, but not be limited to:

a. Failure of either party to comply with any or all items contained within Sections 1 through 15 of this Agreement, contract exhibits, and/or provisions of any subsequent contractual amendments executed relative to this Agreement;

b. This Agreement may be terminated if project funds to WICHITA under the grant are suspended or terminated;

c. Either party hereto may also, by giving thirty (30) days notice, terminate this Agreement for convenience; and

d. Upon receipt of notice of termination, COUNTY shall: (1) discontinue further commitments of contract funds to the extent they relate to the terminated portion of the Agreement; (2) promptly cancel all Agreements and/or orders to subcontractors utilizing funds under this Agreement; (3) submit, within a reasonable period of time to be specified by WICHITA, a cancellation settlement proposal which shall include a final statement for the Agreement, or reimbursement of unearned funds previously distributed.

17. **Appendices.** All exhibits referenced below and all amendments or mutually agreed upon modification(s) made by both parties are hereby incorporated as though fully set forth herein. In case of conflict in terms between this Agreement and Exhibit C, the terms of Exhibit C shall take precedence.

Exhibit A	Nondiscrimination and Equal Employment Opportunity Statement
Exhibit B	Scope of Services and Method of Payment
Exhibit C	Fiscal Year 2012 Certifications and Assurances for FTA Assistance Programs
Exhibit D	FTA 2012 Master Agreement of October 1, 2011

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

BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS

David M. Unruh, Chairman
First District

APPROVED AS TO FORM:

Bill H. Raymond, Assistant County Counselor

ATTEST:

Kelly B. Arnold, County Clerk

CITY OF WICHITA, KANSAS
By order of the City Council

Carl Brewer, Mayor

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

ATTEST:

Karen Sublett, City Clerk

Exhibit A
Nondiscrimination and Equal Employment Opportunity Statement

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

A. During the performance of this Agreement, the contractor, subcontractor, vendor, or supplier of the City, or any of its agencies, shall comply with all provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may promulgated 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 Agreement because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin, or ancestry;

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

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

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

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

C. Requirements of the City of Wichita, Kansas, relating to Nondiscrimination – Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice nondiscrimination – equal employment opportunity in all employment relations, including, but not limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The vendor, supplier, contractor, or subcontractor shall submit and Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

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

3. The vendor, supplier, contractor, or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with nondiscrimination – equal employment opportunity requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor, or subcontractor shall be deemed to have breached the present contract, purchase order, or Agreement and it may be canceled, terminated, or suspended in whole or in part by the City or its agency, and further civil rights complaints or investigations may be referred to the State;

4. The vendor, supplier, contractor, or subcontractor shall include the provisions of Subsection 1 through 3, inclusive, of this present section in every subcontract, sub-purchase order, or sub-Agreement so that such provisions will be binding upon each subcontractor, sub-vendor, or sub-supplier; and

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

D. Exempted from these requirements are:

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

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

Exhibit B
Scope of Services and Method of Payment

COUNTY will provide preventive maintenance and planning activities in support of general public transportation services in Bel Aire, Derby, Haysville, Kechi, Maize, Mulvane, Park City, Goddard and Valley Center, Sedgwick County, Kansas, under federal guidelines.

The amount of funds anticipated from the Federal Transit Administration Section 5307 grant in FY2012 is $160,000.00. The total allocation for the planning and preventive maintenance functions for COUNTY's transportation system for FY2012 is **$200,000**. The federal portion is **$160,000**, and the COUNTY's portion is **$40,000** for the required 20% local match. As the designated recipient of federal funds, the WICHITA will disperse the available federal funds that are appropriately matched under the terms of the grant.

COUNTY will submit an invoice for payment no later than 30 days after the end of each quarter. WICHITA will reimburse COUNTY for the invoiced amount no later than 30 days after the invoice is received. A line item list of expenses must be attached to the invoice for WICHITA to examine and determine if all expenses are FTA eligible. Any ineligible costs will be rejected by WICHITA and COUNTY must submit a revised invoice.

Exhibit C
Fiscal Year 2012 Certifications and Assurances for FTA Assistance Programs

The 2012 Certifications and Assurances will be on file for review at Wichita Transit, 777 E. Waterman as of January 1, 2012.

Exhibit D
FTA 2012 Master Agreement

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by
49 U.S.C. chapter 53, Title 23, United States Code (Highways),
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended by the SAFETEA-LU Technical Corrections Act of 2008,
the Transportation Equity Act for the 21st Century, as amended,
the National Capital Transportation Act of 1969, as amended,
the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5,
February 17, 2009, or other Federal laws that FTA administers.

FTA MA(18)
October 1, 2011
http://www.fta.dot.gov/documents/18-Master.pdf

INTERLOCAL AGREEMENT
For PLANNING and PREVENTIVE MAINTENANCE

This interlocal agreement (Agreement) is entered into by and between the City of Wichita, Kansas ("WICHITA") and the City of Derby, Kansas ("DERBY").

WICHITA and DERBY both operate public transportation services within the WICHITA metropolitan area, and are committed to continuing such services in a cooperative and coordinated manner. The purpose of this Agreement is to provide for allocation of federal funds available under the Urban Mass Transportation Act of 1964 ("Act") to provide on-going support to transit services provided by WICHITA and DERBY. It is therefore, mutually agreed as follows:

1. **Term.** The Agreement shall be effective upon execution by all parties hereto and shall be effective FY 2012 terminating after receipt of final payment, unless terminated earlier as allowed below.

2. **Operations and Management.** WICHITA and DERBY shall each be solely responsible for the separate operation and management of their respected public transportation systems. WICHITA and DERBY agree to act with due diligence and good faith in the exercise of the operation and management of their respective transit systems to comply with the terms of this Agreement and to work together in a mutually supportive manner to ensure the implementation of all provisions contained in this Agreement. WICHITA agrees to assist DERBY in set-up guidance for proper reimbursement and payout documents, data submission for the National Transit Database, etc. DERBY will be responsible for scheduling an annual meeting with WICHITA for review and future planning.

3. **Allocation of FY2012 Section 5307 Funds.** For FY2012, DERBY shall be designated by WICHITA to be a sub-grantee (pass-through) recipient to receive Section 5307 (CFDA 20.507) funding for planning and preventive maintenance. Section 5307 funding requires all sub-grantee (pass-through) recipients to fund 20% of the total cost as a local match, the Federal Transit Administration (FTA) provides the remaining 80% federal portion for the total cost of the project. The total allocation for the planning and preventive maintenance functions for DERBY's transportation system for FY2012 is **$50,000**; the federal portion is **$40,000** and the City of Derby's portion is **$10,000** for the required 20% local match.

4. **Application for Section 5307 Funding.** WICHITA shall apply to the FTA for funding under Paragraph 3. The funds received by DERBY shall be matched at an appropriate percentage (20% of the total allocation) by local funds secured by DERBY and shall be available for use by DERBY, as its governing body deems appropriate within the FTA requirements, as set out in Exhibit C and D attached.

5. **Future Section 5309 Applications.** WICHITA and DERBY shall cooperate to pursue applications as may be appropriate for capital grants under Section 5309, which shall include funds for capital acquisitions by DERBY.

6. **Carryover of Funds.** Funds allocated to DERBY pursuant to Sections 4 and 5 may be carried over.

7. **Future Allocation of 5307 Funds.** Based on the amount of carryover funds available, DERBY may be subject to less apportionment than the $40,000 FTA portion available for allocation in a Fiscal Year. This will be determined during the annual planning meeting.

8. **Compliance with Laws.** WICHITA and DERBY hereby agree, in the performance of this Agreement, to comply with all applicable federal, state, and local laws, including specifically all relevant

requirements of the Act, as appropriate, which may separately and individually apply to their respective jurisdictions.

9. **Extension of Agreement.** WICHITA and DERBY may extend this Agreement on a year-to-year basis with written approval of both parties. Funds are secured in the agreement year and subject to be spent within FTA requirements.

10. **Establishment and Maintenance of Records.** DERBY shall establish and maintain records as prescribed by WICHITA, with respect to all matters covered by this Agreement. Except as otherwise authorized by WICHITA, DERBY shall retain such financial and non-financial related records for a period of three (3) years after receipt of the final payment under this Agreement or termination of this Agreement. However, if any litigation, claim, negotiation, audit, oversight or other action involving the records has been started before the expiration of the three-year period, the records must be retained until the completion of the action and resolution of issues which arise from it or until the end of the regular three-year period, whichever is later.

11. **Reports and Information.** DERBY, at such times and in such forms as WICHITA or its designates and authorized representative(s) may require, shall furnish to WICHITA, the FTA, or their designated and authorized representative(s) such statements, records, reports, data, and information as they may request pertaining to matters covered by this Agreement.

12. **Audits and Inspections.** DERBY shall, at anytime, and as often as WICHITA may deem necessary, make available to WICHITA, or its designated and authorized representative(s), for examination of all its records and data pertaining to matters covered by this Agreement for the purpose of making audits, oversights, examinations, excerpts, and transcriptions. DERBY is required to provide WICHITA with access to their single audit report.

13. Per OMB Circular A-133: **Pass-through entity responsibilities**. A pass-through entity shall perform the following for the Federal awards it makes:

    (1) Identify Federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of Federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the Federal award.

    (2) Advise subrecipients of requirements imposed on them by Federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

    (3) Monitor the activities of subrecipients as necessary to ensure that Federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

    (4) Ensure that subrecipients expending $300,000 *($500,000 for fiscal years ending after December 31, 2003)* or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

    (5) Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

(6) Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

(7) Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

**Wichita will provide the applicable information from 13(1) when available.

14. **Discrimination.**

a. **Discrimination Prohibited.** No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, national origin, ancestry, religion, physical handicap, sex, or age. (Reference Title VI of the Civil Rights Act of 1964 – Pub. L. 88-352). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of DERBY receiving funds pursuant to this Agreement.

b. DERBY further agrees to implement and comply with the "Revised Non-discrimination and Equal Employment Opportunity Statement" for contracts or Agreements as provided in Exhibit A attached hereto and to specifically comply with the requirements of the Americans with Disabilities Act of 1990, as amended.

15. **Payments.**

a. **Compensation and Method of Payment.** Compensation and method of payment to DERBY relative to conducting the operations of the project activities and services as herein described will be carried out as specified in Exhibit B attached hereto and will be administered under the established accounting and fiscal policies of WICHITA.

b. **Total Payments.** Total payments to DERBY will be in the contracted amount of $40,000.00 FTA portion starting January 1, 2012 unless carryover money remains, then carryover money will be drawn down first.

c. **Restriction on Disbursements.** No grant funds shall be disbursed to DERBY or a contractor except pursuant to a written contract that incorporates by reference the general conditions of this Agreement.

16. **Termination Clause.** Whenever either of the parties hereto determines that termination of this Agreement is in such party's best interest, then the Agreement may be terminated by giving written notification to the other party. A determination may include, but not be limited to:

a. Failure of either party to comply with any or all items contained within Sections 1 through 15 of this Agreement, contract exhibits, and/or provisions of any subsequent contractual amendments executed relative to this Agreement;

b. This Agreement may be terminated if project funds to WICHITA under the grant are suspended or terminated;

c. Either party hereto may also, by giving thirty (30) days notice, terminate this Agreement for convenience;

d. Upon receipt of notice of termination, DERBY shall: (1) discontinue further commitments of contract funds to the extent they relate to the terminated portion of the Agreement; (2) promptly cancel all Agreements and/or orders to subcontractors utilizing funds under this Agreement; (3) submit, within a reasonable period of time to be specified by WICHITA, a cancellation settlement proposal which shall include a final statement for the Agreement, or reimbursement of unearned funds previously distributed.

17. **Appendices.** All exhibits referenced below and all amendments or mutually agreed upon modification(s) made by both parties are hereby incorporated as though fully set forth herein. In case of conflict in terms between this Agreement and Exhibit C, the terms of Exhibit C shall take precedence.

Exhibit A	Nondiscrimination and Equal Employment Opportunity Statement
Exhibit B	Scope of Services and Method of Payment
Exhibit C	FTA Master Agreement of October 1, 2011.
Exhibit D	Fiscal Year 2012 Certifications and Assurances for FTA Assistance Programs

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

CITY OF DERBY, KANSAS
By order of the City Council

_____
Dion Avello, Mayor

APPROVED AS TO FORM:

_____
Philip Alexander, City Attorney

ATTEST:

_____
Jean Epperson, City Clerk

CITY OF WICHITA, KANSAS
By order of the City Council

_____
Carl Brewer, Mayor

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

ATTEST:

_____
Karen Sublett, City Clerk

Exhibit A
Nondiscrimination and Equal Employment Opportunity Statement

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

A. During the performance of this Agreement, the contractor, subcontractor, vendor, or supplier of the City, or any of its agencies, shall comply with all provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may promulgated 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 Agreement because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin, or ancestry;

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

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

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

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

C. Requirements of the City of Wichita, Kansas, relating to Nondiscrimination – Equal Employment Opportunity/Affirmative Action Program Requirements:

   1. The vendor, supplier, contractor or subcontractor shall practice nondiscrimination – equal employment opportunity in all employment relations, including, but not limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The vendor, supplier, contractor, or subcontractor shall submit and Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;

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

3. The vendor, supplier, contractor, or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with nondiscrimination – equal employment opportunity requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor, or subcontractor shall be deemed to have breached the present contract, purchase order, or Agreement and it may be canceled, terminated, or suspended in whole or in part by the City or its agency, and further civil rights complaints or investigations may be referred to the State;

4. The vendor, supplier, contractor, or subcontractor shall include the provisions of Subsection 1 through 3, inclusive, of this present section in every subcontract, sub-purchase order, or sub-Agreement so that such provisions will be binding upon each subcontractor, sub-vendor, or sub-supplier.

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

D. Exempted from these requirements are:

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

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

Exhibit B
Scope of Services and Method of Payment

The City of Derby will provide preventive maintenance and planning activities in support of general public transportation services in Derby, Kansas, under federal guidelines.

The amount of funds anticipated from the Federal Transit Administration Section 5307 grant in FY2012 is $40,000.00. The total allocation for the planning and preventive maintenance functions for DERBY's transportation system for FY2012 is **$50,000**; the federal portion is **$40,000** and the City of Derby's portion is **$10,000** for the required 20% local match. As the designated recipient of federal funds, the City of Wichita will disperse the available federal funds that are appropriately matched under the terms of the grant.

DERBY will submit an invoice for payment no later than 30 days after the end of each quarter. WICHITA will reimburse DERBY for the invoiced amount no later than 30 days after the invoice is received. A line item list of expenses must be attached to the invoice for WICHITA to examine and determine if all expenses are FTA eligible. Any ineligible costs will be rejected by WICHITA and DERBY must submit a revised invoice.

Exhibit C
FTA Master Agreement

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by
49 U.S.C. chapter 53, Title 23, United States Code (Highways),
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, as amended by the SAFETEA-LU Technical Corrections Act of 2008,
the Transportation Equity Act for the 21st Century, as amended,
the National Capital Transportation Act of 1969, as amended,
the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5,
February 17, 2009, or other Federal laws that FTA administers.

FTA MA(18)
October 1, 2011
Terms of master agreement found at http://www.fta.dot.gov/documents/18-Master.pdf are hereby adopted by reference as though fully set out herein.

Exhibit D
Fiscal Year 2012 Certifications and Assurances for FTA Assistance Programs

These will be on file for review at Wichita Transit, 777 E. Waterman when Wichita Transit applies for Section 5307 grant funds in 2012.

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: Interdepartmental Development Tracking System Software Replacement Project

INITIATED BY: IT/IS

AGENDA: Consent

Recommendation: Approve redirection of Professional Services funding and the contract for $29,896.71 for the Hansen Cashiering product owned by Infor Global Solutions (Infor).

Background: The original contract approved by City Council on April 21, 2009, authorized the replacement of the current development, permitting and licensing software system (Tidemark) with the Hansen Community Development and Regulation software by signing a contract with Infor. All funding was approved (Total Funding - $1,089,350) and $939,373 has been encumbered to date ($939,373 to Hansen for software and professional services; $55,400 to Selectron for IVR; $33,978.84 to Dell for Hardware).

The City Council approved, on August 23, 2011, an additional $50,000 for Professional Services to Infor. City staff is requesting to redirect $29,896.71 of the approved $50,000 funding for Cashiering licenses in lieu of Professional Services.

Analysis: IT/IS has been working with the Office of Central Inspection (OCI) and the Finance Express Office in the development and configuration of the Hansen system. When the original contract for Cashiering was signed, it included six licenses identified as current cash drawers. After many different configurations, taking advantage of station sharing and fiscal accountability, there is a need for seven additional licenses primarily for supervisors and administrators.

IT/IS, OCI, and the Express Office have agreed that the additional licenses will allow more control over cash and credit card transactions by creating multiple levels/gates of accountability. Credit card transactions are expected to increase with the Dynamic Portal (Citizen and contractor external Web service system).The additional licenses will allow City staff to provide efficient access while maintaining fiscal integrity.

Financial Consideration: The $29,896.71 is included in the total amount of funding approved by the City Council on April 21, 2009 and no additional funds are being requested, just the reallocation from Professional Services to additional licensing for Cashiering.

Goal Impact: This project addresses the Internal Perspective goal by influencing the following indicators: Improve Technology Efficiencies and Increase Productivity.

Legal Considerations: The Addendum to the contract has been reviewed and approved by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the contract with Infor Global Solutions for additional Cashiering licenses and authorize the necessary signatures.

Attachments: April 21, 2009 Agenda Report and Infor order form

Agenda Item #_____

City of Wichita
City Council Meeting
April 21, 2009

TO: Mayor and City Council Members

SUBJECT: Interdepartmental Development Tracking System Software Replacement Project

INITIATED BY: Office of Central Inspection/Information Technology Department

AGENDA: New Business

Recommendations: Authorize staff to negotiate a contract with Infor Global Solutions for software, software licensing, professional services, year-one prorated maintenance and on-going annual maintenance costs for the Interdepartmental Development Tracking System Software Replacement Project, and for the Infor Global Solutions (Infor) business licensing product, and authorize the necessary contract signatures.

Background: On July 15, 2008, the City Council approved a proposed Interdepartmental Development Tracking System (IDTS) Software Replacement Project (land use, land development, construction permitting, code enforcement, inspection and licensing management/tracking), with a budget of up to $1,000,000, and authorized staff to prepare and issue a request for proposals. The proposed IDTS project budget included vendor software, software licensing, required professional services and on-going maintenance costs, and associated hardware upgrade costs.

The Council-approved IDTS Software Replacement Project will replace the City's current development, permitting and licensing software system (Tidemark), which is over a decade old. There are currently about 140 multi-department employee users of Tidemark, including approximately 50 wireless and/or remote inspector-users. Tidemark also provides several citizen-facing Internet services, including: construction permitting; permit inspection scheduling and resulting; and citizen access to land use, permitting and code enforcement case information. However, *Tidemark software, by declaration of the vendor, is at end of life cycle and will not be supported by the vendor within the next two (2) years. During this "phase down", no new functionality or product enhancements will be forthcoming.* Additionally, the 12-13 year old Tidemark product and architectural platform will simply not support many new web-based and/or Internet technologies and services, most of which can dramatically improve citizen access, "e-commerce" capacity, ease of use, wireless capabilities, information flow, communication and data storage/retrieval.

Analysis: Since Council approval of the IDTS Software Replacement Project in July 2008, a request for proposals (RFP) was developed by the IDTS Software Replacement Project Staff Screening and Selection Committee (SSSC). The RFP was issued in September 2008, with RFP responses due in late October 2008. The RFP included several optional bid response items, including software, professional services and annual maintenance for a replacement interactive voice response system (IVRS), wireless mobile solution software, and a Web-based business license software system for use by the Finance Department Express Office.

RFP responses were received from eight (8) vendors. After review by the SSSC and IT Department technical staff, the competition was narrowed to the top four (4). The top four (4) vendors made on-site product demonstrations to the SSSC and IT Department technical staff during January 2009. In late January 2009, the SSSC narrowed the competition to the top two (2) vendors, both of whom demonstrated the ability to meet or exceed the minimum requirements of the RFP. The top two (2) vendors were the only vendors with an operational, fully Web-based product, a key criterion for the replacement software (for overall product flexibility and longevity). After additional discussions and product/technical reviews with the top two (2) vendors, and completion of vendor reference checks, "best and final offers" were obtained from the top two (2) vendors. Both vendors significantly reduced their initial bid pricing. In late February 2009, the SSSC made a final recommended vendor selection – *Infor Global Solutions*. The cost for Infor is approximately 20% lower than the cost of the other top vendor, and Infor's ongoing annual maintenance costs (technical support, upgrades, new product releases) are about 60% less than the other top vendor. If fact, Infor's annual maintenance costs are significantly less than the annual maintenance costs for the current Tidemark software.

The total IDTS Replacement Project cost (including software, software licenses, professional services and year-one prorated maintenance) for the Infor product, mobile wireless solution software and IVRS replacement is $812,368. Hardware upgrades to support the IDTS project are estimated to cost an additional $87,017. The total IDTS Replacement Project cost, plus a 5% contingency allowance, is $944,350.

In addition to the originally approved IDTS Software Replacement Project and budget, the Finance Department will participate in the project with the purchase of the Infor business license software product, software licenses, professional services, year-one prorated maintenance and a contingency allowance at a total cost of $145,000. The Infor business licensing product will replace the current Finance Department/Express Office business licensing software, enabling a web-based solution through an application for business, pet and garage sale licenses.

Financial Considerations:

Funding in the amount of $944,350 is required for the IDTS Software Replacement Project (including software, software licenses, professional services, year-one prorated maintenance, hardware upgrades and a 5% contingency allowance). Funding in the amount of $145,000 is required for the Infor business license software for the Finance Department (including software, software licenses, professional services, year-one prorated maintenance and a contingency allowance).

The City Council previously approved funding from the following sources:

Office of Central Inspection Special Revenue Fund Reserve	$ 400,000
City (IT/IS) Equipment Replacement Fund (ERF)	400,000
City ERF Loan (48 months, 0%), if needed, up to:	200,000
Total	$1,000,000

However, due to economic changes within the Office of Central Inspection, the additional OCI Special Revenue Fund reserve is not available. There are sufficient funds available within the City (IT/IS) Equipment Replacement Fund (ERF) for this purchase. A conservative payback of $100,000 per year for five years from the Office of Central Inspection, derived from increased permit fee activity and an overall reduction in software maintenance costs, is projected.

The Finance Department portion will be paid from the ERF with a payback structured for 4 years, derived primarily from a reduction the maintenance costs.

The current project funding allocation is:

City (IT/IS) Equipment Replacement Fund (ERF)	$ 400,000
City ERF Loan	689,350
Total	$1,089,350

Goal Impact: On January 24, 2006 the City Council adopted five (5) goals for the City of Wichita. These include: Provide a Safe and Secure Community, Promote Economic Vitality and Affordable Living, Ensure Efficient Infrastructure, Enhance Quality of Life, and Support a Dynamic Core Area & Vibrant Neighborhoods. This item impacts the *Provide a Safe and Secure Community* and *Support a Dynamic Core Area and Vibrant Neighborhoods* goals by providing more effective and efficient delivery of land use development, construction permitting, construction inspection, business licensing and neighborhood code enforcement service delivery, while providing enhanced communication to citizens who use these services.

Legal Considerations: The Internal Auditor has reviewed the work of the Staff Screening and Selection Committee and confirms compliance with the City's vendor selection process. The Law Department was represented as a member of the Staff Screening and Selection Committee, and will review and approve as to form the final contract with Infor Global Solutions.

Recommendations/Actions: It is recommended that the City Council authorize staff to negotiate a contract with Infor Global Solutions for software, software licensing, professional services, year-one prorated maintenance and on-going annual maintenance costs for the Interdepartmental Development Tracking System Software Replacement Project, and for the Infor Global Solutions business licensing product, and authorize the necessary signatures.

ORDER FORM

As it relates to the Component Systems specified herein, this Order Form is subject to the terms of the Software License Agreement between Hansen Information Technologies, an Infor company ("Infor") and City of Wichita, Kansas ("Licensee") with an effective date of May 27, 2009 (the "License Agreement"). As it relates to Support for the Component Systems, this Order Form is subject to the applicable terms of the License Agreement (to the extent it concerns Support) or, if Support is the subject of a separate Support agreement related to the License Agreement, the terms of such Support Agreement (the "Support Agreement"). The License Agreement and related Support Agreement (if any) are referred to herein as the "Agreement". All terms of the Agreement are incorporated herein by reference. Capitalized terms not defined in this Order Form are defined in the Agreement. In the event of a conflict, the terms of this Order Form control over the terms of the Agreement.

In the event the capitalized terms in this Order Form differ from the terminology used in the Agreement, references herein to: "Component Systems" means the software products that are being licensed (and may be referred to in the Agreement as Products, Software Products, Software, Programs or Licensed Programs); "Support" means Infor's current standard maintenance and support services (and may be referred to in the Agreement as Maintenance and Support, Annual Support, Support Services, On-Going Support or One Point Support); "Order Form" means a mutually agreed upon ordering document (and may be referred to in the Agreement as Schedule, Supplement or Supplemental Schedule); "User Restriction" means the license restriction applicable to the Component System in addition to any license restrictions in the Agreement; "Annual Escalation Percentage Cap" means the maximum percentage increase in the annual Support Fee on an annual basis. In addition, based on the applicable Agreement, listed Component Systems herein owned by a third party may also be referred to in the Agreement as "Additional Software" or "Third Party Software".

Effective date of this Order Form: _____ (the "Order Form Date")

I. Component Systems

	Part # (if applicable)	**Component System**	**User Restriction*** Quantity	Type	**Support level****
1	H8CM	Hansen 8 – Cashiering	7	Named Users	
2					
3					
				Total License Fee:	**$24,500.00**

*If specified in the User Restriction field:

"Named Users" Quantity represents the maximum number of Named Users that may access the Software and each Named Users (e.g. login ID) requires a license. Each license may only be assigned to a single and exclusive log-in. Customer may not utilize any method or program to automatically reassign a log-in from one user to another.

**Support Level: Infor Xtreme ("XT") Support unless otherwise indicated. Descriptions of the Support levels can be found at http://www.infor.com/support/about-support/.

If Applicable, "XTP" = Infor Xtreme Premium (24x7) and "XTE"= Infor Xtreme Elite (24x7) Plus

II. Support services

Additional Annual Support Fee: $4,900.00

Annual Escalation Percentage Cap: 6% or the then-current year-over-year increase in the Consumer Price Index (CPI-U), whichever is greater.

Initial Term of Support: Order Form Date through December 23, 2012

Fee for Initial Term of Support*: $5,396.71**

*** If the Initial Term is less than or more than 12 months, the Fee for Initial Term of Support represents a proportional amount of the annual Support Fee based on the anticipated Order Form Date. This fee may vary based on the actual Order Form Date.

Other Fees:

Total Amount Due (before applicable taxes): $29,896.71

All amounts are in US Dollars unless otherwise specified.

Currency: United States Dollars

Payment Terms:
Payment is due within 30 days of Order Form Date.

Equipment (on which Component Systems will be installed):

Computer Platform _____ Model: _____

Operating System _____ DBMS: _____

Location: **Same as Delivery**

Serial Number: _____

Licensee Account ID: 1-91809

Infor GL ID: _____

Account Executive Name: Shelly Carroll/Matt Dey

Delivery Address:	City of Wichita 455 North Main Street Wichita, KS 67207	**Invoice Address: (if blank, the Delivery Address shall be used for Invoicing):**	Same as Delivery
Contact Name:	June Schurr	Contact Name:	
Contact Title:		Contact Title:	
Contact Phone	316-303-8114	Contact Phone	
Contact email	jschurr@wichita.gov	Contact email	

Delivery is FOB Shipping Point.

By signing this Order Form, Licensee represents and warrants that it has obtained all necessary authorizations and approvals including, but not limited to, appropriation of funds and budget approval by the City of Wichita, Kansas.

THE PARTIES have executed this Order Form through the signatures of their respective authorized representatives.

For: **Hansen Information Technologies**

Signature

Typed or Printed Name

Title Date

For: **City of Wichita, Kansas**
(Legal Name of LICENSEE)

Signature

Typed or Printed Name

Title Date

Agenda Item No. II-19

City of Wichita
City Council Meeting
December 20, 2011

Agenda Report

TO: Mayor and City Council Members

SUBJECT: Budget Adjustments (2011 Year-end)

INITIATED BY: Department of Finance

AGENDA: Consent

Recommendation: Approve year-end budget adjustments.

Background: Final expenditures will be posted soon to the 2011 budgets. Budget adjustments are needed to accomplish fiscal year-end closing. Adjustments exceeding $25,000 require City Council approval in accordance with the City's Administrative Regulations.

Analysis: In closing out the year 2011, some line items are projected to be over budget. These will require budget adjustments, generally offset by lower than budgeted expenditures in other areas. The potential expenditures overages are noted at the estimated maximum potential level, to provide the necessary authority to process year ending adjustments, and avoid delays in vendor payments. The actual necessary adjustments are often smaller than estimated.

Adjustments are needed in two internal service funds. Internal service funds provide services (information technology and fleet services) to customers within the City organization. Costs are recovered through charges to user departments. These charges are set to recover costs. However, based on GABS (Governmental Accounting Standards Board) rules, those charges should not be set at a level to over collect. In both the Fleet and IT Fund, adjustments will be considered at year end to reverse user charges in an effort to balance internal services fund charges and expenditures, consistent with GABS regulations and direction included in the Adopted Budget.

In addition, in the Fleet Fund fuel costs are expected to be as much as $1 million over budget. This is primarily due to the consolidation of Transit fuel management into the Fleet Fund and higher than budgeted fuel prices. Neither has an impact on Fleet Fund cash flows, since fuel costs are recovered through charges to departments. The fuel expenditures overages in the Fleet Fund can be mostly absorbed within the operating budget total expenditure authority using savings in vehicle maintenance line items, however, staff is recommending the deferral of a planned $383,000 transfer to the General Fund.

The General Fund transfer to the Economic Development Fund for Affordable Airfares is budgeted at $1 million annually. In 2011, the City’s share of affordable airfares costs actually

totaled only $875,000. Staff is proposing to reduce the General Fund Transfer to $875,000 to the Economic Development Fund.

To comply with the modified-accrual basis accounting rules, payroll and vacation accrual adjustments are made each year end. These adjustments are difficult to forecast accurately, and occur as a post closing adjustment. Similarly, year-end inventory adjustments can impact expenditure budgets. These adjustments are also typically made at year end and are difficult to forecast. Budget adjustments may be needed for payroll and vacation accrual adjustments, as well as inventory adjustments at yearend closed out.

The Wichita Early Retirement Program (WERIP) was approved by the City Council on August 9, 2011. As a result of the program, 103 City employees will leave service. The termination costs associated with the WERIP will be recovered by lowering the wage base and by reviewing and recommending the elimination of selected positions. However, an estimated $1.2 million of WERIP costs will be accrued in 2011, including an estimated $650,000 for the General Fund. To offset these one-time expenditures at year end 2011, staff recommends a one-time acceleration of the budgeted 2012 transfer from the Pension Reserve Fund in an amount equal to the 2011 WERIP costs borne by the General Fund. As an offset the Pension Reserve transfer for 2012 will be adjusted downward equal to the amount accelerated into 2011.

Financial Considerations: Budget adjustments over $25,000 require City Council approval.

Legal Considerations: Compliance with State budget requirements has been met, since the final 2011 expenditure totals -- after the adjustments -- will not exceed the legally adopted 2011 expenditure authorizations.

Recommendations/Actions: It is recommended that the City Council approve year-end budget adjustments to facilitate fiscal year-end closing.

Second Reading Ordinances for December 20, 2011 (first read on December 13, 2011)

A. <u>Public Hearing and Issuance of Industrial Revenue Bonds, Pulse Systems, Inc.</u> (District II)

ORDINANCE NO. 49-171

An Ordinance authorizing the City of Wichita, Kansas to issue its Industrial Revenue Bonds, Series 2011 (Pulse Headquarters, LLC) (taxable under federal law), in the aggregate principal amount not to exceed $6,000,000 for the purpose of acquiring and improving a commercial facility; and authorizing the execution of certain documents in connection with the issuance of the bonds.

B. <u>Ordinance appropriating the 2012 budget; ratifying the payment of claims against the 2011 budget.</u>

ORDINANCE NO. 49-172

An Ordinance appropriating the amounts set up in each fund in the budget; providing for the payment of all claims and charges against the accounts provided for therein; and approving and ratifying the payment of all claims against the accounts.

C. <u>Mobile Radios Project</u>.

ORDINANCE NO. 49-173

An ordinance determining the necessity for acquiring mobile radios, together with certain spare parts and equipment, and providing that the cost of said acquisition shall be paid by the City of Wichita, Kansas, at large through the issuance of General Obligation Bonds of the City of Wichita, Kansas, under the city's home rule authority as set out in Article 12, Section 5, of the Constitution of the State of Kansas.

City of Wichita
City Council Meeting
December 20, 2011

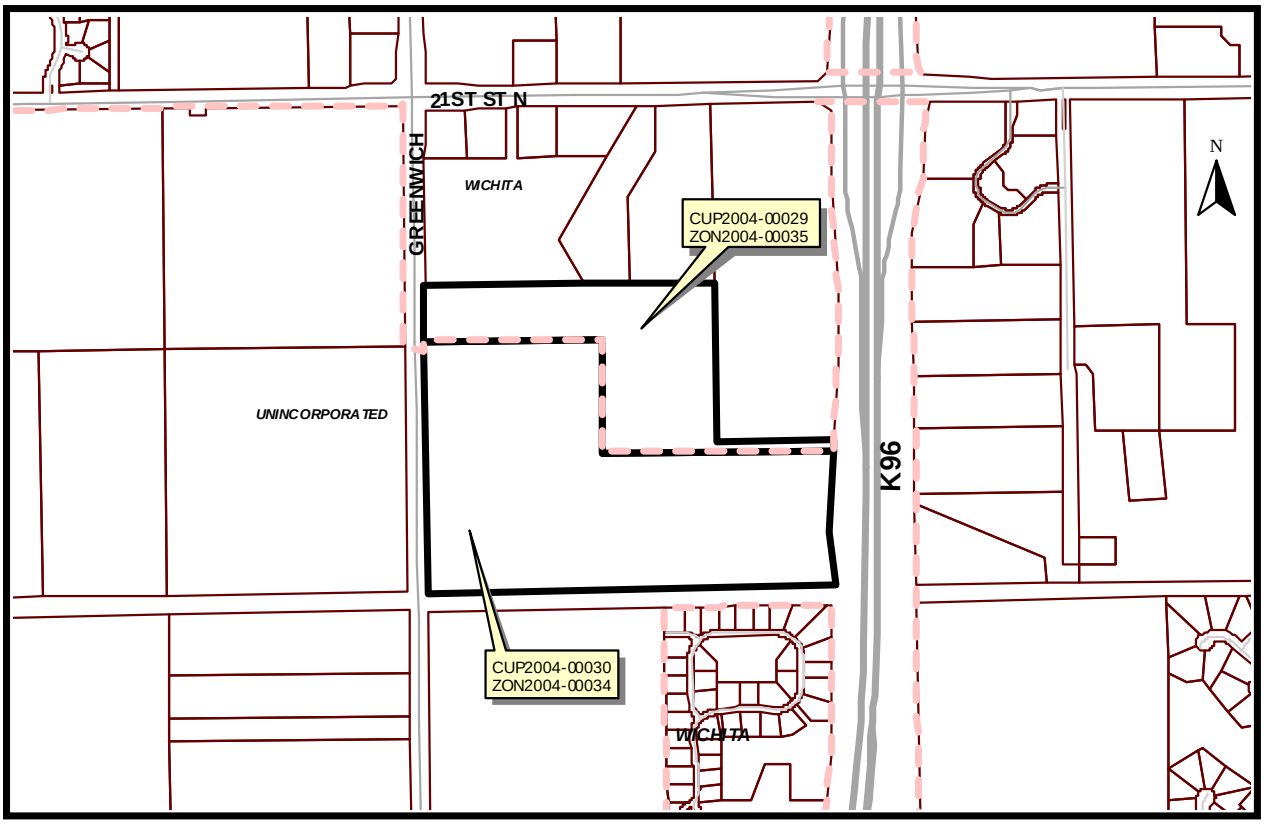
TO: Mayor and City Council Members

SUBJECT: ZON2004-35 (DP-277 associated with CUP2004-30) – Extension of time to complete the platting requirement for the Bruce Brown Commercial Community Unit Plan and a zone change from SF-5 Single-family Residential ("SF-5") to LC Limited Commercial ("LC") on property generally located east of Greenwich Road and south of 21st Street North. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the extension of the platting deadline to December 20, 2013.



Background: On September 21, 2004, the City Council and the Board of County Commissioners approved the creation of DP-277 Bruce Brown Commercial Community Unit Plan ("CUP") and a zone change from SF-5 Single-family Residential ("SF-5") to Limited Commercial ("LC") subject to the condition of platting the property within one year. The Wichita city limits divides the property into two tracts, one of which has been annexed and one which has not been annexed. The applicant initially received a six month platting extension from staff, and then received two one year platting extensions from the City Council. On May 6, 2008, the City Council approved a one year platting extension to March 21, 2009, and then one other extension to March 21, 2010. As the attached letter indicates, the property has since changed ownership and the new owner was not aware of the March 2010 platting deadline. The applicant would like to request a two-year platting extension so the new owner has time to explore his options and to see if the commercial market conditions improve in the future; see attached letter.

Analysis: Staff recommends that the requested two-year platting extension be granted. The City Council may deny the request for an extension of time to complete platting. However, denying the extension would declare the CUP and zone change null and void, and would require reapplication and rehearing if the property owner still desired a CUP and zone change.

Financial Considerations: Approval of the request does not commit the City of Wichita to any atypical financial obligations.

Goal Impact: This recommendation supports the City's goal of promoting Economic Vitality.

Legal Considerations: No legal documents are required to enact the granting of the platting extension. The granting of a platting extension is indicated via letter to the applicant noting the extended platting deadline as granted by the City Council.

Recommendations/Actions: Approve the request and establish December 20, 2013, as the new platting deadline.

PEC
PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

November 17, 2011

Metropolitan Area Planning Dept.
City Hall – 10th Floor
455 N. Main
Wichita, KS 67202

Attention: John Schlegel
Director of Planning

Reference: Platting Extension for Zone Case ZON 2004-34/ZON 2004-35 and
CUP 2004-29/CUP 2004-30
PEC Project No. 36-04354-3432

Dear Mr. Schlegel:

It was brought to my attention by Donna Goltry that the platting extension for the above referenced zone cases and C.U.P.'s expired on March 21, 2010. The land has changed ownership since my last extension request and the new owner was not aware of the March 21, 2010 deadline. I would like to request an additional 2 year extension from today's date so the new owner has time to review his options and see if the commercial real estate market will improve in the future.

I would appreciate your favorable consideration of the above requested extension.

Very truly yours,

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

Rob Hartman, Agent

RMH/tac

cc: Laham Development
Spilled Wine, LLC, Owner

308 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 FAX 316-262-3083 www.pec1.com

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PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

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Director of Planning

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Very truly yours,

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

Rob Hartman, Agent

RMH/tac

cc: Laham Development
Spilled Wine, LLC, Owner

303 SOUTH TOPEKA WICHITA, KS 67202 316-262-2691 FAX 316-262-3003 www.pec1.com

Agenda Item No. II- 22.

City of Wichita
City Council Meeting
December 20, 2011

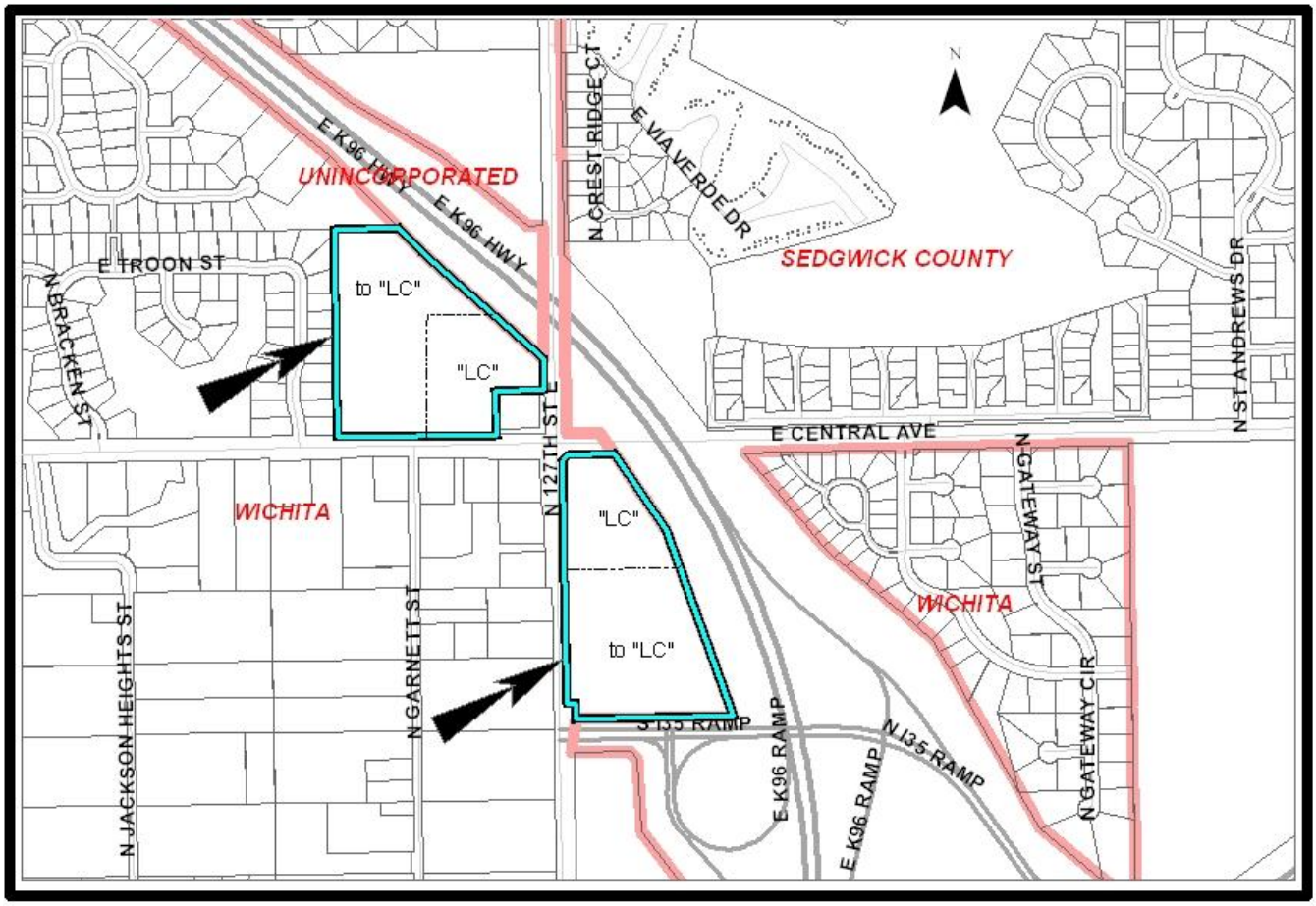
TO: Mayor and City Council

SUBJECT: CUP2008-00015 AND ZON2008-00021 – Extension of time to complete the platting requirement for the Parker Addition Community Unit Plan and zone change from SF-5 Single-family Residential ("SF-5") to LC Limited Commercial ("LC") generally located on the northwest and southeast corners of Central Avenue and 127th Street East. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPD Staff Recommendations: Approve the extension of the platting deadline to July 22, 2012.



Background: On July 22, 2008, the City Council approved the creation of DP-313 the Parker Addition Community Unit Plan ("CUP") and a zone change from SF-5 Single-family Residential ("SF-5") to LC Limited Commercial ("LC"), subject to the condition of platting the property within one year. The applicant then requested and received a one year platting extension on August 11, 2009, which expired on July 22, 2010. The applicant requests a retroactive platting extension to make up the time from July 22, 2010, and asks for a two-year platting extension until July 22, 2012. The applicant's letter is attached.

Analysis: Staff recommends that the platting extension be granted. The City Council may deny the request for an extension of time to complete platting; however, denying the extension would declare the CUP and zone change null and void and would require reapplication and rehearing if the property owner still desired a CUP and zone change.

Financial Considerations: Approval of the request does not commit the City of Wichita to any atypical financial obligations.

Goal Impact: This recommendation supports the City's goal of promoting Economic Vitality.

Legal Considerations: No legal documents are required to enact the granting of the platting extension. The granting of a platting extension is indicated via letter to the applicant noting the extended platting deadline as granted by the City Council.

Recommendation/Actions: Approve an extension of the platting deadline to July 22, 2012.

POE & ASSOCIATES, INC. CONSULTING ENGINEERS
5940 E. Central, Suite 200
Wichita, Kansas 67208
(316) 685-4114
FAX: (316) 685-4444

November 30, 2011

VIA EMAIL
DMiller@wichita.gov

Mr. Dale Miller
Senior Planner, Current Plans
Metropolitan Area Planning Department
455 N. Main; 10th Floor
Wichita, Kansas 67202

RE: Parker Addition, Community Unit Plan, DP313
PLATTING EXTENSION REQUEST

Dear Dale:

We respectfully request a two-year platting extension until July 22, 2012.

Please let me know if you have any questions.

Respectfully,

Tim Austin, PE

Cc: Mr. Todd Parker
Mr. Craig Ablah
Mr. Chris Bohm

POE & ASSOCIATES, INC. CONSULTING ENGINEERS
5940 E. Central, Suite 200 (316) 685-4114
Wichita, Kansas 67208 FAX: (316) 685-4444

November 30, 2011

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Senior Planner, Current Plans
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PLATTING EXTENSION REQUEST

Dear Dale:

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Please let me know if you have any questions.

Respectfully,

Tim Austin, PE

Cc: Mr. Todd Parker
Mr. Craig Ablah
Mr. Chris Bohm

City of Wichita
City Council Meeting
December 20, 2011

TO: Mayor and City Council

SUBJECT: A11-05: Request by Jon Schrage of Medical Practice Association Properties, LLC to annex lands generally located north and east of Greenwich Road and K-96 Highway along with the annexation of K-96 Highway right-of-way from Greenwich Road to approximately one-third mile south of 21st Street North (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Recommendation: Approve the annexation request.

Background: The City has received a request to annex 106 acres of land generally located north and east of Greenwich Road and K-96 Highway. The area requested for annexation area is entirely surrounded the City of Wichita. The annexation area is unplatted but is proposed to be platted in the near future. Additionally, the K-96 Highway right-of-way in vicinity of the area requested for annexation has the City of Wichita on both sides; therefore, staff recommends that the K-96 Highway right-of-way be annexed from Greenwich Road to approximately one-third mile south of 21st Street North.

Analysis:

Land Use and Zoning: The annexation area consists of approximately 106 acres of undeveloped land that zoned "SF-20" Single-Family Residential and approximately 47 acres of K-96 Highway right-of-way. The annexation request indicates that the subject property will be proposed for commercial zoning for an unspecified office and commercial development. The adjacent properties to the north are zoned "LI" Limited Industrial, "LC" Limited Commercial, and "MF-18" Multi-Family Residential and are undeveloped. The adjacent property to the south is zoned "SF-5" Single-Family Residential and is developed with a cemetery. The adjacent properties to the east are zoned "SF-5" Single-Family Residential, which are developed with single-family residences, and "LI" Limited Industrial, which are undeveloped. The adjacent properties to the west are zoned "LI" Limited Industrial and are developed with an industrial park.

Public Services: Water service is available to serve the subject property from a 16-inch main located in Greenwich Road. Sanitary sewer service is available to serve the subject property from a 12-inch main located in Greenwich Road. As a condition of platting, the applicant will be responsible for installing or providing a guarantee for the extension of water mains and service lines and sewer mains and laterals to serve the subject property.

Street System: The subject property has access to Greenwich Road, a four- to five-lane arterial street, on the west and the platted right-of-way for 27th Street North on the north. The plat of the subject property will determine the number and location of permitted access drives to these streets and the nature of any internal street system that may serve the subject property.

Public Safety: Fire protection is currently provided to the area on the basis of a first-responder agreement between the City and County, and that service will continue following annexation. Fire Station No. 18 at 2808 N. Webb is the nearest fire station to the site. Upon annexation, police protection will be provided to the area by the Patrol East Bureau of the Wichita Police Department, headquartered at 350 S. Edgemoor.

Parks: Stryker Soccer Complex and the Northeast Sports Complex, located approximately one-quarter mile west of the subject property, are the nearest public park properties. The Parks, Recreation and Open Space Plan identifies the Northeast Sports Complex as a site for major park development in the future.

School District: The south portion of annexation area is part of Unified School District 259 (Wichita School District). The north portion of the annexation area is part of Unified School District 375 (Circle School District). Annexation will not change the school district.

Comprehensive Plan: The proposed annexation is consistent with the Wichita-Sedgwick County Comprehensive Plan. The annexation property falls within the Wichita 2030 Urban Growth Area as shown in the Plan.

Financial Considerations: The current approximate appraised value of the proposed annexation lands, according to County records, is $75,120 with a total assessed value of $17,176. Using the current City levy ($32.272/$1000 x assessed valuation), roughly yields $554 in City annual property tax revenues for the property upon annexation. The future assessed value of this property will depend on the type and timing of any other developments on the proposed annexation property and the current mill levy. The annexation request indicates that the type and timing of future development of the subject property is to be determined.

Goal Impact: Approving the annexation request would impact Wichita's goal to ensure Efficient Infrastructure, and annexation of this property would assist the City in satisfying the demand for new infrastructure needed to support growth and development.

Legal Considerations: The property is eligible for annexation under K.S.A. 12-519, *et seq*. The annexation ordinance has been reviewed by the Law Department and approved as to form.

Recommendations/Actions: It is recommended that the City Council approve the annexation, declare that a public emergency exists requiring the final adoption and passage of the annexation ordinance on the date of its introduction, authorize the necessary signatures and instruct the City Clerk to publish the annexation ordinance.

Attachment: Map Sheet
Request for Declaration of Emergency
Ordinance

Planning Agenda

Item: A11-05 Attachment No. 1

An ordinance including and incorporating certain blocks, parcels, pieces, and tracts of land within the limits and boundaries of the City of Wichita, Kansas, and relating thereto.

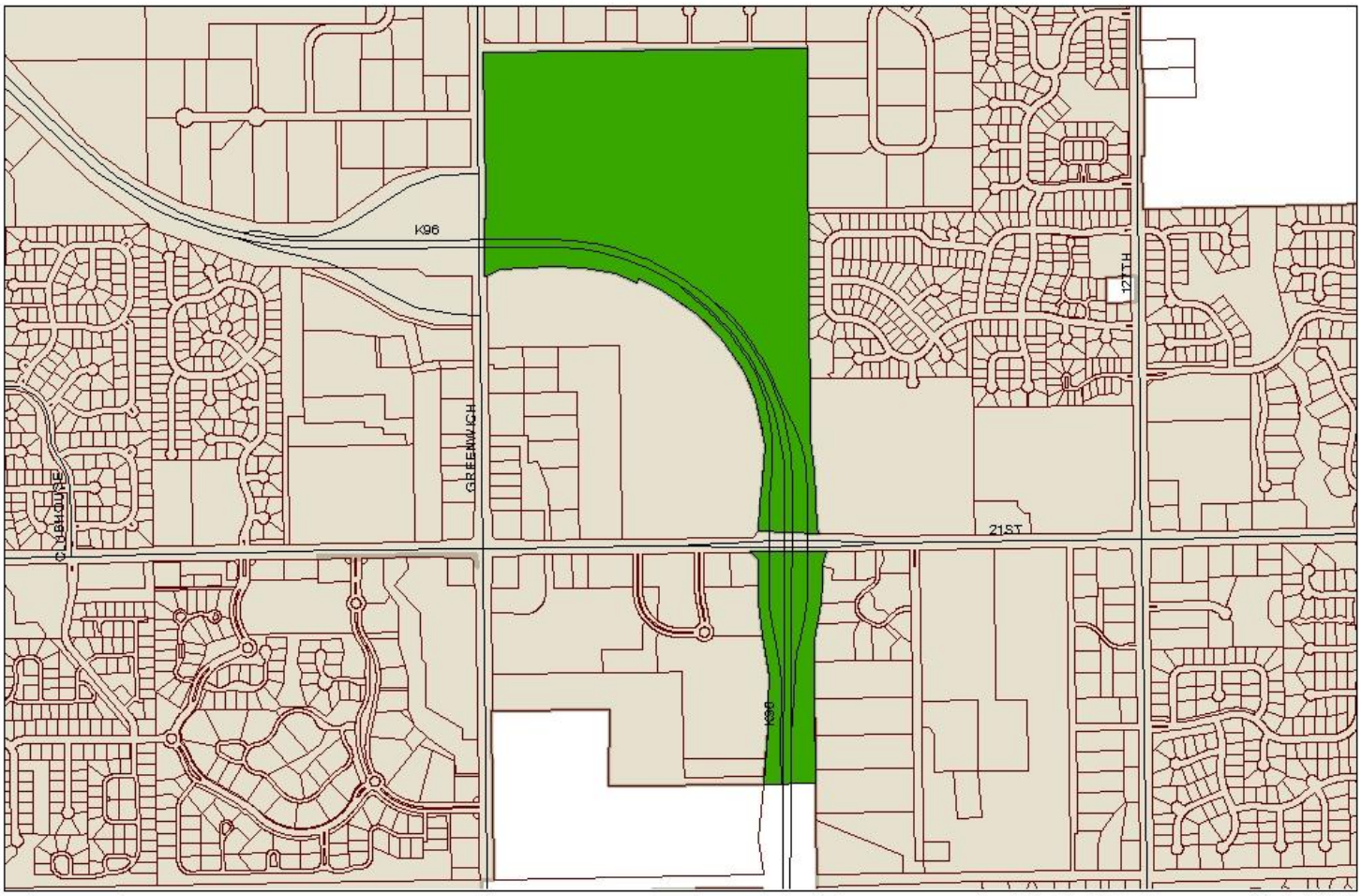
General Location: Unincorporated lands generally north and east of K-96 Highway and Greenwich Road along with the K-96 Highway right-of-way from Greenwich Road to approximately one-third mile south of 21st Street North

Address: 2624 N. Greenwich Rd.

153.19	Area in Acres	X	Request
0	Existing population (est.)		Unilateral
0	Existing dwelling units		Island
0	Existing industrial/commercial units		Other:

Reason(s) for Annexation:

Existing zoning:	"SF-20" Single Family Residential



ANNEXATION AREA
WICHITA
SEDGWICK COUNTY

N

Software: ArcGIS
Map Data Sources: City of Wichita, Sedgwick County
Prepared: 2/5/09

It is understood that while the City of Wichita Data Center Geographical Information Systems Department have no intention and reason to believe that there are inaccuracies in information incorporated in the base map, the Data Center-GIS personnel make no warranty or representation, either expressed or implied, with respect to the information or data displayed.
Note: Public property represented on this map is not intended to be inclusive.

REQUEST FOR DECLARATION OF EMERGENCY

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit*, December 20, 2011, of an ordinance entitled:

ORDINANCE NO. _____

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS. (A11-05)

The general nature of such emergency is that, in order to insure that land proposed for inclusion in a STAR bond project area is located within the city limits, passage of the ordinance prior to January 1, 2012 is required.

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

EXECUTED at Wichita, Kansas, on this 20th day of December, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

OCA150004
PUBLISHED IN THE WICHITA EAGLE ON DECEMBER 23rd, 2011

ORDINANCE NO.49-178

AN ORDINANCE INCLUDING AND INCORPORATING CERTAIN BLOCKS, PARCELS, PIECES AND TRACTS OF LAND WITHIN THE LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS. (A11-05)

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

SECTION 1. The governing body, under the authority of K.S.A. 12-519, et seq, hereby annexes the following blocks, parcels, pieces and tracts of land and they are hereby included and brought within the corporate limits of the City of Wichita, Kansas and designated as being part of City Council District II respectively:

Parcel #1:
The South Half of the Northwest Quarter of Section 3, Township 27 South, Range 2 East of the Sixth Principal Meridian, Sedgwick County, Kansas, EXCEPT the following tracts:

Tract 1:
A tract in the Northwest Quarter of Section 3, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at the Southwest corner of said Northwest Quarter, thence East 223 feet, thence North 150 feet, thence West 223 feet, thence South 150 feet to the point of beginning.

Tract 2:
That part of the Northwest Quarter of Section 3, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning 150 feet North of the Southwest corner thereof; thence North along the West line of said Northwest Quarter 7.0 feet; thence East parallel with the South line of said Northwest Quarter, 223.0 feet; thence South parallel with the West line of said Northwest Quarter, 7.0 feet; thence West parallel with the South line of said Northwest Quarter, 223.0 feet to the point of beginning.

Parcel #2:
A tract in the Northwest Quarter of Section 3, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning at the Southwest corner of said Northwest Quarter, thence East

223 feet, thence North 150 feet, thence West 223 feet, thence South 150 feet to the point of beginning.

Parcel #3:
That part of the Northwest Quarter of Section 3, Township 27 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, described as follows: Beginning 150 feet North of the Southwest corner thereof; thence North along the West line of said Northwest Quarter 7.0 feet; thence East parallel with the South line of said Northwest Quarter, 223.0 feet; thence South parallel with the West line of said Northwest Quarter, 7.0 feet; thence West parallel with the South line of said Northwest Quarter, 223.0 feet to the point of beginning.

Parcel #4:
A tract of land in the Southwest Quarter of Section 3, Township 27 South, Range 2 East of the Sixth Principal Meridian, Sedgwick County, Kansas more particularly described as follows:
Commencing at the Northwest corner of the Southwest Quarter of Section 3, Township 27 South, Range 2 East of the Sixth Principal Meridian, thence N89°07’30”E along the North line of said Southwest Quarter, a distance of 50.00 feet to the point of beginning; thence bearing N89°07’30”E along the North line of said Southwest Quarter, a distance of 2,597.70 feet to the Northeast corner of said Southwest Quarter; thence bearing S0°35’35”E along the East line of said Southwest Quarter, a distance of 1,815.28 feet to the intersection of the North Right of Way of K-96 Highway; thence along the North Right-of-Way of the K-96 Highway the following courses and distances; N24°08’08”W a distance of 532.89 feet to the Point of Curvature of a curve to the left with a radius of 2,039.86 feet and a chord distance of 1,696.46 feet bearing N48°12’42”W; thence along said curve to the left through a central angle of 49°08’34”, an arc distance of 1,749.60 feet; thence bearing N73°44’11”W, a distance of 322.28 feet; thence bearing N85°58’54”W, a distance of 301.62 feet; thence bearing S89°49’11”W, a distance of 522.46 feet; thence bearing N0°43’07”W, parallel with the West line of said Southwest Quarter a distance of 49.03 feet to the Point of beginning.

K-96 Right-of-Way:
A tract of land being that part of the right of way of Highway K-96 situated in the South one-half of Section 3, the North One-half of Section 10 all in Township 27 South, Range 2 East of the Sixth Principal Meridian in Sedgwick County, Kansas, being more particularly described as follows:

Note: The basis of the bearings in this description is N 89° 16’ 46” E being the South line of the Southwest Quarter of Section 3 Township 26 South Range 2 East, as shown on Cross Pointe 2ND a recorded subdivision in the Sedgwick County Register of Deeds office.

Beginning at the Northwest corner of the Southwest Quarter of said Section 3, said point also being on the center line of Greenwich Road,

Thence North 89° 07’ 22” East, 50.00 feet to a point on the easterly right of way line of said Greenwich Road;

Thence South 0° 43’ 15” East, 49.03 feet on the easterly right of way line of said Greenwich Road to the intersection with the northerly right of way line of Highway K-96;

The following 8 courses follow the right of way line of Highway K-96 to the northerly right of way line of 21st Street North;

1. Thence North 89° 49’ 03” East, 522.46 feet;

2. Thence South 85° 59’ 02” East, 301.62 feet;

3. Thence South 73° 44’ 19” East, 322.28 feet to the beginning of a curve concave to the southwest having a radius of 2039.85 feet and a chord bearing of S 49° 12’ 50” E;

4. Thence Southerly on said curve an arc length of 1749.60 feet;

5. Thence South 24° 08’ 16” East, 532.89 feet to a point on the North/South center line of said Section 3, said point being a point on the West line of Messiah Baptist Church 4TH Addition, a recorded subdivision in the Sedgwick County Register of Deeds office;

6. Thence South 7° 16’ 31” East, 249.28 feet continuing southerly on the right of way line of Highway K-96 and the west line of said Messiah Baptist Church 4TH Addition;

7. Thence South 2° 29’ 15” East, 459.82 feet;

8. Thence South 35° 44’ 26” East, 48.21 feet to a point on the northerly right of way line of 21st Street North;

Thence South 15° 48’ 23” East, 154.59 feet to a point on the south right of way line of 21st Street North;

The following 4 courses follow the right of way line of Highway K-96 to the southern end of the described tract of land;

1. Thence South 20° 19’ 43” West, 119.04 feet on the west line of The Collective a recorded subdivision in the Sedgwick County Register of Deeds office;

2. Thence South 00° 18’ 19” West, 300.63 feet on the said west line of The Collective;

3. Thence South 10° 42’ 40” West, 304.55 feet to a point on the North/South center line of said Section 10 and the said west line of The Collective said point being 175.11 feet north of the southwest corner of said The Collective;

4. Thence South 01° 00’ 22” East 1093.00 feet on the North/South center line of said Section 10 to a point 417.59 feet east of the South East corner of Reserve C on Cross Pointe 2ND a recorded subdivision in the Sedgwick County Register of Deeds office;

Thence South 89° 16’ 20” West, 417.59 feet to the said Southeast corner of Reserve C and the westerly right of way line of Highway K-96;

The following 5 courses follow the right of way line of Highway K-96 to the southerly right of way line of 21st Street North;

1. Thence North 4° 23’ 02” East, 401.05 feet;

2. Thence North 1° 41’ 07” East, 400.13 feet;

3. Thence North 8° 16’ 40” West, 606.71 feet;

4. Thence North 0° 15’ 11” East, 350.00 feet;

5. Thence North 43° 40’ 17” West, 71.43 feet to a point on the southerly right of way line of 21st Street North;

Thence North 0° 52’ 17” West, 120.02 feet to a point on the northerly right of way line of 21st Street North;

The following 13 courses follow the east north easterly line of Kensington Gardens, a recorded subdivision in the Sedgwick County Register of Deeds office and right of way line of Highway K-96 to the east right of way line of Greenwich Road;

1. Thence North 41° 30’ 18” East, 71.18 feet;

2. Thence North 4° 14’ 48” East, 695.32 feet;

3. Thence North 11° 08’ 02” West, 368.00 feet;

4. Thence North 23° 04’ 20” West, 232.36 feet to the beginning of a curve concave to the southwest having a radius of 1779.86 feet and a chord bearing of N 39° 02’ 00” W;

5. Thence on said curve an arc length of 605.76 feet;

6. Thence North 54° 47’ 00” West, 372.09 feet;

7. Thence North 66° 47’ 00” West, 186.05 feet;

8. Thence South 23° 13’ 00” West, 30.00 feet;

9. Thence North 66° 47’ 00” West, 182.74 feet;

10. Thence North 79° 20’ 00” West, 273.06 feet;

11. Thence North 88° 11’ 31” West, 255.05 feet;

12. Thence South 87° 05’ 38” West, 411.71 feet;

13. Thence South 58° 32’ 58” West, 114.17 feet to a point on the east right of way line of Greenwich Road;

Thence South 89° 16’ 45” West, 60.11 feet to a point on the West line of said Section 3 and the center line of Greenwich Road;

Thence North 00° 43’ 06” West 457.40 feet on said West line and said center line to the point of beginning.

SECTION 2. That if any part or portion of this ordinance shall be held or determined to be illegal, ultra vires or void the same shall not be held or construed to alter, change or annul any terms or provisions hereof which may be legal or lawful. And in the event this ordinance in its entirety shall be held to be ultra vires, illegal or void, then in such event the boundaries and limits of said City shall be held to be those heretofore established by law.

SECTION 3. That the City Attorney be and he is hereby instructed at the proper time to draw a resolution redefining the boundaries and limits of the City of Wichita, Kansas, under and pursuant to K.S.A. 12-517, et seq.

SECTION 4. This ordinance shall become effective and be in force from and after its adoption and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this December 20th, 2011.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law

Agenda Item No. II-24

City of Wichita
City Council Meeting
December 20, 2010

To: Mayor and City Council Members

Subject: DER2011-07: Amendment of the City of Wichita Boundary Resolution

Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Consent)

Recommendation: Approve the Amended Boundary Resolution.

Background: Kansas State law requires that before the last day of December in any year in which any territory has been added to or excluded from the City, the City Council must declare by resolution the entire boundary of the City. On December 13, 2011, the City Council approved a Boundary Resolution pursuant to the requirements of Kansas State law. However, on December 20, 2011, the City Council approved an additional annexation request. Therefore, the Boundary Resolution approved on December 13, 2011, must be amended to include the additional territory annexed.

Analysis: During the calendar year 2011, the City of Wichita approved five annexations, all of which were requests. The annexations resulted in a total of 256.25 acres (0.4 square miles) being added to the City, resulting in an incorporated area of 163.5 square miles, as of December 31, 2011. City Engineering staff has prepared a legal description of all territory annexed into the City of Wichita in 2011 which is contained with the attached Amended Boundary Resolution.

Financial Consideration: None.

Goal Impact: Annexation assists the City of Wichita with accomplishing the goal to Ensure Efficient Infrastructure by facilitating optimized public facilities and assets.

Legal Consideration: K.S.A. 12-517 requires that for any year in which any territory has been added or excluded from any city, the governing body of such city shall declare, by resolution, the entire boundary of the city. The Law Department has reviewed and approved the Amended Boundary Resolution as to form.

Recommendations/Actions: Approve the Amended Boundary Resolution and authorize the necessary signatures.

Attachment: Amended Boundary Resolution

AMENDED RESOLUTION NO. 11-286

A RESOLUTION DECLARING, ESTABLISHING AND DEFINING THE CITY LIMITS AND BOUNDARIES OF THE CITY OF WICHITA, KANSAS, AFTER ALL ANNEXATIONS OF TERRITORY AND EXCLUSIONS OF TERRITORY SINCE DECEMBER 21, 2010.

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

SECTION 1: That hereafter and until altered or changed in accordance with the law, the City Limits are, and the entire boundaries of the City of Wichita, Kansas are hereby defined, established and declared to be as follows:

Beginning at the intersection of the north right-of-way line of 13th Street North and the east right-of-way line of 127th Street East; thence east along said north right-of-way line to the west line of the Southeast Quarter of Section 11, Township 27 South, Range 2 East of the 6th P.M.; thence north along said west line to the south right-of-way line originally designated for the St. Louis, Wichita, and Western Railway Company; thence east along said south right-of-way line to west line of the east half of said Southeast Quarter; thence south along said west line to the north right-of-way line of 13th Street North; thence east along said north right-of-way line to the east line of the west half of the Southeast Quarter of Section 12, Township 27 South, Range 2 East of the 6th P.M.; thence north along said east line to the south line of the originally designated right-of-way for the St. Louis, Wichita, and Western Railway Company; thence west along said south right-of-way line to a point located 487 feet east of the west line of the Southwest Quarter of Section 12, Township 27 South, Range 2 East of the 6th P.M.; thence south along a line parallel to said west line to a point located 568.23 feet south the north line of said Quarter Section; thence west along a line parallel to said north line to the east right-of-way line of 143rd Street East; thence north along said east right-of-way line to the north line of the South Half of Section 1, Township 27 South, Range 2 East of the 6th P.M.; thence west along said north line and the north line of the South Half of Section 2, Township 27 South, Range 2 East of the 6th P.M. to the east right-of-way line of 127th Street East; thence north along said east right-of-way line to the south right-of-way line of 29th Street North; thence west along said south right-of-way line to the west right-of-way line of 127th Street East; thence north along said west right-of-way line to the north right-of-way line of 29th Street North; thence west along said north right-of-way line to the east right-of-way line of Greenwich Road; thence north along said east right-of-way line to a point located 350 feet north of the south line of Section 34, Township 26 South, Range 2 East of the 6th P.M.; thence west parallel to the south line of said Section 34 and the south line of Section 33, Township 26 South, Range 2 East of

the 6th P.M. to a point on the west right-of-way line of Greenwich Road located 350 feet north of the south line of said Section 33; thence north along said west right-of-way line to the north line of the south half of the Southeast Quarter of said Section 33; thence west along said north line of the south half to the east line of the West Half of said Section 33; thence north along said east line and the east line of the West Half of Section 28, Township 26 South, Range 2 East of the 6th P.M. to the south line of the Northeast Quarter of said Section 28; thence east along said south line, a distance of 283.35 feet; thence bearing N 06°02'48" E to the south right-of-way line of 45th Street North; thence west along said south right-of-way line to the east line of the West Half of Section 29, Township 26 South, Range 2 East of the 6th P.M.; thence north along the east line of said West Half and the east line of the West Half of Section 20, Township 26 South, Range 2 East of the 6th P.M. to the south right-of-way line of the Union Pacific Railroad; thence southwesterly along said south right-of-way line to the north right-of-way line of 45th Street North; thence west along said north right-of-way line to the north right-of-way line of the Union Pacific Railroad; thence northeasterly along said north right-of-way line to the east line of the Southwest Quarter of Section 20, Township 26 South, Range 2 East of the 6th P.M.; thence north along said east line to the north line of said Southwest Quarter; thence west along said north line to the east right-of-way line of Rock Road; thence south along said east right-of-way line to the north right-of-way line of 45th Street North; thence west along said north right-of-way line to the west right-of-way line of Rock Road; thence south along said west right-of-way line to the northerly right-of-way line of the Missouri-Pacific Railroad; thence southwesterly along said northerly right-of-way line to a point 1465.01 feet northeast of its intersection with the west line of the east half of Section 30, Township 26 South Range 2 East of the 6th P.M.; thence north with a deflection to the right of 117°31'41", to the south right-of-way line of 45th Street North; thence west along said south right-of-way line to the west line of the east half of said Section 30; thence south along said west line to the northerly right-of-way line of the Missouri-Pacific Railroad; thence southwesterly along said northerly right-of-way line to the east right-of-way line of Woodlawn Boulevard; thence south along said east right-of-way line to the south right-of-way line of 37th Street North; thence west along said south right-of-way line to the west right-of-way line of Oliver; thence north along said west right-of-way line of Oliver to the south right-of-way line of 53rd Street North; thence west along said south right-of-way line to the south right-of-way line of K-254 Highway; thence southwesterly along said south right-of-way line to the east right-of-way line of the Union Pacific Railroad; thence southwesterly along said east right-of-way line to the west line of the east half of the Southwest Quarter of Section 23, Township 26 South, Range 1 East of the 6th P.M.; thence south along said

west line to a point 275 feet north of the south line of said Southwest Quarter; thence east parallel with said south line to a point 225 feet east of the west line of the east half of said Southwest Quarter; thence south parallel to said west line to the north right-of-way line of 45th Street North; thence west along said north right-of-way line to the east right-of-way line of Hillside Avenue; thence north along said east right-of-way line to the intersection with the north line of Normandy Park Addition, Sedgwick County, Kansas; thence easterly along said north line to the Northeast corner of said Addition; thence southerly along the east line of said Addition, 206.00 feet; thence easterly parallel with the south line of the northwest quarter of said Southwest Quarter, 520.87 feet, more or less, to a point on the northwesterly right-of-way line of Kansas Highway 254, (Condemnation Case No. B19603); thence northeasterly along said right-of-way, being a curve to the left, having a radius of 2745.51 feet, an arc length of 222.70 feet to a point on the east line of the west half of said Southwest Quarter; thence northerly along said east line and the east line of the west half of the Northwest Quarter of Section 23, Township 26 South, Range 1 East to a point 195.00 feet south of the northeast corner of the west half of said Northwest Quarter; thence west, parallel with the north line of said Northwest Quarter, a distance of 230.00 feet; thence north to a point on the south right-of-way line of 53rd Street North located 1090.82 feet east of the west line of said Section; thence west 36.82 feet along said south right-of-way line; thence south parallel with the west line of said Section to a point 330.63 feet south of the north line of said Section; thence west parallel with the north line of said Section a distance of 454 feet; thence south parallel with the west line of said Section a distance of 100 feet; thence west to a point on the east right-of-way line of Hillside Avenue, said point being located 430.63 feet south of the north line of said Section; thence north along said east right-of-way line to the south right-of-way line of 53rd Street North; thence west along said south right-of-way line to the east line of the Northwest Quarter of Section 22, Township 26 South, Range 1 East of the 6th P.M.; thence south along said east line and the east line of the Southwest Quarter of said Section 22 to the northeast corner of the southeast quarter of said Southwest Quarter; thence west along the north line of said southeast quarter of the Southwest Quarter to the west line of the east half of the east half said Southwest Quarter; thence south along said west line to a point 648.16 feet north of the south line of said Southwest Quarter; thence east to a point 647.7 feet north and 336 feet west of the southeast corner of said Southwest Quarter; thence south to the north right-of-way line of 45th Street North; thence west along said north right-of-way line to the east right-of-way line of Hydraulic Avenue, thence south along said east right-of-way line to the south right-of-way line of 45th Street North; thence west along said south right-of-way line to the west right-of-way line of Hydraulic; thence south along said west right-of-way line to the southerly right-of-way line of the

Chisholm Creek Diversion; thence southwesterly along said southerly right-of-way line to a point 100 feet west of the east line of the Southwest Quarter of Section 28, Township 26 South, Range 1 East of the 6th P.M., said point being the west right-of-way line of St. Louis and San Francisco Railroad; thence north along said west right-of-way line to the north right-of-way line of the Chisholm Creek Diversion; thence westerly along said north right-of-way line to the east right-of-way line of Lawrence Road; thence north along said east right-of-way line to the south right-of-way line of Interstate Highway 235; thence northeasterly and easterly along said south line to a point 860.7 feet west of the east line of said Southwest Quarter; thence north to the north line of said Southwest Quarter; thence west to the east line of the southwest quarter of the Northwest Quarter of Section 28, Township 26 South, Range 1 East of the 6th P.M.; thence north along said east line to the north line of said southwest quarter of the Northwest Quarter; thence west along said north line of said southwest quarter of the Northwest Quarter to a point 622.8 feet east of the west line of said Northwest Quarter; thence north parallel to the west line of said Northwest Quarter to the south right-of-way line of 45th Street North; thence west along said south right-of-way line to the west line of said Northwest Quarter; thence south along said west line to a point 1620.84 feet north of the south line of said Northwest Quarter; thence west parallel to the south line of the Northeast Quarter of Section 29, Township 26 South, Range 1 East of the 6th P.M. to the east line of the Wichita-Valley Center Flood Control (Condemnation Case A-41035); thence northerly and westerly along said east line to the westerly right-of-way line of the Atchison, Topeka and Santa Fe Railroad; thence northwesterly along said westerly line to the south right-of-way line of 61st Street North; thence west along said south right-of-way line to the east right-of-way line of Seneca Street; thence north along said east right-of-way line to the north right-of-way line of 61st Street North; thence west along said north right-of-way line to the east line of the west half of vacated Fairfield Street; thence southwesterly along said east line to the north line of the Northeast Quarter of Section 18, Township 26 South, Range 1 East of the 6th P.M; thence west along said north line to a point 30 feet north of the northeast corner of Lot 110, Vanview Addition; thence south along a line parallel to the west line of said Northeast Quarter to the south right-of-way line of 61st Street North and the northeast corner of said Lot 110; thence west along said south right-of-way line to the east bank of the Little Arkansas River; thence north along said east bank to the north line of the Southeast Quarter of Section 7, Township 26 South, Range 1 East of the 6th P.M.; thence west along said north line to the east line of the Southwest Quarter of Section 7, Township 27 South, Range 1 East; thence north along said east line and the east line of the Northwest Quarter of said Section 7 to the north line of Reserve A, Rio Vista Estates Third Addition; thence westerly along said north line to the northwest corner of Reserve A, Rio Vista

Estates Second Addition; thence southerly and westerly along the west line of said Reserve A to the east right-of-way line of Meridian Avenue; thence south along said east right-of-way line to a point on the most northerly northwest corner of Lot 1, Block 2 of Rio Vista Estates Second Addition and on the east right-of-way line of Meridian Avenue, said point being located 641.36 feet north of the south line of said Southwest Quarter.; thence west parallel to the south line of said Section and Section 12, Township 26 South, Range 1 West of the 6th P.M.. to a point on the west right-of-way line of Meridian Avenue, said point being located 641.36 feet north of the south line of said Section; thence north along said west right-of-way line to the centerline of the Little Arkansas River; thence northwesterly along said centerline to a point 1650.14 feet north of the south line of the Southeast Quarter of Section 12, Township 26 South, Range 1 West of the 6th P. M.; thence west parallel to the south line of said Southeast Quarter to a point 1056.05 feet, more or less, west of the east line of said Southeast Quarter; thence south along a line parallel to said east line to the north right-of-way line of 61st Street North; thence west along said north right-of-way line to a point 208.71 feet east of the west line of said Southeast Quarter; thence south to a point 208.71 feet east of the west line of the Northeast Quarter of Section 13, Township 26 South, Range 1West of the 6th P.M. on the north line of said Section; thence west along said north line to the west line of said Northeast Quarter; thence south along said west line to the north right-of-way line of 53rd Street North; thence east along said north right-of-way line to the west right-of-way line of Meridian Avenue; thence south along said west right-of-way line to the south right-of-way line of 53rd Street North; thence west along said south right-of-way line to a point 856.8 feet west of the east line of Section 24, Township 26 South, Range 1 West of the 6th P.M.; thence south to a point 649 feet, more or less, south of the north line of said Section 24, said point located 856.8 feet west of the east line of said Section; thence east parallel to the north line of said Section to the west right-of-way line of Meridian Avenue; thence south along said west right-of-way line to a point 1646 feet north of the south line of the Northeast Quarter of said Section 24; thence west along a line parallel to said north line to a point 147.5 feet west of the east line of said Section; thence south 140 feet along a line parallel to the east line of said section; thence east along a line parallel to the north line of said section to the west right-of-way line of Meridian Avenue; thence south along said west right-of-way line to the north line of the south half of the Northeast Quarter, Section 24, Township 26 South, Range 1 West; thence west along said north line to a point on the east line of Moorings 10th Addition to Wichita, Sedgwick County, Kansas, said point being the southeast corner of Lot 2, Block 2 in said Moorings 10th Addition; thence north along the east line of said Addition to the northeast corner of Reserve D in said Addition, thence westerly along the north line of said Addition to the east right-of-way line

of North Portwest Circle; thence northwesterly along said east right-of-way line to the southeast corner of Lot 5, Block 2, Moorings 11th Addition to Wichita, Sedgwick County, Kansas; thence north along the east line of said lot to the northeast corner of said lot and the north line of said Addition; thence west along said north line to the west line of said Addition; thence south and southeasterly along said west line to the northerly right-of-way line of Portwest Circle; thence southwesterly along said northerly right-of-way line and the westerly right-of-way line of Portwest Circle to the northwest corner of Lot 6, Block 1, Moorings 11th Addition, said corner lying on the west line of said Addition; thence southwesterly and south along said west line to the north line of the south half of the Northwest Quarter of Section 24, Township 26 south, Range 1 West of the 6th P.M.; thence west along said north line to the east line of the Wichita-Valley Center Flood Control right-of-way; thence south along said east right-of-way line to a line 650 feet north of and parallel to the south line of the north half of said Section 24; thence west along said line and said line extended to the west mean high bank of the Arkansas River; thence southeasterly along said west mean high bank to the north line of the south half of Section 23, Township 26 South, Range 1 West of the 6th P.M; thence west along said north line and the north line of the south half of Section 22, Township 26 South, Range 1 West of the 6th P.M, to the west line of the Southeast Quarter of said Section; thence south along said west line to the south line of said Section; thence east 30 feet along said south line; thence south along a line parallel to the west line of the Northeast Quarter of Section 27, Township 26 South, Range 1 West of the 6th P.M. to a point 30 feet north of the south line of Government Lot 5 in said Section; thence east along a line parallel to said south line to a point on the south right-of-way line of 45th Street North; thence southeasterly along said south right-of-way line to a point 30 feet south of the south line of said Government Lot 5; thence west parallel to said south line and said line extended to a point 30 feet west of the east line of the Northwest Quarter of said Section 27; thence north along a line parallel to said east line to a point 30 feet south and 30 feet west of the northeast corner of said Northwest Quarter; thence west 388.45 feet along a line parallel to the north line of said Northwest Quarter; thence south 356.25 feet along a line parallel to said east line to a point on the west line of Lot 13 and the northeast corner of Lot 15, Block A, Edgewater Addition; thence west along the north line of said Lot 15 to the northwest corner of Lot 16, Block A in said Addition; thence south along the west line of said Addition to the north right-of-way line of K-96 Highway; thence easterly along said north right-of-way line to a point located 208 feet west of the east line of the Northeast Quarter, Section 27, Township 26 South, Range 1 West of the 6th P.M.; thence north along a line parallel to said east line to a point 450 feet north of the south line of said Northeast Quarter; thence east along a line parallel to said south line to the west right-of-way line of

Hoover Road; thence south along said west right-of-way line to the north right-of-way line of K-96 Highway; thence easterly along said north right-of-way line to the west mean high bank of the Arkansas River; thence southerly along said high bank to the south line of the north half of Section 36, Township 26 South, Range 1 West of the 6th P.M.; thence east along said south line to the west right-of-way line of Interstate Highway 235; thence southerly and southwesterly along said west right-of-way line to the north line of Section 1, Township 27 South, Range 1 West of the 6th P.M.; thence west along said north line to the east right-of-way line of West Street; thence south along said east right-of-way line to the south right-of-way line of 29th Street North; thence west along said south right-of-way line to the west line of the north half of the Northeast Quarter of Section 2, Township 27 South, Range 1 West of the 6th P.M.; thence south along said west line to the south line of the north half of said Northeast Quarter; thence east along said south line of said north half a distance of 647.85 feet; thence southwesterly 979.38 feet to a point on the west line of the south half of said Northeast Quarter, said point being 735.71 feet south of the north line of the said south half; thence south along the west line of said south half and the north half of the Southeast Quarter of Section 2, Township 27 South, Range 1 West of the 6th P.M. to the south line of the said north half; thence east along the south line of said north half to the west line of the Big Slough-Cowskin Creek Floodway; thence southwesterly along said west line to the north right-of-way line of 21st Street North; thence west along said north right-of-way line to the east line of the Southwest Quarter of Section 2, Township 27 South, Range 1 West of the 6th P.M.; thence north along said east line to a point 264 feet north of the south line of said Southwest Quarter; thence west parallel to said south line a distance of 165 feet; thence south parallel to the east line of said Southwest Quarter to the north right-of-way line of 21st Street North; thence west along said north right-of-way line to the east line of the southwest quarter of said Southwest Quarter; thence north along said east line to the north line of said Southwest Quarter; thence west along said north line to the east right-of-way line of Hoover; thence north along said east right-of-way line to a point 2099.9 feet south of the north line of Section 2, Township 27 South, Range 1 West of the 6th P.M.; thence east along a line parallel with said north line to a point 245.7 feet east of the west line of said section; thence north parallel to the west line of said section a distance of 531.9 feet; thence east parallel to the north line of said Section a distance of 286.2 feet; thence north parallel to the west line of said Section a distance of 245.7 feet; thence west parallel to the north line of said section to the east right-of-way line of Hoover Road; thence north along said east right-of-way line to the south right-of-way line of 29th Street North; thence west along said south right-of-way line to the west right-of-way line of Hoover Road; thence north along said west right-of-way line to a point 300 feet north of the south line of the north half of

the Northeast Quarter of Section 34, Township 26 South, Range 1 West of the 6th P.M., thence west parallel to said south line to a point 871 feet west of the east line of said Quarter; thence south parallel to the east line of said Northeast Quarter to the south line of the north half of said Northeast Quarter; thence west along said south line to the east line of the Northwest Quarter of Section 34, Township 26 South, Range 1 West of the 6th P.M.; thence north along said east line and said east line extended to the north right-of-way line of 37th Street North; thence west along said north right-of-way line to the east right-of-way line of Ridge Road; thence north along said east right-of-way line to the south right-of-way line of K-96 Highway; thence west along said south right-of-way line to the north line of the Southeast Quarter of Section 28, Township 26 South, Range 1 West of the 6th P.M.; thence west along said north line and the north line of the Southwest Quarter of said Section 28 to the east right-of-way line of Tyler Road; thence south along said east right-of-way line to a point 855 feet north of the south line of said Southwest Quarter; thence east parallel to said south line to a point 264 feet east of the west line of said Southwest Quarter; thence south to the north right-of-way line of 37th Street North, thence west along said north right-of-way line to the east right-of-way line of Maize Road; thence north along said east right-of-way line to the north line of the south half of the Southeast Quarter of Section 30, Township 26 South, Range 1 West of the 6th P.M. as extended east; thence west along said line and said line extended to the west line of said Southeast Quarter; thence south along said west line to the south right-of-way line of 37th Street North; thence west along said south right-of-way line 419.2 feet; thence south parallel with the east line of the Northwest Quarter of Section 31, Township 26 South, Range 1 West of the 6th P.M. to a point 1039.65 feet south of the north line of said Northwest Quarter; thence east parallel to the north line of said Northwest Quarter to the east line of said Northwest Quarter; thence north along said east line to the south right-of-way line of 37th Street North; thence east along said south right-of-way line to a point 1573.47 feet west of the east line of the Northeast Quarter of Section 31, Township 26 South, Range 1 West of the 6th P.M.; thence south parallel with said east line 981.06 feet; thence east parallel with the north line of said Northeast Quarter 750 feet; thence north parallel with the east line of said Northeast Quarter 513.04 feet; thence west parallel to the north line of said Northeast Quarter 117.17 feet; thence north parallel to the east line of said Northeast Quarter to the south right-of-way line of 37th Street North; thence east along said south right-of-way line to the west right-of-way line of Maize Road; thence south along said west right-of-way line to a point 190 feet south of the north line of the southeast quarter of the Southeast Quarter of Section 31, Township 26 South, Range 1 West of the 6th P.M.; thence west parallel to said north line to the west line of the southeast quarter of said Southeast Quarter; thence north along said west line to the north line of the southwest quarter of said Southeast

Quarter; thence west along said north line to the west line of said Southeast Quarter; thence north along said west line to the north line of the Southwest Quarter of said Section 31; thence west along said north line to the east right-of-way line of 119th Street West; thence south along said east right-of-way line to the south right-of-way line of 29th Street North; thence west along said south right-of-way line to a point 1368.74 feet west of the east line of the Northeast Quarter of Section 1, Township 27 South, Range 2 West of the 6th P.M.; thence southerly perpendicular to the north line of said Northeast Quarter to a point 260.00 feet south of said north line; thence easterly parallel with the north line of said Northeast Quarter, 340.00 feet; thence southerly perpendicular to the north line of said Northeast Quarter, 1340.74 feet to a point 1600.74 feet normally distant south of the north line of said Northeast Quarter; thence northeasterly, 418.36 feet to a point 1430.63 feet normally distant south of the north line of said Northeast Quarter and 600 feet normally distant west of the east line of said Northeast Quarter; thence northerly parallel with the east line of said Northeast Quarter, 250.00 feet ; thence easterly perpendicular to the east line of said Northeast Quarter, 340.00 feet; thence southerly parallel to the east line of said Northeast Quarter, 267.00 feet; thence easterly perpendicular to the east line of said Northeast Quarter, to the west right-of-way line of 119th Street West; thence south along said west right-of-way line to the north line of the Southeast Quarter of Section 1, Township 27 South, Range 2 West of the 6th P.M.; thence west along said north line to a point 507.9 feet east of the west line of said Southeast Quarter; thence north 15 feet; thence west parallel to the north line of said Southeast Quarter to the west line of the Northeast Quarter of said Section 1; thence south along said west line and the west line of the Southeast Quarter of said Section 1 to a point 1689.32 feet north of the south line of said Southeast Quarter; thence east 162.2 feet; thence south 199.32 feet; thence east 340 feet to a point 2101 feet west and 1490 feet north of the southeast corner of said Southeast Quarter; thence south 500 feet; thence east 30 feet; thence south to the north right-of-way line of 21st Street North; thence east along said north line to a point 680 feet west of the east line of said Southeast Quarter; thence south to the south right-of-way line of 21st Street North; thence west along said south right-of-way line to a point 275 feet west of the northwest corner of Teal Brook Estates Addition; thence south parallel to the west line of the Northeast Quarter of Section 12, Township 27 South, Range 2 West of the 6th P.M. to a point 238 feet south of the north line of said Northeast Quarter; thence east parallel with said north line to the west line of said Addition; thence south along said west line to the north line of the south half of said Northeast Quarter;; thence west along said north line to a point 190 feet east of the west line of said Northeast Quarter; thence south along a line parallel to the west line of said Northeast Quarter to the south line of said Northeast Quarter; thence west along said south line to the west line of the Southeast

Quarter of Section 12, Township 27 South, Range 2 West of the 6th P.M.; thence south along said west line 655.62 feet to the center line of the Cowskin Creek; thence easterly, southerly and northerly along said center line to the intersection of said centerline with the south line of Lot 16, Autumn Ridge Second Addition to Wichita, Sedgwick County, Kansas as extended to the west; thence east along said south line extended to the southwest corner of said Lot 16; thence southerly along the west line of Autumn Ridge Second Addition and the east line of the Floodway Reserve Agreement (dedicated on Film 979, Page 1092) to the north right-of-way line of 13th Street North; thence west along said north right-of-way line to a point 429 feet west of the east line of the Southwest Quarter of Section 12, Township 27 South, Range 2 West; thence north parallel with the east line of said Southwest Quarter to a point 990 feet north of the south line of said Southwest Quarter; thence west parallel with said south line to a point 470 feet east of the west line of said Southwest Quarter; thence south parallel with said west line to a point 511.5 feet north of the south line of said Southwest Quarter; thence west parallel with said south line and south line of Section 11, Township 27 South, Range 2 West of the 6th P.M. to the west right-of-way line of 135th Street West; thence north along said west right-of-way line to the north line of the southeast quarter of the Northeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M.; thence west along said north line to the east line of the northwest quarter of the Northeast Quarter of said Section, thence north to the south right-of-way line of 21st Street North; thence west along said south right-of-way line to a point 441.92 feet east of the west line of said Northeast Quarter; thence south parallel to said west line to a point 860 feet south of the north line of said Northeast Quarter; thence east parallel with said north line a distance of 238.40 feet; thence south parallel to the north line of said Northeast Quarter a distance of 450 feet; thence west parallel to said north line to the west line of said Northeast Quarter; thence south along said west line to the north line of the south half of Section 11; thence west along said north line to the northwest corner of Reserve 49, Blackstone Addition, Sedgwick County, Kansas, said point being on the west line of said Addition; thence south, west and southwesterly along said west line to the north right-of-way line of 13th Street North; thence east along said north right-of-way line to the west line of the east half of the Southeast Quarter of Section 11, Township 27 South, Range 2 West of the 6th P.M.; thence south along said west line and the west line of the east half of the Northeast Quarter of Section 14, Township 27 South, Range 2 West of the 6th P.M. to the south line of said Northeast Quarter; thence east along said south line and the south line of the Northwest Quarter of Section 13, Township 27 South, Range 2 West of the 6th P.M. to the northwest corner of the Southeast Quarter of said Section 13; thence south along the west line of said Southeast Quarter to the north right-of-way line of Central; thence west along said north right-of-way line to the west line

of Block 1, Rainbow Lakes Estates extended north; thence south along said west line extended to the north line of Section 24, Township 27 South, Range 2 West of the 6th P.M.; thence west along said north line to the west right-of-way line of 135th Street West; thence south along said west line to the south right-of-way line of Central; thence west along said south right-of-way line to the west line of the Northeast Quarter of Section 23, Township 27 South, Range 2 West of the 6th P.M.; thence south along said west line to the northeast corner of the Southwest Quarter of said Section 23; thence west along the north line of said Southwest Quarter to the west line of the east half of said Southwest Quarter; thence south along said west line to the north right-of-way line of Maple; thence west along said north right-of-way line to a point 400 feet east of the west line of the southeast quarter of the Southeast Quarter of Section 22, Township 27 South, Range 2 West of the 6th P.M.; thence north along a line parallel to said west line to the north line of the said southeast quarter of the Southeast Quarter; thence west 400 feet along said north line to said west line; thence south along said west line to said north right-of-way line; thence west along said north right-of-way line to the west line of said Southeast Quarter; thence south along said west line and the east line of the Northwest Quarter of Section 27, Township 27 South, Range 2 West of the 6th P.M.; thence south along said east line to the south line of the north half of said Northwest Quarter; thence west along said south line to a point 1320 feet east of the west line of said Northwest Quarter; thence north parallel to said west line 267.3 feet; thence east parallel to the south line of said Northwest Quarter to the west right-of-way line of 162nd Street West; thence north along said west right-of-way line 390.7 feet; thence west parallel to said south line to a point 1320 feet east of said west line; thence south parallel to the west line of said Northwest Quarter 328 feet; thence west parallel to the south line of said Northwest Quarter to the east right-of-way line of 167th Street West; thence south along said east line to the north right-of-way line of U.S. Highway 54; thence east along said north right-of-way line to the west line of the Southeast Quarter of Section 27, Township 27 South, Range 2 West of the 6th P.M.; thence north along said west line to the north line of said Southeast Quarter thence east along said north line to the east right-of-way line of Reece Road; thence south along said east line to the south right-of-way line of Moscelyn Lane; thence east and easterly along said south right-of-way line to the west right-of-way line of 151st Street West; thence south along said west right-of-way line to the north right-of-way line of Grassmere Lane; thence west along said north right-of-way line to the west line of Tapestry Meadows Third Addition, said line being 997 feet west of the east line of said Southeast Quarter; thence south along said west line and the west line of Tapestry Meadows Second Addition to the north right-of-way line of U.S. 54 Highway; thence easterly along said north right-of-way line to the east right-of-way line of 135th Street West; thence north along said east right-

of-way line to the north line of the Southwest Quarter of Section 25, Township 27 South, Range 2 West of the 6th P.M; thence east along said north line to a point located 900 feet west of the Northeast Corner of said Southwest Quarter; thence southeast to a point 500 feet south of said Northeast Corner, said point being located on the east line of said Southwest Quarter; thence south along said east line to a point 1722 feet north of the south line of said Southwest Quarter; thence west parallel to said north line 250 feet; thence south parallel said east line to the north right-of-way line of U.S. 54 Highway as condemned in Case No. A-38302; thence east along said north right-of-way line to the west right-of-way line of 119th Street West; thence south along said west right-of-way line to the north line of the Southeast Quarter of Section 36, Township 27 South, Range 2 West of the 6th P.M.; thence west along said north line to the east line of the west half of said Section, thence north along said east line to the south right-of-way line of the A.T. & S.F. Railroad; thence westerly along the said south right-of-way to the east line of Lot 1, Centennial Sub, Sedgwick County, Kansas, said line being located 350 feet east of the west line of said Section; thence south along said east line a distance of 215 feet to the south line of said Subdivision; thence westerly along said south line to the east right-of-way line of 135th Street West; thence south along said east right-of-way line to a point 886.79 feet north of the south line of the Southwest Quarter of Section 36, Township 27 South, Range 2 West of the 6th P.M.; thence east parallel to said south line to a point 249.20 feet east of the west line of said Section; thence south parallel to the west line of said Section a distance of 259.16 feet; thence west parallel to the south line of said section to the east right-of-way line of 135th Street West; thence south along said east right-of-way line to the south right-of-way line of Pawnee; thence east along said south right-of-way line to a point 1111.66 feet west of the east line of the Northwest Quarter of Section 1, Township 28 South; Range 2 West of the 6th P.M.; thence S 01° 17’ 03” W a distance of 885.54 feet; thence N 88° 51’ 55” E a distance of 22 feet; thence S 01° 17’ 03” W a distance of 1559.19 feet to the south line of said Northwest Quarter; thence east along said south line and the south line of the Northeast Quarter of said Section to a point 175.95 feet east of the southwest corner of said Northeast Quarter; thence north parallel to the east line of said Northeast Quarter to a point 2428.17 feet west and 1376.46 feet south of the northeast corner of said Northeast Quarter; thence east along a line parallel to the north line of said Northeast Quarter to a point located 613.27 feet west of the east line of said Northeast Quarter; thence S03 02’11”E, 79.17 feet; thence S29 23’22”E, 210 feet; thence S03 02’11”E, 215 feet; thence easterly to a point on the west right-of-way line of 119th Street West located 1,856.85 feet south, more or less, of the north line of said Northeast Quarter; thence north along said west right-of-way line to a point located 353.94 feet south of the north line of said Northeast Quarter and said line extended east to the

east right-of-way line of 119th Street West; thence north along said east right-of-way line to the south right-of-way line of Pawnee; thence east along said south right-of-way line to the west line of the Northeast Quarter of Section 6, Township 28 South, Range 1 West of the 6th P.M.; thence south along said west line to the south line of said Northeast Quarter; thence east along said south line and the south line of the Northwest Quarter of Section 5, Township 28 South, Range 1 West of the 6th P.M. to the west line of the east half of said Section; thence south along said west line of said east half and the west line of the east half of Section 8, Township 28 South, Range 1 West of the 6th P.M. to the south right-of-way line of 31st Street South; thence west along said south right-of-way line to a point 538.07 feet east of the west line of the east half of Section 7, Township 28 South, Range 1 West of the 6th P.M.; thence S02°29'53"E parallel with the west line of the east half of said Section to a point 1142.10 feet south of the north line of said section; thence S90°00'00"W parallel with the north line of said Section, 538.07 feet to the west line of the east half of said Section; thence south along the west line of the east half of said Section, to a point 1,032.73 feet south of the northwest corner of the Southeast Quarter of said Section said point being the northernmost northeast corner of Lot 1, St. Peter The Apostle Catholic Church Addition; thence west along the north line of said Addition to the northernmost northwest corner of said Addition; thence southerly and westerly along the west line of said Addition to the north right-of-way line of Peter Avenue; thence east along said north right-of-way line to the east right-of-way line of Annie Avenue and the northernmost southeast corner of said Lot 1; thence north along the east line of said Addition, 179.68 feet to the south line of said Addition; thence east along said south line, 130.04 feet to the west line of said Addition; thence south along said west line and the west line of Schulte Country Storage Addition to the southwest corner of said Addition; thence east along the south line of said Addition, to the westernmost southeast corner of said Addition and the northwest corner of Schulte Country Store Addition; thence south along the west line of said Addition to the southwest corner of said Addition; thence northerly and easterly along the south line of said Addition and the south line of Lot 1, St. Peter The Apostle Catholic Church Addition to the southernmost southeast corner of said Addition; thence north along the east line of said Addition to the south line of Lot 1, Block A, St Peter the Apostle Catholic Church 2nd Addition; thence east along said south line and the south line of Harvest Ridge Addition, to the southeast corner of Lot 30, Block C, Harvest Ridge Addition; thence south along the west line of said Addition and said line extended to the north right-of-way line of K-42 Highway; thence northeasterly along said north right-of-way line to a point 50 feet west of the east line of the Northeast Quarter, Section 9, Township 28 South, Range 1 West; thence south parallel to said east line to a line 50 feet south of and parallel to the south right-of-way line of the Atchison,

Topeka and Santa Fe Railroad; thence southwesterly along said south right-of-way line to a point 417.29 feet west of the east line of said Quarter Section measured along said line; thence northwesterly at right angles to said line 50 feet to the south line of said Railroad right-of-way; thence southerly and westerly along the south right-of-way line of the Atchison, Topeka and Santa Fe Railroad to the west right-of-way line of Maize Road; thence south along said west right-of-way line to the north right-of-way line of MacArthur Road; thence east along said north right-of-way line to the east right-of-way line of Tyler Road; thence north along said east right-of-way line to the south line of the north half of the Southwest Quarter of Section 9, Township 28 South, Range 1 West of the 6th P.M.; thence east along said south line to the east line of said Southwest Quarter; thence north along said east line to the southwest corner of the Northeast Quarter of said Section 9; thence east along the south line of said Northeast Quarter to the west right-of-way line of Ridge Road; thence north along said west right-of-way line and said line extended to the north right-of-way line of Highway K-42; thence northeasterly along said north right-of-way line to a point 210 feet west of the Center Line of Section 3, Township 28 South, Range 1 West of the 6th P.M.; thence north along a line parallel to and 210 feet west of said Center Line a distance of 328.3 feet; thence west at 90 degrees a distance of 390 feet; thence north along a line parallel to and 600 feet west of the Center Line of said Section 3 to a point 327.4 feet south and 600 feet west of the southwest corner of the northwest quarter of the Northeast Quarter of said Section 3; thence east at 90 degrees to a point on the Center Line of said Section 3; thence north to said southwest corner; thence east along the south line of the north half of the Northeast Quarter of said Section 3 to the west right-of-way line of Hoover Road; thence south along said west right-of-way line to the south right-of-way line of 31st Street South; thence west along said south right-of-way line to the west line of the J.I. Case Addition; thence south along said west line to a point 460 feet south of the north line of the Northeast Quarter of Section 10, Township 28 South, Range 1 West of the 6th P.M.; thence east 190 feet; thence south along said west line to the north line of Ecco Industrial Addition; thence west along said north line of said Addition to the west line of said Addition; thence south along said west line to the northeast corner of the Southwest Quarter of Section 10, Township 28 South, Range 1 West of the 6th P.M; thence west along the north line of said Southwest Quarter to a point 242.4 feet east of the west line of said Southwest Quarter; thence south parallel with said west line 225 feet; thence east parallel with said north line to the west right-of-way line of Summitlawn Avenue; thence south along said west right-of-way line to the north right-of-way line of 35th Street South; thence west along said north right-of-way line to the east right-of-way line of Ridge Road; thence south along said east right-of-way line to the south line of the north half of said Southwest Quarter; thence

east along said south line to the east line of said Southwest Quarter; thence south along said east line to the north right-of-way line of MacArthur Road; thence east along said north right-of-way line to the west right-of-way line of Hoover Road; thence south along said west right-of-way line to the south right-of-way line of MacArthur Road; thence west along said south right-of-way line to the west line of the east half of the Northeast Quarter of said Section 15, Township 28 South, Range 1 West of the 6th P.M.; thence south along said west line to the south line of said Northeast Quarter; thence east along said south line to a point 1273.00 feet west of the east line of the Southeast Quarter of said Section 15; thence southeasterly with a deflection angle to the right of 45°00'08", 237.00 feet; thence southeasterly with a deflection angle to the left of 12°14'30", 533.00 feet; thence southeasterly with a deflection angle to the right of 12°58'00", 315.00 feet; thence southeasterly with a deflection angle to the right of 22°30'00", 595.00 feet; thence southeasterly with a deflection angle to the left of 06°01'00", to the west right-of-way line of Hoover Road; thence south along said west right-of-way line to the north right-of-way line of 47th Street South; thence east along said north right-of-way line to the westerly right-of-way line of the Wichita-Valley Center Flood Control (Condemnation Case A-30410); thence northwesterly along said westerly line to the north line of the Southwest Quarter of Section 14, Township 28 South, Range 1 West of the 6th P.M; thence west along said north line and said line extended to a point 667.87 feet west of the east line of the Southeast Quarter of said Section 15; thence north parallel with said east line of said Section 15 a distance of 521.77 feet to the south line of Wheatland Addition, Sedgwick County, Kansas; thence east along said south line of said Addition and said south line extended to the east right-of-way line of Hoover Road; thence north along said east right-of-way line to the south right-of-way line of MacArthur Road; thence east along said south right-of-way line to the west right-of-way line of West Street; thence north along said west right-of-way line to the north right-of-way line of MacArthur Road; thence easterly along said north right-of-way line to the east right-of-way line of West Street; thence north along said east right-of-way line to the most westerly southwest corner of Lot 1, Block A, Pretty Prairie Addition; thence east along the south line of said Lot 1 to a point 230 feet east of the west line of the Southwest Quarter of Section 12, Township 28 South, Range 1 West of the 6th P.M.; thence south along the west line of said Lot 1 to the south line of said Lot 1; thence southeasterly along said south line of said Lot 1 and the south line of Lot 2, Block A, Pretty Prairie Addition to the east line said Lot 2; thence north along said east line to the south line of Rainbow Sales Addition; thence east along said south line to the east line of said Addition; thence north along said east line to a point 350 feet north of the south line of said Southwest Quarter; thence east, parallel with said south line, 180 feet; thence north

parallel to the east line of said Southwest Quarter, to the northern most southeast corner of Lot 1, Trimmel Addition; thence north along the east line of said Addition and the east line of Carmichael Addition to the southerly right-of-way line of Interstate 235 Highway; thence southerly and easterly along said right-of-way line to a point 1998.2 feet east of the west line of the Southwest Quarter of Section 12, Township 28 South, Range 1 West of the 6th P.M.; thence south parallel to said west line to the north right-of-way line of MacArthur Road; thence east along said north right-of-way line to a point 359.34 feet west of the east line of said Southwest Quarter; thence north parallel to said east line to a point 359.34 feet west and 610.4 feet north of the southeast corner of said Southwest Quarter; thence east 194.34 feet to a point 610.4 feet north and 165 feet west of said southeast corner; thence north to a point 165 feet west of and 1326 feet north of said southeast corner, thence east to the east line of said Southwest Quarter; thence south along said east line to a point 1320.6 feet, more or less, north of the south line of the Southeast Quarter of said Section 12; thence east parallel with said south line to the west right-of-way line of Meridian Avenue; thence south along said west right-of-way line to a point 168.3 feet north of the south line of the Northeast Quarter, Section 13, Township 28 South, Range 1 West of the 6th P.M.; thence west to a point 233.8 feet west of the east line of said Section; thence south 168.3 feet to the south line of the north half of said Section 13; thence west along said south line to the southeast corner of the Northwest Quarter of said Section 13; thence north along the east line of said Northwest Quarter to the north line of the south half of the south half of said Northwest Quarter; thence west along said north line to a point 660 feet east of the west line of said Northwest Quarter; thence south parallel with the west line of said Northwest Quarter 395 feet; thence west parallel with the south line of said Northwest Quarter to the east right-of-way line of West Street; thence south along said east right-of-way line to a point 754 feet north of the south line of the Southwest Quarter Section 13, Township 28 South, Range 1 West of the 6th P. M.; thence east parallel to said south line to a point 208.71 feet east of the west line of said Southwest Quarter; thence south parallel to the west line of said Southwest Quarter 135 feet; thence east parallel to the south line of said Southwest Quarter to a point 600 feet east of the west line of said Southwest Quarter; thence south parallel to said west line to the north right-of-way line of 47th Street South; thence east along said north right-of-way line to the west line of the Southeast Quarter of Section 13, Township 28 South, Range 1 West of the 6th P.M.; thence north along said west line to the north line of the south half of said Southeast Quarter; thence east along said north line to the west line of the east half of said Southeast Quarter; thence south along said west line to the north right-of-way line of 47th Street South; thence east along said north right-of-way line to a point 380 feet west of the east line of said Quarter Section; thence north parallel to said east line to a point

380 feet north of the south line of said Quarter Section; thence east parallel to said south line to the west right-of-way line of Meridian Avenue; thence south along said west right-of-way line to the south right-of-way line of 47th Street South; thence west along said south right-of-way line to the west line of the east half of the Northeast Quarter of Section 24, Township 28 South, Range 1 West; thence south along said west line to the south line of said Northeast Quarter; thence west along said south line to the east line of the west half of the west half of said Northeast Quarter; thence north along said east line to the south right-of-way line of 47th Street South; thence west along said south right-of-way line to the west line of said Northeast Quarter; thence south along said west line of said Northeast Quarter and the west line of the Southeast Quarter of said Section 24 to the south line of the north half of the Southeast Quarter; thence east along said south line and the south line of the North Half of the Southwest Quarter of Section 19, Township 28 South, Range 1 East of the 6th P.M. to the west line of the Southeast Quarter of said Section 19; thence south along said west line and said line extended to the south right-of-way line of 55th Street South; thence west along said south right-of-way line to the west line of the east half of the northeast quarter of the Northwest Quarter of Section 30, Township 28 South, Range 1 East of the 6th P.M.; thence south along said west line to the south line of the northeast quarter of said Northwest Quarter; thence east along said south line to the west line of the Northeast Quarter of Section 30, Township 28 South, Range 1 East of the 6th P.M.; thence south along said west line to the north line of the Southeast Quarter of said Section 30; thence east along said north line to a point 400 feet west of the east line of the west half of said Southeast Quarter; thence south parallel to said west line to the north right-of-way line of 63rd Street South; thence east along said north right-of-way line to the east right-of-way line of the Union Pacific Railroad; thence northeasterly along said east right-of-way line to the south line of the north half of Section 29, Township 28 South, Range 1 East of the 6th P.M.; thence east along said south line to the west line of the Southeast Quarter of said Section; thence south along said west line to the south right-of-way line of 59th Street South; thence east along said south right-of-way line to the west right-of-way line of Broadway Avenue; thence north along said west right-of-way line to the north line of said Southeast Quarter; thence east along said north line and the south line of the Northwest Quarter of Section 28, Township 28 South, Range 1 East of the 6th P.M. to the east line of said Northwest Quarter; thence north along said east line to the north line of the south half of the Northeast Quarter of Section 28, Township 28 South, Range 1 East of the 6th P.M.; thence east along said north line to the north line of the Riverside Drainage Canal; thence southeasterly and easterly along said north line to the west right-of-way line of Hydraulic; thence south along said west right-of-way line to the north line of Becker Addition, Sedgwick County,

Kansas; thence west along said north line to a point 486.8 feet west of the east line of the Northeast Quarter of Section 28, Township 28 South, Range 1East, said point being the west line of Becker Addition; thence south 301.17 feet along said west line to the north line of the Southeast Quarter of said Section 28; thence west along said north line to the east right-of-way line of the Kansas Turnpike; thence southerly along said east right-of-way line to the west line of said Southeast Quarter; thence south along said west line to the north right-of-way line of 63rd Street South; thence east along said north right-of-way line to the west right-of-way line of Hydraulic; thence south along said west right-of-way line to a point 660.04 feet north of the north line of the south half of the Northeast Quarter of Section 33, Township 28 South, Range 1 East of the 6th P.M; thence west along a line parallel to said north line to a point 660.04 feet west of the east line of said Northeast Quarter; thence south along a line parallel to said east line to the north line of the south half of said Northeast Quarter; thence west along said north line to the west line of said Northeast Quarter; thence south along said west line to the north right-of-way line of the Big Ditch Cowskin Floodway; thence southeasterly along said north right-of-way line to the west right-of-way line of Hydraulic Avenue; thence south along said west right-of-way line to the north line of the Southeast Quarter of Section 33, Township 28 South, Range 1 East of the 6th P.M.; thence east along said north line and said line extended to the north right-of-way line of the Big Ditch Cowskin Floodway; thence southeasterly and easterly along said north line to the south line of the Riverside Levee; thence northwesterly along said south line to the east line of the Southeast Quarter of Section 34, Township 28 South, Range 1 East; thence south along said east line to the north line of the south half of said Southeast Quarter; thence west along said north line to the east right-of-way line of Grove Street; thence north along said east right-of-way line to a point 203.32 feet south of the north line of said Southeast Quarter; thence east parallel to said north line to a point 320 east of the west line of said Southeast Quarter; thence north parallel to the west line of said Southeast Quarter and said line extended to a point 137 feet north of the north line of said Southeast Quarter; thence west parallel to said north line to the east right-of-way line of Grove Street; thence north along said east right-of-way line to a point located 831.96 feet, more or less, south of the north line of the Northeast Quarter of said Section 34; thence southeasterly a distance of 563.09 feet more or less; thence northeasterly 144.3 feet more or less to a point on the south line of the Riverside Levee; thence northwesterly along said south line to the east right-of-way line of Grove Street; thence north along said east right-of-way line and said east right-of-way line extended to the north right-of-way line of 63rd Street South; thence east along said north right-of-way line to the west line of the eastern portion of the Riverside Levee; thence northeasterly along said west line to the east line of the Southwest Quarter of Section 27, Township

28 South, Range 1 East of the 6th P.M.; thence north along said east line to the south line of Government Lot 7, located in the Southeast Quarter of Section 27, Township 28 South, Range 1 East of the 6th P.M.; thence east along said south line to the right bank of the Arkansas River; thence northerly along said right bank to the south line of Mona Kay Matlock Addition extended from the west; thence west along said extended line to the westerly right-of-way line of the Riverside Levee; thence northerly along said westerly right-of-way line to the north line of the Northwest Quarter of Section 22, Township 28 South, Range 1 East of the 6th P.M.; thence east along said north line to the right bank of the Arkansas River; thence northerly along said right bank to the northerly right-of-way line of the Kansas Turnpike; thence easterly and northerly along said northerly right-of-way line to the south line of the north half of Section 11, Township 28 South, Range 1 East of the 6th P.M.; thence east along said south line to the most southerly southeast corner of Turnpike Industrial 3rd Addition to Sedgwick County, Kansas; thence north along the east line of said Addition to the south line of said Addition; thence northeasterly and east along said south line to the southwest corner of Lot 1, Block A of Bradley Addition, Sedgwick County, Kansas; thence north along the west line of said Addition to the north line of said Addition; thence east along said north line of said Addition and said line extended to the east right-of-way line of Oliver Street; thence north along said east right-of-way line to the south right-of-way line of 31st Street South; thence east along said south right-of-way line to a point 2,170.42 feet east of the northwest corner of the Northwest Quarter of Section 12, Township 28 South, Range 1 East of the 6th P.M.; thence 490.25 feet on a bearing of S 00°00’00”W; thence 253.90 feet on a bearing of S18° 46’00”W; thence 389.40 feet on a bearing of S50°29’00”W; thence 285.26 feet on a bearing of S62°51’00”W; thence 26.76 feet on a bearing of S68°07’15”W; thence 553.32 feet on a bearing of S34°39’05”E; thence 529.18 feet on a bearing of N73°30’20”E; thence 377.90 feet on a bearing of N13°25 00”E; thence 176.92 feet on a bearing of N76° 35’45”W; thence 100.00 feet on a bearing of N01°19’30”E; thence 146.51 feet on a bearing of N07°44’55”W; thence 89.02 feet on a bearing of N65°26’40”W to a point of intersection with a curve; thence northerly 421.20 feet along a curve to the left having a central angle of 19° 56’45” with a radius of 1209.92 feet, and with a great chord of 419.08 feet having a bearing of N12°50’55”E to a point of intersection with a radial line of said curve; thence 6.59 feet on a bearing of N87°07’30”W along the radial line of said curve to a point of intersection with a curve; thence northerly 294.20 feet along a curve to the left having a central angle of 11° 20’05” with a radius of 1489.52 feet, and with a great chord of 294.10 feet having a bearing of N02°47’30”W to a point of tangency; thence 30.33 feet on a bearing of N08°27’25”W along the tangent to the preceding curve to the south right-of-way line of 31st Street South; thence east along said south right-of-way line to the east

right-of-way line of George Washington Boulevard; thence northerly along said east right-of-way line to the north right-of-way line of 31st Street South; thence east along said north right-of-way line to the east line of the Southwest Quarter of Section 1, Township 28 South, Range 1 East of the 6th P.M.; thence north along said east line to the north line of said Southwest Quarter; thence west along said north line to the east right-of-way line of George Washington Boulevard; thence northwesterly along said east right-of-way line to the south right-of-way line of the Kansas Turnpike; thence northeasterly along said south right-of-way line to a line 300 feet south of and parallel to the north line of the Northwest Quarter of said Section 1; thence east on said line to the east line of said Northwest Quarter; thence north along said east line and the east line of the Southwest Quarter of Section 36, Township 27 South, Range 1 East to the northerly right-of-way line of the Kansas Turnpike; thence northeasterly along said northerly right-of-way line to the south right-of-way line of Harry; thence east along said south right-of-way line to the west line of the east half of the Northeast Quarter, Section 31, Township 27 South, Range 2 East; thence south along said west line to the south line of said Northeast Quarter; thence east along said south line to the west right-of-way line of Rock Road; thence south along said west right-of-way line to a point 40 feet south of the north line of the Northeast Quarter, Section 6, Township 28 South, Range 2 East of the 6th P.M.; thence east parallel to the north line of said Northeast Quarter and the north line of the Northwest Quarter, Section 5, Township 28 South, Range 2 East of the 6th P.M., to the east right-of-way line of Rock Road; thence south along said east right-of-way line to the south line of said Northwest Quarter; thence east along said south line and said line extended to a point on the north line of the Southeast Quarter, Section 5, Township 28 South, Range 2 East, said point being 240 feet east of the northwest corner of said Southeast Quarter; thence south parallel with the west line of said Southeast Quarter, 1015.17 feet more or less to a point 310 feet north of the south line of the northwest quarter of said Southeast Quarter; thence west parallel with the south line of the northwest quarter of said Southeast Quarter 105 feet; thence south parallel with the west line of said Southeast Quarter 310 feet to a point on the south line of the northwest quarter of said Southeast Quarter; thence east along the south line of the northwest quarter of said Southeast Quarter 578.01 feet; thence north parallel with the west line of said Southeast Quarter, 515 feet; thence northeasterly 281.42 feet more or less to a point 912 feet east of the west line of said Southeast Quarter as measured parallel with the north line of said Southeast Quarter and said point being 610.62 feet south of the north line of said Southeast Quarter as measured parallel with the west line of said Southeast Quarter; thence north parallel with the west line of said Southeast Quarter 483.57 feet; thence east at right angles to the last described line 18 feet; thence north parallel with the west line of said Southeast Quarter 127.05 feet to a point on the north line

of said Southeast Quarter; thence east along said north line and the south line of the Northeast Quarter of Section 5, Township 28 South, Range 2 East of the 6th P.M. to a point 300 feet east of the west line of the east half of said Northeast Quarter; thence north along a line parallel to said west line a distance of 365 feet; thence west parallel to the south line of said Northeast Quarter to the west line of the east half of said Northeast Quarter; thence north along the west line of said east half a distance of 406.66 feet; thence east parallel with the south line of said Northeast Quarter a distance of 184 feet; thence north along a line parallel to the west line of the east half of said Northeast Quarter a distance of 498.11 feet to the south line of the northeast quarter of said Northeast Quarter; thence east along said south line to the west right-of-way line of Webb Road; thence north along said west right-of-way line a distance of 167 feet; thence west to a point 332 feet west of the east line of said Northeast Quarter, said point being located on the east line of Lot 8, Block 3, Turtle Run 2nd Addition; thence north along the east line of Block 3, Turtle Run 2nd Addition a distance of 277 feet; thence east to the west right-of-way line of Webb Road; thence north along said west right-of-way line to the south right-of-way line of Pawnee**;** thence east along said south right-of-way line to the east right-of-way line of Webb Road; thence north along said east right-of-way line to the north right-of-way line of Pawnee; thence east along said north right-of-way line to the east line of the Southwest Quarter of Section 33, Township 27 South, Range 2 East of the 6th P.M.; thence north along said east line to the south line of the north half of said Section 33; thence east along said south line and the south line of the north half of Section 34, Township 27 South, Range 2 East of the 6th P.M. to the west line of the East Half of said Section 34; thence south along said west line to the north right-of-way line of Pawnee; thence east along said north right-of-way line to the southeast corner of Reserve D, Sierra Hills 2nd Addition; thence northerly and easterly along the east line of said Addition to the northeast corner of Reserve E, said Addition; thence N79˚52’54”E, 104.00 feet; thence N84˚17’54”E, 535.00 feet; thence S00˚47’54”W, 322.00 feet; thence N85˚37’54”E, to the west right-of-way line of 143rd Street East; thence north along said west right-of-way line to the north line of the Southeast Quarter of Section 35, Township 27 South, Range 2 East of the 6th P.M.; thence west along said north line to the east line of the west half of said Section; thence north along said east line and said line extended to the north right-of-way line of Harry Street; thence west along said north right-of-way line to a point 1,540.52 feet east of the west line of the Southwest Quarter of Section 26, Township 27 South, Range 2 East of the 6th P.M.; thence north along a line parallel to said west line to a point in the centerline of a creek, said point being located 105 feet north of the south line of said Southwest Quarter; thence northerly and easterly along the centerline of the creek to a point 343.18 feet west of the east line of said Southwest Quarter; thence north parallel to said east line

to the south line of the north half of said Southwest Quarter; thence east to the east line of said Southwest Quarter; thence north along said east line a distance of 627.26 feet; thence N32°21'18"W, 270.00 feet; thence N60°42'49"W, 632.00 feet; thence N28°20'44"W, 109.83 feet; thence S88°45'24"W, parallel with said north line, 134.79 feet; thence N01°14'36"W, 50.00 feet to the north line of said Southwest Quarter; thence east along said north line and north line of the Southeast Quarter of said Section 26 to a point located 1642.06 feet west of the northeast corner of said Southeast Quarter; thence south parallel to the east line of said Southeast Quarter to the north right-of-way line of Harry Street; thence west along said north right-of-way line to a point 1817 feet west of the east line of said Southeast Quarter; thence south on a line parallel to said east line and the east line of the Northeast Quarter of Section 35, Township 27 South, Range 2 East of the 6th P.M. to a point 177.02 feet south of the south line of Timber Valley Estates 3rd Addition, Sedgwick County, Kansas; thence southwesterly, 132.02 feet; thence southeasterly, 115 feet; thence southwesterly, 15 feet; thence southeasterly, 74 feet to a curve; thence southeasterly along said curve, 233.74 feet; thence easterly to an intersection with the west right-of-way line of 143rd Street East; thence north along said west right-of-way line to the south right-of-way line of Harry Street; thence east along said south right-of-way to the west line of the East Evangelical Free Church Addition, Sedgwick County, Kansas; thence south along said west line to the south line of said Addition; thence east along said south line a distance of 395 feet to the west line of Arbor Lakes Estates Addition, Sedgwick County, Kansas, said line being the west line of the northeast quarter of the Northwest Quarter of Section 36, Township 27 South, Range 2 East of the 6th P.M.; thence south along said west line a distance of 566.56 feet to the south line of the north half of said Northwest Quarter; thence east along said south line to the west line of the Northeast Quarter of said Section 36; thence south along said west line to the south line of said Northeast Quarter; thence east along said south line to the west right-of-way line of 159th Street East; thence north along said west right-of-way line to the north right-of-way line of Harry Street; thence east along said north right-of-way line to the east line of the Southeast Quarter of Section 25, Township 27 South, Range 2 East of the 6th P.M.; thence north along said east line to the north line of said Southeast Quarter; thence west on said north line to the east line of the Northwest Quarter of said Section 25; thence north on said east line to the south right-of-way line of Kellogg Drive; thence west on said south right-of-way line to the west line of the east half of said Northwest Quarter; thence south on said west line to the north line of the Southwest Quarter of said Section 25; thence west on said north line to the east right-of-way line of 143rd Street East; thence north along said east right-of-way line to the south right-of-way line of U.S. Highway 54; thence west along said south right-of-way line and the southerly right-of-way line of K-96

Highway to the east right-of-way line of 127th Street East; thence north along said east right-of-way line to the north right-of-way line of the Kansas Turnpike; thence northeasterly along said north right-of-way line to the south line of the Northwest Quarter, Section 23, Township 27 South, Range 2 East; thence west along said south line to the east line of Meadowland Addition, Sedgwick County, Kansas; thence northwesterly and west along the east line and the north line of said Addition to the east right-of-way line of 127th Street East; thence north along said east right-of-way line 341.91 feet, more or less, to the north right-of-way line of K-96 Highway; thence westerly and northerly along said north right-of-way line and the west right-of-way line of K-96 Highway to the north right-of-way line of Central; thence west along said north right-of-way line to the east right-of-way line of 127th Street East; thence north along said east right-of-way line to the point of beginning; and in addition thereto the following tracts of land described as: A tract of land in Sections 34 and 35, Township 25 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas described as: Beginning at the intersection of the east right-of-way line of Greenwich Road (111th Street East) and the south right-of-way line of 85th Street North; thence east along said south right-of-way line to the west right-of-way line of 127th Street East; thence south along said west right-of-way line to the north line of the Southwest Quarter, Section 35, Township 25 South, Range 2 East extended west; thence east along said north line to the east line of said Southwest Quarter; thence south along said east line to the north line of the south half of the Southeast Quarter, Section 35, Township 25 South, Range 2 East; thence east along said north line to the west right-of-way line of 143rd Street East; thence south along said west right-of-way line to the north right-of-way line of 77th Street North; thence west along said north right-of-way line to a point 485.8 feet east of the west line of the Southwest Quarter of Section 35, Township 25 South, Range 2 East; thence north parallel to said west line to a point 485.8 feet north of the south line of said Southwest Quarter; thence west to the west right-of-way line of 127th Street East; thence south along said west right-of-way line to the north right-of-way line of 77th Street North; thence west along said north right-of-way line to the west line of the east half of the Southwest Quarter, Section 34, Township 25 South, Range 2 East; thence north along said west line to the south line of the Northwest Quarter of Section 34, Township 25 South, Range 2 East; thence west along said south line to the east right-of-way line of Greenwich Road (111th Street East); thence north along said east right-of-way line to the point of beginning, EXCEPT for that part designated as 127th Street East.

And Also:

Tracts of land in the Southeast Quarter of Section 1, Township 27 South, Range 2 East of the 6th P.M. EXCEPT Beginning at the southeast corner of the northeast quarter of said Southeast Quarter; thence along the south line of said northeast

quarter of said Southeast Quarter on a Kansas coordinate system 1983 south zone bearing of S88˚56'59"W, 933.12 feet; thence N00˚34'25"W, 661.72 feet parallel with the west line of said northeast quarter; thence S88˚58'38"W, 394.93 feet; thence N00˚35'58"W, 666.09 feet to the northwest corner of said northeast quarter of said Southeast Quarter, said northwest corner being located on the north line of said Southeast Quarter; thence N88˚58'46"E, 1326.66 feet along said north line to the northeast corner of said Southeast Quarter; thence S00˚38'46"E, 1327.30 feet along the east line of said Southeast Quarter to the point of beginning, AND EXCEPT for that part designated as 21st Street North right-of-way , AND EXCEPT for that part designated as 159th Street East right-of-way .

And Also:

A tract of land located in the Southwest Quarter of Section 21, Township 26 South, Range 2 East of the 6th P.M., described as: The south half of said Southwest Quarter of said Section, EXCEPT for that part designated as Webb Road right-of-way AND EXCEPT for that part designated as 45th Street North right-of-way.

And Also:

Tracts of land in Section 17 and Section 20, Township 26 South, Range 2 East of the 6th P.M., described as:

Beginning at the southeast corner of the Southwest Quarter of said Section 17; thence north along the east line of said Southwest Quarter, 430.00 feet; thence west, parallel with the south line of said Southwest Quarter, 400.00 feet; thence south, parallel with the east line of said Southwest Quarter, 430.00 feet to a point on the south line of said Southwest Quarter; thence East along the south line of said Southwest Quarter, 400.00 feet to the point of beginning TOGETHER WITH that part of 53rd Street North described as: Beginning at the northeast corner of the Northwest Quarter of said Section 20; thence west along the north line of said Northwest Quarter to a point 400 feet west of the east line of said Northwest Quarter; thence south parallel with said east line to the south right-of-way line of 53rd Street North; thence east along said south right-of-way line to the east line of said Northwest Quarter; thence north along said east line to point of beginning.

And Also:

Tracts of land in the Northwest Quarter of Section 17, Township 26 South, Range 1 East of the 6th P.M. described as: Beginning at the intersection of the south right-of-way line of 61st Street North and the east right-of-way line of the St. Louis and San Francisco Railroad, thence easterly and southerly along said east right-of-way line to a line parallel to and 370.01 feet west of the east line of said Northwest Quarter; thence north parallel with said east line to said south right-of-way line; thence west along said south right-of-way line to point of beginning.

And Also:

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Tracts of land described as: The south 1000.06 feet of the west 1366.80 feet of the north half of the Southwest Quarter of Section 34, Township 26 South, Range 2 East of the 6th P.M EXCEPT for that part designated as Greenwich Road right-of-way.

And Also:

The east half of the west half of the Northwest Quarter of Section 27, Township 26 South, Range 1 West of the 6th P.M.; EXCEPT for the east 458 feet of the north 452 feet of said east half; AND EXCEPT for that part designated as K-96 right-of-way; AND EXCEPT for that part designated as 45th Street North right-of-way.

And Also:

The Southwest Quarter of Section 25, Township 26 South, Range 2 West of the 6th P.M.; EXCEPT for that part beginning at the southwest corner of said Southwest Quarter; thence north along the west line of said Southwest Quarter, 530 feet; thence east parallel to the south line of said Southwest Quarter, 290.4 feet; thence south parallel to said west line, 340 feet; thence west parallel to said south line, 61.14 feet; thence south parallel to said west line, 190 feet to the south line of said Southwest Quarter; thence west along said south line to beginning; AND EXCEPT that part designated as 37th Street North right-of-way; AND EXCEPT that part designated as 135th Street West right-of-way.

And Also:

A tract of land in the south half of the Southeast Quarter of Section 2, Township 27 South, Range 2 West of the 6th P.M., described as follows: Lots 1 and 2, Block 1, Northwest YMCA Addition, Sedgwick County, Kansas.

And Also:

A tract of land in the Northwest Quarter of Section 12, Township 27 South, Range 2 West of the 6th P.M., described as: Beginning at a point 65 feet south and 50.59 feet east of the northwest corner of said Northwest Quarter; thence east parallel with the north line of said Northwest Quarter 441.26 feet; thence south parallel with the west line of said Northwest Quarter 431.85 feet; thence west parallel with the north line of said Northwest Quarter 466.85 feet; thence north to a point 450 feet south and 25 feet east of the northwest corner of said Northwest Quarter; thence northeasterly to a point 400 feet south and 40 feet east of the northwest corner of said Northwest Quarter; thence northerly to the point of beginning TOGETHER WITH Lot 1, Block 1, L.R. Jones, 2nd Addition, Sedgwick County, Kansas.

And Also:

A tract of land in the Northwest Quarter of Section 12, Township 27 South, Range 2 West of the 6th P.M. described as Lot 1, Block 2, L.R. Jones Second Addition, Sedgwick County, Kansas.

And Also:

Tracts of land in the Northwest Quarter of Section 34, Township 27 South, Range 2 West of the 6th P.M., described as:

Beginning at a point of the south right-of-way line of U.S. Highway 54, said point being 1016 feet west of the east line of said Northwest Quarter; thence south parallel to the west line of said Northwest Quarter to a point 559.21 feet north of the north right-of-way line of the Atchison, Topeka and Santa Fe Railroad; thence west parallel to the north line of said Northwest Quarter 300 feet; thence north parallel to the west line of said Northwest Quarter to a point 531.59 feet, more or less, south of the north line of said Northwest Quarter ; thence west parallel to the north line of said Northwest Quarter to the east right-of-way line of 167th Street West; thence north along said east right-of-way line to the south right-of-way line of U.S. Highway 54; thence east along said south right-of-way line to point of beginning.

And Also:

Tracts of land in the Northeast Quarter of Section 34, Township 27 South, Range 2 West of the 6th P.M., described as:

Beginning at the intersection of the south right-of-way line of U.S. Highway 54 and the east line of said Northeast Quarter; thence south along said east line 460 feet; thence west parallel to the north line of said Northeast Quarter 467 feet; thence north parallel to said east line to the south right-of-way line of U.S. Highway 54; thence east along said south right-of-way line to point of beginning.

And Also:

Tracts of land in the Northwest Quarter of Section 35, Township 27 South, Range 2 West of the 6th P.M., described as:

Beginning at a point of the south right-of-way line of U.S. Highway 54, said point being 396.69 feet east of the west line of said Northwest Quarter; thence south parallel to the west line of said Northwest Quarter 466.69 feet; thence west parallel to the north line of said Northwest Quarter to the east right-of-way line of 151st Street West; thence south along said east right-of-way line 162.2 feet; thence east parallel with the north line of said Northwest Quarter to a point on the west line of United Industrial Addition, said point being 546.69 feet east of said west line of said Northwest Quarter; thence south along said west line of said Addition to the south line of said Addition; thence east along said south line and south line extended to the east right-of-way line of United Circle; thence northerly along said east right-of-way line to the south right-of-way line of U.S. Highway 54; thence west along said south right-of-way line to the point of beginning.

And Also:

A tract of land in the Northeast Quarter of Section 17, Township 28 South, Range 1 West of the 6th P.M., described as: Eliot Second Addition, Wichita, Sedgwick County Kansas.

And Also:

Tracts of land described as: That part of the East Half of the Northwest Quarter lying north of the railroad right-of-way in Section 36, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, except the portion condemned in Case A-38302 and except that portion deeded to the State of Kansas in Deed Book 1419, Page 413

And Also:

A tract of land in the Northeast Quarter of Section 14, Township 28 South, Range 1 West of the 6th P.M., described as:

Beginning at the intersection of the west right-of-way line of West Street and the south line of said Northeast Quarter; thence west along said south line to the east line of the Missouri Pacific Railroad right-of-way; thence north along said east right-of-way line 642.44 feet; thence east parallel to the south line of said Northeast Quarter to the west right-of-way line of West Street; thence south along said west right-of-way line to beginning.

And Also:

The west 130 feet of the following described tract: Beginning at a point 180 feet West of the Northeast Corner of the Northwest Quarter of Section 24, Township 28 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; thence west along the north line of said Northwest Quarter, 510 feet; thence south parallel with the east line of said Northwest Quarter, 420 feet; thence northeasterly 563.8 feet, more or less, to a point 180 feet west and 180 feet south of the northeast corner of said Northwest Quarter; thence north 180 feet to the point of beginning, EXCEPT for that part designated as 47th Street South right-of-way.

And Also:

A tract of land in the Southwest Quarter of Section 24, Township 28 South, Range 1 West of the 6th P.M. described as:

Lots 1, 2, 3 and 4, Deer Creek Estates Second Addition, Sedgwick County, Kansas

And Also:

A tract of land in the Northwest Quarter of Section 19, Township 28 South, Range 1 East of the 6th P. M., Sedgwick County, Kansas described as: Commencing at the northwest corner of said Northwest Quarter; thence S00˚E along the west line

of said Northwest Quarter 1139 feet for a place of beginning; thence continuing S00˚E, 258.26 feet; thence N89˚48'30"E, 683.76 feet; thence N00˚E, 175 feet; thence N44˚09'W, 132.99 feet; thence S88˚36'W, 591.3 feet to the point of beginning, EXCEPT for that part designated as Meridian Avenue right-of-way.

And Also:

A tract of land in Section 11, Township 28 South, Range 1 East of the 6th P.M. described as:

Lot 1, Block A, Dunnegan Industrial Addition, Wichita, Sedgwick County, Kansas

And Also:

Tracts of land in the Southwest Quarter of Section 26, the Southeast Quarter of Section 27, the Northeast Quarter of Section 34 and the Northwest Quarter of Section 35, all of Township 28 South, Range 1 East of the Sixth Principal Meridian, described as; All of Lots 4 and 5, Block B, TOGETHER WITH all of Lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, Block C, TOGETHER WITH all of Lots 6, 7, 8, 9, 10, and 11, Block E, TOGETHER with all of Lots 1, 2, 3, 4, and 5, Block F, all in Woodvale Addition, Sedgwick County, Kansas, TOGETHER WITH that part of Lot 3 in said Block B, and that part of Lots 3, 16, and 17 in said Block C, and that part of Lots 7, 8, and 9 in said Block D, and that part of Holyoke Ave., Clifton Ave., and 62nd St. So. as dedicated in said Woodvale Addition lying south of the following described line: Commencing at the SW corner of the SW ¼ of Sec. 26, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, said SW corner also being the SW corner of said Woodvale Addition; thence northerly along the west line of said SW ¼, and along the west line of said Woodvale Addition, 742.59 feet to the intersection with the south line of Right-of-Way Agreement, (Film 215, Page 1009), and for a point of beginning; thence easterly with a deflection angle to the right of 92˚47'39", 310.00 feet; thence easterly with a deflection angle to the left of 02˚46'24", 1006.62 feet to a point on the east line of the SW ¼ of said SW ¼, and on the east line of said Woodvale Addition, said point being 721.69 feet north of the SE corner of the SW ¼ of said SW ¼, said SE corner also being the SE corner of said Woodvale Addition, and there ending, TOGETHER with all of Myrtle Drive as dedicated in said Woodvale Addition, TOGETHER WITH all of Vassar Avenue as dedicated in said Woodvale Addition, TOGETHER WITH that part of Government Lot 1 in the NE ¼ of Sec. 34, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas and that part of Government Lot 4 in the SE ¼ of Sec. 27, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas lying northeasterly of the following described line: Commencing at the NE corner of said Government Lot 1; thence S01˚09'09"E along the east line of said Government Lot 1, 795.57 feet to the mean high bank of the Arkansas River, and for a point of beginning; thence N51˚09'09"W along said mean high bank, 200.00 feet; thence N33˚51'09"W along said mean high bank, 148.00 feet; thence N68˚04'58"W, 305.07 feet; thence N28˚53'28"W along said mean high bank, 133.00 feet; thence

N41˚53’28”W along said mean high bank, 193.00 feet; thence N48˚53’28”W along said mean high bank, 413.00 feet; thence N50˚59’28”W along said mean high bank, 393.75 feet; thence N41˚22’41”W along said mean high bank, 186.35 feet; thence N32˚44’07”W along said mean high bank, 222.86 feet to a point on the south right-of-way line of Right-of-Way Agreement, (Film 215, Page 1009), and there ending, and lying south of that part of said Right-of-Way Agreement, (Film 215, Page 1009), described as follows: Commencing at the SE corner of said Government Lot 4; thence northerly along the east line of said Government Lot 4, 742.59 feet for a point of beginning; thence west with a deflection angle to the left of 89˚58’45” a distance of 1006.10 feet; thence south 15.00 feet along a deflection angle to the left of 90˚00’00”; thence west 300.00 feet along a deflection angle to the right of 90˚00’00”; thence south 25.00 feet along a deflection angle to the left of 90˚00’00” to a point, which point is 1306.10 feet west and 40.00 feet south of the point of beginning; thence west 335.00 feet, more or less, along a deflection angle to the right of 90˚00’00”, to a point on the east established bank line of the Big Arkansas River, and there ending, TOGETHER with the west 20.00 feet of Right-of-Way Agreement, (Film 242, Page 464), lying in Government Lot 2 in the NW ¼ of Sec. 35, Twp. 28-S, R-1-E of the 6th P.M., Sedgwick County, Kansas, and TOGETHER WITH the west 20.00 feet of the south 275.93 feet of the north 335.93 feet of said Government Lot 2, EXCEPT for that part designated 63rd Street South.

And Also:

Tracts of land located in Sections 26 and 27, Township 28 South, Range 1 East of the 6th P.M. described as: The south 1082.30 feet of the northwest quarter of the Southwest Quarter of said Section 26, EXCEPT that part designated as Clifton Avenue right-of-way TOGETHER WITH the south 1082.30 feet of Government Lot 3 located in the Southeast Quarter of said Section 27.

And Also:

Tracts of land in Sections 22, 23, 26 and 27, Township 28 South, Range 1 East of the 6th P.M., described as follows: Beginning at the southeast corner of the southwest quarter of the Southwest Quarter of said Section 23; thence north along the east line of the southwest quarter of the Southwest Quarter of said Section, to a point 1314.48 feet south of the north line of the Southwest Quarter of said Section; thence west parallel to said north line, to the west right-of-way line of Clifton Street; thence north along said west right-of-way line to a point on the north line of Reserve “G”, Meadowlake Beach Addition, Wichita, Segwick County, Kansas; thence S79°41'19"W along the north line of said Reserve “G” to a point 174.43 feet west of the east line of Lot 1, Pinaire Mobile Home Park to Sedgwick County, Kansas; thence N30°00'23"W, 35.00 feet; thence S59°59'37"W, 1154.85 feet to a point 225.61 feet north of the south line of said Lot 1; thence S89°59'54"W parallel with the south line of said Lot 1, 570.00 feet

to a point on the west line of said Lot 1; thence S00°00'06"E, 225.61 feet to the southwest corner of said Lot 1, said point being on the north line of Government Lot 4, located in the Southeast Quarter of said Section 22; thence west along said north lot line to the east bank of the Arkansas River; thence south along said east bank to the intersection of said east bank and the centerline of a ditch, said point also being 830 feet south of the north line of Government Lot 2 in the Northeast Quarter of said Section 27; thence northeasterly along said ditch centerline to a point located 58.5 feet south of the north line of the southwest quarter of the Northwest Quarter of said Section 26 and 568 feet east of the west line of said southwest quarter of the Northwest Quarter; thence north along a line parallel to said west line to said north line; thence east along said north line to the west right-of-way line of Clifton Avenue; thence north along said west right-of-way line to the south right-of-way line of 55th Street; thence west along said south right-of-way line to the west line of the Northwest Quarter of said Section 26; thence south along said west line to a point located 200 feet south of the northwest corner of said Northwest Quarter ; thence west along a line parallel to the north line of the Northeast Quarter of said Section 27 a distance of 765 feet; thence north parallel to the east line of said Section 27 and said Section 22 a distance of 800 feet; thence east parallel to the south line of said Section 22 a distance of 490 feet; thence south parallel to the east line of said Section 22 a distance of 190 feet; thence east parallel to the south line of said Section 22 a distance of 275 feet to the west line of the Southwest Quarter of said Section 23; thence south along said west line to the south line of the southwest quarter of the Southwest Quarter of said Section 23; thence east along said south line to the southeast corner of the southwest quarter of the Southwest Quarter of said Section 23 and point of beginning

And Also:

Tracts of land in the Southeast and Southwest Quarters of Section 23, Township 28 South, Range 1 East of the 6th P.M., described as: Beginning at the intersection of the north right-of-way line of 55th Street South and the west right-of-way line of the ATS&F Railroad, thence north along said west right-of-way line to the northeast corner of said Southwest Quarter; thence west along the north line of said Southwest Quarter to the east right-of-way line of Clifton Avenue; thence south along said east right-of-way line to the north right-of-way line of 55th Street South; thence east along said north right-of-way to the point of beginning.

And Also:

A tract of land in the Northwest Quarter of Section 8, Township 28 South, Range 2 East of the 6th P.M. described as:

Reserve B, Rocky Ford Industrial Park Addition, Sedgwick County, Kansas

And Also:

A tract of land in the Northwest Quarter of Section 8, Township 28 South, Range 2 East of the 6th P.M. described as:

Reserve C and Lot 7, Block A; both in Rocky Ford Industrial Park Addition, Sedgwick County, Kansas

And Also:

That part of the west half of the Northwest Quarter of Section 4, Township 28 South, Range 2 East of the 6th P.M., described as follows: Beginning at the northwest corner of said Northwest Quarter; thence east along the north line of said Northwest Quarter, 1328.70 feet to the northeast corner of the west half of said Northwest Quarter; thence south along the east line of the west half of said Northwest Quarter, 1476.34 feet; thence N81˚07'31"W, 357.15 feet; thence N75˚45'41"W, 304.16 feet; thence N83˚53'08"W, 64.29 feet; thence N89˚35'43"W, 612.88 feet to a point on the west line of said Northwest Quarter; thence north along the west line of said Northwest Quarter, 1333.53 feet to the point of beginning, EXCEPT that part designated as Webb Road (95th Street East) right-of-way, AND EXCEPT that part designated as Pawnee Avenue (23rd Street South) right-of-way.

And Also:

A tract of land described as:

The Northeast Quarter of Section 3, Township 28 South, Range 2 East of the 6th P.M., Sedgwick County, Kansas, EXCEPT that part designated as Pawnee Avenue (23rd Street South) right-of-way, AND EXCEPT that part designated as 127th Street East right-of-way.

And Also:

Tracts of land located in the Southwest Quarter of Section 36, Township 27 South, Range 2 East of the 6th P.M., described as commencing at the northwest corner of said Southwest Quarter; thence S89°48'32"E, along the north line of said Southwest Quarter, 40.00 feet for a place of beginning; thence continuing S89°48'32"E, along said north line, 1737.00 feet; thence S44°14'09"W, 322.00 feet; thence S11°01'16"W, 126.00 feet; thence S34°51'21"E, 155.00 feet; thence S41°53'26"W, 277.00 feet; thence N88°38'14"W, 70.00 feet; thence S40°39'47"W, 155.00 feet; thence S08°47'08"W, 287.00 feet; thence N85°43'21"W, 188.00 feet; thence S55°32'56"W, 206.00 feet; thence S06°13'33"W, 202.00 feet; thence S48°02'58"E, 120.00 feet; thence S39°58'11"W, 214.00 feet; thence S75°03'46"W, 358.00 feet; thence S42°11'12"W, 110.00 feet; thence N31°34'45"W, 110.00 feet; thence N70°03'54"W, 174.00 feet; thence N48°08'50"W, 143.00 feet to a point 40.00 feet East of the west line of said Southwest Quarter ; thence N00°04'42"W, parallel with said west line, 1566.00 feet to the point of beginning.

And Also:

Tracts of land in Sections 23 and 24, Township 27 South, Range 2 East of the 6th P.M., described as:

Beginning at the intersection of the west right-of-way line of 159th Street East and the south right-of-way line of Central; thence south along said west right-of-way line to the north right-of-way line of U.S. Highway 54; thence west along said north right-of-way line to the east line of the Southwest Quarter of said Section 24; thence north to the north line of said Southwest Quarter; thence west to the east line of the west half of said Southwest Quarter; thence south to the north right-of-way line of U.S. Highway 54; thence west along said north right-of-way line to the east right-of-way line of K-96 Highway; thence northerly and easterly along said east right-of-way line and the southeast right-of-way line of the K-96 Highway/Kansas Turnpike interchange to the east right-of-way line of 143rd Street East; thence south along said east right-of-way line to a point 1275.27 feet north of the south line of the Northwest Quarter of said Section 24, said point being the westernmost northwest corner of Lot 2, Block A, Clark Estates Addition; thence S89°49'00"E, 29.23 feet; thence northerly 412.65 feet along the west line of said Lot 2 to the north line of said Addition; thence east along said north line 151.93 feet to the east line of said Addition; thence southerly along said east line to the southeast corner of Lot 1, Block A of said Addition and the north line of Shadybrook Meadow Addition; thence easterly 67.59 feet along said north line to the westernmost corner of Lot 3, Block A, of The Estates at Shadybrook; thence northerly and easterly along the west line of said Lot 3 and of Lots 4 and 5, Block A in said Addition to the northwest corner of said Lot 5; thence easterly 67.44 feet along the north line of said Lot 5 to the southwest corner of Lot 5, Block 1, Scottsdale at Shadybrook Farm Addition; thence northeasterly along the west line of said Addition to the south right-of-way line of the Kansas Turnpike Authority; thence northeasterly along said south right-of-way line to the south right-of-way line of Central Avenue; thence east along said south right-of-way line to the point of beginning.

And Also:

Tracts of land in the Southeast Quarter of Section 13, Township 27 South, Range 2 East of the 6th P.M., described as:

Beginning at the intersection of the north right-of-way line of Central Avenue and the west line of said Southeast Quarter; thence north along said west line of said Southeast Quarter to the south right-of-way line of the Kansas Turnpike Authority; thence northeasterly along said south right-of-way line to the west right-of-way line of 159th Street East; thence south along said west right-of-way line to the north right-of-way line of Central Avenue; thence west along said north right-of-way line to beginning.

And Also:

Tracts of land in Section 26, Township 29 South, Range 4 West of the 6th P. M., Sedgwick County, Kansas described as: All of said Section EXCEPT the east 1396 feet of the south 537 feet AND EXCEPT for that part designated as perimeter road rights-ofway.

And Also:

Tracts of land lying in the Northeast and Southwest Quarters of Section 14, Township 28 South, Range 1 West of the 6th P.M. described as:
Broad Street Industrial Park Addition to Sedgwick County, Kansas

SECTION 2. That the following blocks, parcels, pieces and tracts of land be and they are hereby excluded from the corporate limits of the City of Wichita, even though completely surrounded by the territory of the City of Wichita, and nothing herein shall otherwise be construed as incorporating or including such blocks, parcels, pieces and tracts of land within the City limits, such lands being described as follows:

(a) Beginning at the intersection of the north line of Kellogg Street right-of-way and the Center Line of Woodlawn Boulevard; thence north along said Center Line to the Center Line of Douglas Avenue; thence west along said Center Line to the west line of Woodlawn Heights Addition; thence north along said west line a distance of 655 feet; thence east 377 feet; thence north 655 feet more or less, to the north line of the south half of the Northeast Quarter of Section 24, Township 27 South, Range 1 East of the 6th P.M.; thence east along said north line and the south line of Cresthill Manor Addition to the east line of the west half of Section 19, Township 27 South, Range 2 East of the 6th P.M.; thence south along said east line to the south line of Block U, Eastborough 3rd Addition; thence west to the east line of Block DZ, in said Addition, extended from the south; thence south along said east line and the east line of Block EZ, in said Addition, to the north right-of-way line of Kellogg Street; thence west along said north right-of-way line to the point of beginning.

(b) Tracts of land in Section 28, Township 27 South, Range 2 East of the 6th P.M. described as: Beginning at a point on the west right-of-way line of Greenwich Road, said point being 270 feet north of the south line of the Northeast Quarter of said Section 28; thence south along said west right-of-way line to the north line of the south half of the north half of the southeast quarter of the Southeast Quarter of said Section; thence west parallel to said south line to the west line of the southeast quarter of the Southeast Quarter of said Section; thence north along said west line to the north line of the southwest quarter of the Southeast Quarter of said Section 28; thence west along said north line to the west line of the Southeast Quarter of said Section 28; thence north along said west line to the south line of the Northeast Quarter of said Section 28; thence east along said south line to a

point 1948 feet west of the east line of said Northeast Quarter; thence north parallel to said east line 270 feet; thence east parallel to the south line of said Northeast Quarter to point of beginning.

(c) A tract of land in the Southwest Quarter of Section 27, Township 27 South, Range 2 East of the 6th P.M. described as: Beginning at the intersection of the east right-of-way line of Greenwich Road and the north right-of-way line of Harry Street; thence north along said east right-of-way line to the north line of the south half of said Southwest Quarter; thence east along said north line to the east line of said Southwest Quarter; thence south along said east line to the north right-of-way line of Harry Street; thence west along said north right-of-way line to the point of beginning.

(d) A tract of land located in the Southeast Quarter of Section 28, Township 27 South, Range 2 East of the 6th P.M. described as: The southeast quarter of the southeast quarter of said Southeast Quarter of Section 28, EXCEPT for the east 600 feet of the south 600 feet thereof, AND EXCEPT that part designated as Harry Street right-of-way, AND EXCEPT that part designated as Greenwich Road right-of-way.

(e) A tract of land located in the Southwest Quarter of Section 33, Township 27 South, Range 2 East of the 6th P.M., described as:
Lot 1, Block 1 Sedgwick County East Yard Addition, Sedgwick County, Kansas.

(f) The south half of the northeast quarter of the Southeast Quarter of Section 34, Township 27 South, Range 2 East of the 6th P.M., EXCEPT that part designated as 127th Street East right-of-way.

(g) Beginning at the south right-of-way line of Douglas and the west right-of-way line of 127th Street East; thence south along said west right-of-way line to the north right-of-way line of U.S. Highway 54; thence west along said north right-of-way line to a point 726 feet east of the west line of the Southeast Quarter of Section 22, Township 27 South, Range 2 East of the 6th P.M.; thence north parallel to said west line to a point 1320 feet north of the south line of said Southeast Quarter; thence west parallel to said south line to the west line of said Southeast Quarter; thence north along said west line to the south right-of-way line of Douglas; thence east along said south right-of-way line to the point of beginning.

(h) A tract of land in Sections 9, 16 and 21, Township 27 South, Range 2 East of the 6th P.M. described as: Beginning at the intersection of the south right-of-way line of 13th Street North, and the east right-of-way line of Webb Road.; thence east along said south right-of-way line to a point 272.31 feet east of the west line of the Northeast Quarter of said Section 16; thence north parallel to said west line to the south line of the Southeast Quarter of said Section 9; thence east along said

south line to the west line of the east half of said Southeast Quarter; thence north along said west line to the north right-of-way line of 13th Street North; thence east along said north right-of-way line to a point 585 feet west of the east line of said Southeast Quarter; thence south parallel to said east line and said line extended to the south right-of-way line of 13th Street North; thence west along said south right-of-way line to a point 642.45 feet west of the east line of the Northeast Quarter of said Section 16, said point also being the northwest corner of Lot 1, Block 1, Kiser West Addition; thence south along the west line of said Lot 1 to the southwest corner of said Lot 1; thence S00°32'23"E, 279.88 feet; thence N88°56'33"E, 337.33 feet to the west line of said Addition; thence south along said west line to the southeast corner of Lot 9, Block 1 of said Addition; thence east along the south line of said Lot 9 to the west right-of-way line of Greenwich Road; thence south along said west right-of-way line to a point 663.23 feet north of the south line of the Southeast Quarter of said Section 16; thence west parallel to said south line to a point 485 feet west of the east line of said Southeast Quarter; thence south parallel to said east line and said east line extended to the south right-of-way line of Central Avenue; thence east along said south right-of-way line to the west right-of-way line of Greenwich Road; thence south along said west right-of-way line to the north line of the southeast quarter of the Southeast Quarter of said Section 21; thence west along said north line to the west line of the southeast quarter of said Southeast Quarter; thence south along said west line to the north right-of-way line of U.S. Highway 54; thence west along said north right-of-way line to the east right-of-way line of Webb Road; thence north along said east right-of-way line to the south right-of-way line of Central Avenue; thence easterly along said south right-of-way line to the east right-of-way line of Elder, thence north along said east line to the center line of Chamberlin; thence west along said center line to the east line of Lot 45, , Block 2, Lynch Addition to Travel Air City extended; thence north along said east line and the east lines of Lot 57 and 58, Block 2 of said Addition to the north line of said Lot 58; thence west along said north line to the east right-of-way line of Beech Road; thence north along said east right-of-way line to a point 91 feet south of the north line of the Southwest Quarter of said Section 16; thence west to the east line of the East Side Development Addition; thence north along said east line to the north line of said Addition; thence west along said north line to the east right-of-way line of Webb Road; thence north along said east right-of-way line to beginning.

(i) A tract of land in Sections 9, 10, and 15, Township 27 South, Range 2 East of the 6th P.M. described as: Beginning at the southwest corner of the northeast quarter of the Southeast Quarter of said Section 9; thence north along the west line of the northeast quarter of said Southeast Quarter to a point located 423.11 feet south of the north line of said Southeast Quarter; thence east parallel to said north line to the west right-of-way line of Greenwich Road; thence north along said west right-of-way line to the south line of the Northeast Quarter of said Section 9; thence east along said south line and the south line of the Northwest

Quarter of said Section 10 to the east right-of-way line of Greenwich Road; thence north along said east right-of-way line to a point 1312 feet south of the north line of the Northwest Quarter of said Section 10; thence east to a point 998 feet east of the west line of said Northwest Quarter; thence south parallel to said west line, 610 feet; thence east parallel to said north line of said Section 10, to the west line of the east half of said Section 10; thence south along said west line and the west line of the Northeast Quarter of said Section 15 to the westerly right-of-way line of K-96 Highway; thence northerly along said west right-of-way line to the south line of the Burlington Northern Railroad right-of-way; thence west along said south right-of-way line a distance of 894.72 feet; thence south to a point 755.95 feet north and 1320 feet east of the southwest corner of the Southwest Quarter of said Section 10, said point being located on the north line of Dillon 12th Addition to Sedgwick County, Kansas; thence west along said north line and said north line extended to the west right-of-way line of Greenwich Road; thence north along said west right-of-way line to the south line of the northeast quarter of the Southeast Quarter of said Section 9; thence west along said south line to the southwest corner of the northeast quarter of the Southeast Quarter of said Section 9, said corner being the point of beginning.

(j) The southwest quarter of the Northeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M., EXCEPT for the south 660 feet of the east 330 feet of said southwest quarter of the Northeast Quarter AND EXCEPT that part designated as 33rd Street North right-of-way.

(k) A tract of land in the Northeast Quarter of Section 30, Township 26 South, Range 1 East of the 6th P.M. described as: That part of said Northeast Quarter lying south of South Harbor Addition and west of KPTS Addition and USD 259 Addition.

(l) That part of K-96 Highway right-of-way in the Southeast Quarter of Section 15, Township 27 South, Range 2 East of the 6th P.M. lying west of 127th Street East.

(m) A tract of land located in the Southeast Quarter of Section 34, Township 26 South, Range 1 West of the 6th P.M. described as:
Beginning at the intersection of the north right-of-way line of 29th Street North and the west line of said Southeast Quarter; thence north along said west line to the north line of the south half of said Southeast Quarter; thence east along said north line to a point 1145 feet west of the east line of said Southeast Quarter; thence south parallel to said east line to the north right-of-way line of 29th Street North; thence west along said north right-of-way line to point of beginning.

(n) A tract of land located in the North Half of Section 33, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as:
Beginning at the intersection of the south right-of-way line of 37th Street North and the west right-of-way line of the Kansas Southwestern Railroad; thence east along said south right-of-way line to a point 360 feet west of the east line of the west half of the Northeast Quarter of said Section 33, thence southerly perpendicular to the north line of said Northeast Quarter, to a point 95 feet south of said north line ; thence S55°55'48"E, 30.01 feet; thence east parallel with the north line of said Northeast Quarter, 79.12 feet; thence N75°26'48"E, 16.46 feet; thence east parallel with the north line of said Northeast Quarter, 22.67 feet; thence S44°12'31"E, 45.52 feet; thence southeasterly, 350.27 feet, more or less, to a point on the east line of the West half of said Northeast Quarter, said point being 440 feet south of the northeast corner of the west half of said Northeast Quarter; thence south along said east line to the south line of the north half of said Section 33, thence west along said south line to the west right-of-way line of the Kansas Southwestern Railroad; thence northerly and westerly along said west right-of-way line to the south right-of-way line of 37th Street North and point of beginning.

(o) A tract of land located in the Northwest Quarter of Section 4, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as: Beginning at the intersection of the east line of said Northwest Quarter and the south right-of-way line of 29th Street North; thence south along said east line to a point 600 feet south of the north line of said Northwest Quarter; thence west 150 feet to a point 600 feet south of said north line; thence north parallel with the east line of said Northwest Quarter a distance of 450 feet; thence west 435 feet to a point 150 feet south of the north line of said Northwest Quarter; thence north parallel with the east line of said Northwest Quarter to the south right-of-way line of 29th Street North; thence east along said south right-of-way line to point of beginning.

(p) Tracts of land located in the Sections 15, 11, 3 and 10 all of Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as:
Beginning at the intersection of the south right-of-way line of 21st Street North and the north line of the Missouri Pacific Railroad right-of-way; thence southeasterly along said north right-of-way line to the west right-of-way line of Interstate Highway 235; thence southerly and southwesterly along said west right-of-way line to the south right-of-way line of 13th Street, extended from the west; thence west along said south right-of-way line and said line extended to the east line of County Acres Fourth "B" Addition; thence northerly along said east line and said east line extended to the north right-of-way line of 13th Street North; thence west along said north right-of-way line to the east right-of-way line of

Ridge Road; thence north along said east right-of-way line to the north right-of-way line of 21st Street North; thence east along said north right-of-way line to the north right-of-way line of the Missouri Pacific Railroad; thence southeasterly to point of beginning.

(q) A tract of land in the Northwest Quarter of Section 29, Township 27 South, Range 1 West of the 6th P.M., described as follows: Beginning at a point on the south line of said Northwest Quarter, said point being 1665 feet west of the southeast corner of said Northwest Quarter; thence northeasterly for a distance of 173.30 feet; thence northeasterly with a deflection to the left of 00˚04' for a distance of 353.81 feet; thence northeasterly with a deflection to the left of 01˚31' for a distance of 443.94 feet; thence northeasterly with a deflection to the left of 36˚27' for a distance of 337.02 feet; thence northwesterly with a deflection to the left of 42˚41' for a distance of 114 feet, more or less, to the easternmost corner of Oatman Addition to Sedgwick County, Kansas; thence northwesterly along the east line of Oatman Addition to the northerly line of said Addition; thence northeasterly with a deflection to the right 57˚46 for a distance of 290.95 feet, thence northeasterly with a deflection to the right of 22˚44' for a distance of 462.24 feet; thence with a deflection to the left of 19˚48' to the south right-of-way line of Maple Street; thence east along said south right-of-way line to the east line of said Northwest Quarter; thence south along said east line to the south line of said Northwest Quarter; thence west along said south line to point of beginning.

(r) Tracts of land in the Southwest Quarter of Section 30, Township 27 South, Range 1 West described as:
Beginning at the northeast corner of said Section; thence south along the east line of said Southwest Quarter to the north line of Brady Addition; thence west along said north line to the west line of said Addition; thence south along said west line to a point 338 feet north of the north right-of-way line of U.S. Highway 54 as condemned in Case No. A-38302; thence west along a line parallel with said north right-of-way line for a distance of 284 feet; thence north along a line parallel to the east line of said Southwest Quarter to a point 514.21 feet south of the north line of said Southwest Quarter; thence east parallel to said north line 482.37 feet; thence north parallel to the east line of said Southwest Quarter 260 feet; thence west parallel to the north line of said Southwest Quarter 482.37 feet; thence north parallel to the east line of said Southwest Quarter to the north line of said Southwest Quarter; thence east along said north line to point of beginning.

(s) A tract of land in the Southeast Quarter of Section 13, Township 28 South, Range 1 West of the 6th P.M. described as:
Beginning at a point on the west right-of-way line of Meridian Avenue, said point being 731.51 feet north of the south line of said Section; thence west parallel to said south line to a point 1270.5 feet west of the east line of said Section; thence

south parallel to the east line of said Section 240 feet; thence east parallel to the south line of said Section to the west right-of-way line of Meridian Avenue; thence north to point of beginning.

(t) Tracts of land in the Northeast Quarter of Section 24, Township 28 South, Range 1 West of the 6th P.M. and the Northwest Quarter of Section 19, Township 28 South, Range 1 East of the 6th P.M. described as: Beginning at the intersection of the west right-of-way line of Meridian Avenue and the south right-of-way line of 47th Street South; thence south along said west right-of-way line to the south line of said Northeast Quarter; thence east along said south line and the south line of said Northwest Quarter to the east line of the west half of said Northwest Quarter of Section 19; thence north along said line to the south right-of-way line of 47th Street South; thence west along said south right-of-way line to point of beginning, EXCEPT that part platted as Lots 1 and 2, Block A, Edwards Estates Addition, Sedgwick County, Kansas.

(u) A tract of land in Southwest Quarter of Section 12, Township 28 South, Range 1 West of the 6th P.M. described as: Beginning at a point on the east right-of-way line of West Street, said point being located on the south line of Phat An Temple Addition; thence east along said south line, to the east line of said Addition; thence north along said east line and the east line of Erin Springs Addition, to the north line of said Addition; thence west along said north line and the north line of Lucas Springs Addition, to the east right-of-way line of West Street; thence south along said east right-of-way line, to point of beginning.

(v) A tract of land in the Northwest Quarter of Section 19, Township 28 South, Range 1 East of the 6th P.M. described as: Beginning at the intersection of the east line of said Northwest Quarter and the south right-of-way line of 47th Street South; thence south along said east line to a point 1805 feet south of the north line of said Northwest Quarter; thence west parallel to said north line 40 feet; thence north parallel to said east line to the south right-of-way line of 47th Street South; thence east along said south right-of-way line to beginning.

(w) A tract of land in Southwest Quarter of Section 12, Township 28 South, Range 1 West of the 6th P.M. described as: Beginning at a point on the east right-of-way line of West Street, said point being located 992.15 feet south, more or less, of the north line said Southwest Quarter; thence east along a line parallel to said north line, to a point 298.71 feet east of the west line of said Southwest Quarter and the southernmost southeast corner of Trimmel Addition; thence north along the east line of said Addition, 60 feet to the south line of said Addition; thence east along said south line, 26.29 feet; thence south 504.98 feet along a line parallel to the west line of said Southwest Quarter; thence west along a line

parallel to the north line of said Southwest Quarter to the east right-of-way line of West Street; thence north along said east right-of-way line, to the point of beginning.

(x) A tract of land in the Southeast Quarter of Section 3, Township 27 South, Range 2 East of the 6th P.M. described as: Beginning at a point on the west right-of-way line of 127th Street East, said point being 744.45 feet south of the north line of said Southeast Quarter; thence west parallel to said north line to a point 258.72 feet west of the east line of said Southeast Quarter; thence north parallel to the east line of said Southeast Quarter 208.72 feet; thence east parallel to the north line of said Southeast Quarter to the west right-of-way line of 127th Street East; thence south along said west right-of-way line to point of beginning.

(y) A tract of land in the Southeast Quarter of Section 31, Township 26 South, Range 1 West of the 6th P.M. described as: Beginning 802.39 feet north and 1172.96 feet west of the southeast corner of said Southeast Quarter; thence north 75 feet; thence west 85 feet; thence south 75 feet; thence east 85 feet to beginning.

(z) A tract of land in the Southwest Quarter of Section 32, Township 26 South, Range 1 West of the 6th P.M. described as: Beginning at a point on the east right-of-way line of Maize Road located 501.06 feet, more or less, south of the north line of the south half of said Southwest Quarter; thence east parallel to said north line to a point located 649.44 feet east of the west line of said Southwest Quarter; thence northwesterly 54.11 feet; thence east parallel with said north line 122.59 feet; thence north parallel with said west line to the north line of the south half of said Southwest Quarter; thence east along said north line to a point on the west line of Reserve "G", Fox Ridge Addition; thence south along said west line to a point 626.16 feet north of the south line of said Southwest Quarter; thence west to a point 140 feet west of the west line of the southeast quarter of said Southwest Quarter; thence south parallel to said west line to the north right-of-way line of 29th Street North; thence west along said north right-of-way to the east right-of-way line of Maize Road; thence north along said east right-of-way line to the point of beginning.

(aa) A tract of land in the Northwest Quarter of Section 5, Township 27 South, Range 1 West of the 6th P.M. described as: Beginning at the intersection of east right-of-way line of Maize Road and the south right-of-way line of 29th Street North, thence east along said south right-of-way line to the east line of said Northwest Quarter; thence south along said east line to the south line of Government Lot 3 ; thence west along said south line and said south line extended to the east right-of-way line of Maize Road; thence north along said east right-of-way line to the point of beginning.

(bb) A tract of land in Section 7, Township 28 South, Range 1 West of the 6TH P.M., described as: Beginning at a point on west right-of-way line of Maize Road, said point being located 777.25 feet south of the north line of said Section; thence west along a line parallel to said north line, to a point located 625 feet west of the east line of said Section; thence north parallel with said east line, 333.30 feet, more or less; thence east parallel with said north line, 256.47 feet; thence N01°35'13"E, 202.92 feet; thence east parallel with said north line to the west right-of-way line of Maize Road; thence south along said west right-of-way line to the point of beginning.

(cc) A tract of land described as that part of K-254 Highway right-of-way lying in the North Half of Section 27, Township 26 South, Range 1 East of the 6th P.M.

(dd) A tract of land in the East Half of Section 27, Township 26 South, Range 1 East of the 6th P.M. described as: Beginning at the intersection of the west right-of-way of Hillside Avenue and the west right-of-way line of the Union Pacific Railroad, thence south along said west right-of-way line of Hillside Avenue to the east right-of-way line of the Union Pacific Railroad; thence southwesterly along said east right-of-way line to the north right-of-way line of 37th Street North; thence west along said north right-of-way line to the east line of the Southwest Quarter of said Section, thence north along said east line and said east line extended north to the south line of the north half of the Northeast Quarter of said Section 27; thence easterly along said south line bearing North 89˚ 52' 48" East a distance of 2262.56 feet to a point on the northwest right-of-way line of the Rock Island Railroad; thence along said northwest right-of-way line bearing North 30˚ 19' 25" East a distance of 339.04 feet; thence North 59˚ 40' 35" West, a distance of 25 feet; thence North 30˚ 19' 25" East, a distance of 300 feet to a point on the west right-of-way line of Hillside Avenue.

(ee) A tract of land in the Northwest Quarter of Section 18, Township 26 South, Range 1 East of the 6th P.M. described as: Beginning at the intersection of the east right-of-way line of Meridian Avenue and the south line of the north half of said Northwest Quarter, thence east along said south line to the east line of said Northwest Quarter; thence south along said east line to the south line of said Northwest Quarter; thence west along said south line to a point 700 feet east of the west line of said Northwest Quarter; thence north parallel to said west line 130 feet; thence west parallel to said south line 200 feet; thence south parallel to said west line 130 feet to the south line of said Northwest Quarter; thence west along said south line 60 feet; thence north parallel to said west line a distance of 230 feet; thence west parallel to said south line to the east right-of-way line of Meridian; thence north along said east right-of-way line to the point of beginning

(ff) A tract of land in the Northwest Quarter of Section 13, Township 27 South, Range 2 West of the 6th P.M. described as: Beginning at the intersection of the east right-of-way line of 135th Street West and the south right-of-way line of 13th Street; thence east along said south right-of-way line to a point 430 feet east of the west line of said Northwest Quarter; thence south parallel with said west line to a point 531.30 feet south of the north line of said Northwest Quarter; thence west parallel with the north line of said Northwest Quarter to the east right-of-way line of 135th Street West; thence north along said east right-of-way line to the point of beginning.

(gg) A tract of land in the Southwest Quarter of Section 31, Township 27 South, Range 1 West of the 6th P.M. described as: Beginning at the intersection of the east right-of-way line of 119th Street West and the north line of said Southwest Quarter, thence east along said north line to a point 316 feet east of the west line of said Southwest Quarter; thence south along a line parallel to said west line a distance of 275.7 feet; thence west parallel to said north line to the east right-of-way line of 119th Street West; thence north along said east right-of-way line to point of beginning.

(hh) A tract of land in the Southwest Quarter of Section 31, Township 27 South, Range 1 West of the 6th P.M. described as: Beginning at a point on the east right-of-way line of 119th Street West located 615 feet more or less south of the north line of said Southwest Quarter; thence east parallel to said north line to a point 335 east of the west line of said Southwest Quarter; thence south parallel to said west line a distance of 495 feet; thence west parallel to said north line to the east right-of-way line of 119th Street West; thence north along said east right-of-way line to the point of beginning.

(ii) A tract of land in the Southeast Quarter of Section 11, Township 28 South, Range 1 West of the 6th P.M. described as: Beginning at a point on the west right-of-way line of West Street, said point being located 335 feet south of the north line of said Southeast Quarter; thence west parallel with said north line to a point 500 feet west of the east line of said Southwest Quarter; thence north parallel with the said east line a distance of 300 feet; thence east parallel to said north line to said west right-of-way line and point of beginning.

(jj) A tract of land in the Southwest Quarter of Section 26, Township 27 South, Range 2 East of the 6th P.M. described as: Beginning at the intersection of the north right-of-way line of Harry Street and the east right-of-way line of 127th Street East; thence north along said east right-of-line to the south line of the north half of said Southwest Quarter; thence east along said south line to a point located 778.5 feet east of the west line of said Southwest Quarter; thence south parallel to said west line, a distance of 325.39 feet; thence S 87˚ 08'11" E, a distance of 128.77 feet; thence S 38˚ 46' 30" E, a distance of 44.36 feet; thence S 11˚ 57' 15" W, a distance of 165.81 feet; thence S 21˚ 41'53" E, a distance of 11.72 feet; thence S 47˚ 30'57" W, a distance of 46.10 feet; thence S 29˚ 18'56" W, a distance of 70.61 feet; thence S 31˚ 33'22" W, a distance of 103.23 feet to a point 778.5 feet east of said west line; thence south parallel to said west line, 246.07 feet; thence S 59 ˚27'02" W, a distance of 42.87 feet; thence S 39˚ 27' 02" W, a distance of 79 feet; thence S 30˚ 27' 02" W, a distance of 123 feet; thence S 0˚ 52'58" E, a distance of 30 feet; thence S 30˚ 07' 02" W, a distance of 41 feet; thence S 0˚ 32'58" E to the north right-of-way line of Harry Street; thence west along said north right-of-way line to the east right-of-way line of 127th Street East and point of beginning.

(kk) A tract of land in the Southeast Quarter of Section 36, Township 27 South, Range 2 West of the 6th P.M. described as: Beginning at a point located 660 feet west and 660 feet north of the southeast corner of said Southeast Quarter; thence east parallel to the south line of said Southeast Quarter to the west right-of-way line of 119th Street West; thence south and southwesterly along said west right-of-way line to the north right-of-way line of Pawnee Avenue; thence southwesterly and west along said north right-of-way line to a point 660 feet west of the east line of said Southeast Quarter; thence north e parallel to said east line to point of beginning.

(ll) A tract of land in the Northeast Quarter of Section 6, Township 28 South, Range 1 West of the 6th P.M. described as: Beginning at the intersection of the south right-of-way line of Pawnee Avenue and the west right-of-way line of Maize Road, thence west along said south right-of-way line to a point 475 feet west of the east line of said Section; thence south parallel to said east line to point 943 feet south of the north line of said Section; thence east parallel to said north line to the west right-of-way line of Maize Road; thence north along said west right-of-way line to point of beginning.

(mm) A tract of land described as: The east 208 feet of the north 208 feet of the south 1308 feet of the Northeast Quarter of Section 27, Township 26 South, Range 1 West of the 6th P.M., EXCEPT for that part designated as Hoover Road right-of-way.

(nn) A tract of land in the Northeast Quarter of Section 27, Township 26 South, Range 1 West of the 6th P.M. described as: The north 208 feet of the west 417.42 feet of Government Lot 1, EXCEPT for that part designated as 45th Street road right-of-way.

(oo) A tract of land in the Northwest Quarter of Section 23, Township 26 South, Range 1 East of the 6th P.M. described as: Beginning at a point on the west line of said Northwest Quarter located 890 feet south of the north line of said Section 23; thence east parallel with said north line to a point 505 feet east of the west line of said Northwest Quarter; thence N 53°52'52" E, a distance of 359.16 feet; thence N 90°00'00" E, a distance of 200.00 feet; thence S 00°08'44" E, parallel with the east line of the west half of said Northwest Quarter, a distance of 67.39 feet, more or less, to the approximate center line of a creek; thence following the approximate center line of said creek, S22°00'44"W, 47.92 feet; thence S16°02'04"W, 110.34 feet; thence S00°29'36"W, 84.54 feet; thence S09°57'36"W, 127.74 feet; thence S02°59'31"E, 145.34 feet; thence S16°06'19"W, 133.72 feet; thence S29°37'55"W, 120.21 feet; thence S54°33'50"W, 43.77 feet; thence S69°46'35"W, 53.87 feet; thence S61°36'54"W, 65.25 feet; thence S43°39'57"W, 79.48 feet; thence S30°03'00"W, 91.40 feet; thence S42°56'45"W, 87.09 feet to a point 530.00 feet east of the west line of said Northwest Quarter; thence west to a point on said west line, said point being 1760 feet, more or less, south of the north line of said Northwest Quarter; thence north along said west line to point of beginning, EXCEPT for that part designated as Hillside road right-of-way.

SECTION 3. That if any part or portion of this Resolution shall be held or determined to be illegal, ultra vires or void, the same shall not be held or construed to alter, change or annul any terms or provisions hereof which may be legal or lawful. And in the event this Resolution in it entirety shall be held to be ultra vires, illegal or void, then in such event, the boundaries and limits of said City shall be held to be those heretofore established by law.

ADOPTED as amended in Wichita, Kansas**, this 20th day of December, 2011.**

ATTEST:

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law