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# FINAL

CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. November 2, 2010

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 October 26, 2010

---

## AWARDS AND PROCLAMATIONS

-- Proclamations:

National Adoption Day

-- Service Award:

Mary H. Bond

-- Special Presentation:

Bob Hanson-Sports Commission Appreciation address to the City Council

## I. PUBLIC AGENDA

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

None

**COUNCIL BUSINESS**

## II. UNFINISHED COUNCIL BUSINESS

None

## III. NEW COUNCIL BUSINESS

1. Approval of Forgivable Loan Agreement, Nex-Tech Processing. (District IV)

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

2. Approval of Economic Development Incentives, TECT Power, Inc. (District IV)

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

3. Ordinance to Terminate the Planeview Redevelopment District, Tax Increment Financing. (District III)

   RECOMMENDED ACTION: Approve the request for declaration of emergency and adopt the ordinance on first reading.

4. Revisions to Community Improvement District Policy.

   RECOMMENDED ACTION: Approve the Revised Community Improvement District Policy.

5. Contract with Cox for Metro Ethernet Wide Area Network Services.

   RECOMMENDED ACTION: Approve the contract and authorize the appropriate signatures.

6. Amendments to Title 15 - Adoption of 2006 International Fire Code Change of Terminology in 15.02.010 Smoke Detector Ordinance.

   RECOMMENDED ACTION: Approve first reading of the proposed ordinances to: (1) repeal Chapters 15.01 of the Code of the City of Wichita, which adopted the 2000 Edition of the International Fire Code; and (2) create Chapters 15.01 of the Code of the City of Wichita, which adopts the 2006 Edition of the International Fire Code, with amendments; and (3) repeal Chapters 15.02 of the Code of the City of Wichita, Smoke Detector Ordinance and (4) create Chapters 15.02 of the Code of the City of Wichita, Smoke Alarm Ordinance which pertains to smoke alarm terminology.

7. Performance Contracts for Cultural Funding 2011.

   RECOMMENDED ACTION: Approve 21 Performance Contracts for Cultural Funding for Fiscal Year (FY) 2011.

8. Petition to construct a Water Distribution System in McEvoy Addition, south of Harry, west of 127th Street East. (District II)

   RECOMMENDED ACTION: Approve the petition, adopt the resolution, and authorize the necessary signatures.

9. Revisions to Storm Water Pollution Prevention Ordinances.

   RECOMMENDED ACTION: Approve the Storm Water Ordinance revision and the Storm Water Advisory Board Ordinance.

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**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.

## IV. NON-CONSENT PLANNING AGENDA

1. CON2010-00008 – Request for a Conditional Use to allow Wrecking/Salvage Yard on property located at the southwest corner of 29th Street North and Mead Street. (District VI) (Deferred October 19, 2010)

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

2. DER2010-00009 – Establish Bridgeport Industrial Area Protective Overlay on property zoned GI General Industrial and GC General Commercial; generally located in an area bounded by 29th Street North, Broadway, I-235 and I-135. (District VI)

   RECOMMENDED ACTION: 1) Adopt the findings of the MAPC and approve the overlay district for the entire Bridgeport area except those properties that have chosen to "opt out" prior to the City Council hearing the case, authorize the Mayor to sign the ordinance and place the ordinance on first reading (requires a three-fourths majority vote); OR 2) Override the recommendation of the MAPC and deny the request (requires a two-thirds majority vote); OR 3) Return the application to the MAPC for reconsideration (simple majority).

## V. CONSENT PLANNING AGENDA (ITEMS 1 THROUGH 3)

1. *Street Improvement Agreement for ZON2010-30 located west of Osage Street and South of Maple Street. (District IV)

   RECOMMENDED ACTION: Accept the No Protest Agreement.

2. *ZON2010-00033 – City zone change from LI Limited Industrial ("LI") to GO General Office ("GO"); generally located on the north side of 13th Street North, approximately 1/4 mile west of Greenwich Road. (District II)

   RECOMMENDED ACTION: Adopt the findings of the MAPC, approve the zone change, authorize the Mayor to sign the ordinance and place the ordinance on first reading. (Simple majority required)

3. *VAC2010-00026 - Request to vacate a portion of a platted setback; generally located west of Maize Road, north of Kellogg/US-54. (District V)

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

## 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.

**Summer Jackson, Housing Member is also seated with the City Council.**

### VI. NON-CONSENT HOUSING AGENDA

None

### VII. 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.

### VIII. NON-CONSENT AIRPORT AGENDA

None

### IX. CONSENT AIRPORT AGENDA

None

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## COUNCIL AGENDA

### X. COUNCIL MEMBER AGENDA

1. Approval of travel expenditures for Mayor Carl Brewer to attend the LKM Governing Body Meeting in Topeka, Kansas, December 9-10, 2010.

   RECOMMENDED ACTION: Approve the expenditures.

## XI. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

   RECOMMENDED ACTION: Approve the Appointments.

---

## XII. CONSENT AGENDA (ITEMS 1 THROUGH 18A)

1. Report of Board of Bids and Contracts dated November 1, 2010.

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

2. Applications for Licenses to Retail Cereal Malt Beverages:

| Renewal | 2010 | (Consumption on Premises) |
|---|---|---|
| Mary A Isbell (Hansen) | Bierocks and Brats* | 1225 West Douglas |
| Gregory D Helms | Ty's Diner Inc.* | 928 West 2nd Street North |

| Renewal | 2010 | (Consumption off Premises) |
|---|---|---|
| Yehia A Robert | C & C Store | 1131 East 47th South |
| Chandana Perera | Foodmart #210 | 10723 West Highway 54 |
| Siddique Smimtiaz | Mariam's Quick Mart | 550 North Webb Rd |
| Saquib Irfan^Dao Variety Store | 1601 East Central | |

   * General/Restaurant 50% or more gross revenue from sale of food.

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

3. Preliminary Estimates: (See Attached)

   RECOMMENDED ACTION: Receive and file.

4. Consideration of Street Closures/Uses.
   a. Community Events - Intrust Bank Arena, Barney. (District I)
   b. Community Events - Intrust Bank Arena, Cirque De Soleil. (District I)
   c. Community Events - Intrust Bank Arena, Dane Cook. (District I)
   d. Community Events - Intrust Bank Arena, Radio City Rockettes. (District I)
   e. Community Events - Intrust Bank Arena, Zac Brown Band. (District I)
   f. Community Events - Intrust Bank Arena, Trans Siberian Orchestra. (District I)

   RECOMMENDED ACTION: Approve the request subject to: (1) Hiring off-duty certified law enforcement officers as required; (2) Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department; and (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

5. Property Acquisitions:
   a. Acquisition of 3011 East 13th Street North for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)
   b. Acquisition of 1355 North Madison together with Vacant Lots in the 2000 Block of East 13th Street for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)
   c. Acquisition of 2626 East 13th Street the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)
   d. Acquisition of Land at the Southeast Corner of Golden Prairie Road and U.S. Highway 50 for the Integrated Local Water Supply Plan. (Harvey County)

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

6. Minutes of Advisory Boards/Commissions

   Wichita Public Library, September 21, 2010
   Board of Park Commissioners, September 18, 2010
   Board of Park Commissioners, October 18, 2010
   Joint Investment Committee, September 2, 2010
   Employees' Retirement System, September 15, 2010

   RECOMMENDED ACTION: Receive and file.

7. Sale of Surplus Land at the Southwest Side of Willow Lake and SW 36th Street. (Harvey County)

   RECOMMENDED ACTION: Declare the property surplus, approve the sale, and authorize the necessary signatures.

8. Modification of an Easement Across City Owned Property at K-96 Lake in Conjunction with the Homeland Preparedness Project. (District I)

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

9. Equus Beds Aquifer Water Well Repair.

   RECOMMENDED ACTION: Approve the project, approve Notice of Intent, adopt the resolution and authorize the necessary signatures.

10. Resolution Authorizing Transfer of five (5) Trolleys from Topeka Metropolitan Transit Authority (TMTA) to the City of Wichita.

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

11. Major Bus Engine Replacement.

    RECOMMENDED ACTION: Approve the new engine replacement purchase from Central Power Systems and Services with a cost of $41,199 as identified in Option #2 above.

12. Roosevelt and Woodlawn Water Tower Rehabilitation.

    RECOMMENDED ACTION: Approve the project, adopt the resolution, and authorize the necessary signatures.

13. 2009 Street Rehabilitation Program. (Districts I and III)

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

14. Southeast Water Transmission Line between Wichita and Derby. (District III)

    RECOMMENDED ACTION: Approve the payment to Wildcat Construction Co., Inc. and authorize the necessary signatures.

15. Educational Trust Scholarship.

    RECOMMENDED ACTION: Accept the annual donations and approve the establishment of an educational scholarship account.

16. Relocation of a Sanitary Sewer along I-135 Freeway, between Pawnee and English. (Districts I and III)

    RECOMMENDED ACTION: Approve the payment to USD 259 School District and authorize the necessary signatures.

17. September 15, 2010 Hail Storm Capital Project and Resolution.

    RECOMMENDED ACTION: Approve the Resolution and budget transfers as required.

18. Second Reading Ordinances: (First Read October 26, 2010)
    a. List of Second Reading Ordinances. (See Attached)

    RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO**: Mayor and City Council

**SUBJECT:** Approval of Forgivable Loan Agreement, Nex-Tech Processing. (District IV)

**INITIATED BY:** Office of Urban Development

**AGENDA:** New Business

---

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

**Background**: Nex-Tech Processing ("NTP") has been in business in Wichita since 1975. NTP performs services critical to the completion of aircraft components, both machine parts and formed sheet metal. NTP provides anodizing, chemical coatings, non-destructive testing and other final services for aircraft parts. NTP serves Gulfstream, Cessna, Boeing, Spirit, and Vought among others. The company serves over 225 customers.

The Greater Wichita Economic Development Coalition (GWEDC) worked with Nex-Tech to assist in its plans to expand the existing facilities located at 1702 South Knight in southwest Wichita. The GWEDC coordinated the development of an incentive package with City, County and State officials, which is presented herewith for approval of the City's portion.

**Analysis:** Nex-Tech Processing provides metal finishing services required for the installation of machined parts into aircraft. NTP has to expand the capacity of the wastewater treatment system at the facility in order to acquire additional work. The project will include an investment of approximately $1.2 million. NTP also plans to upgrade and repurpose some of the manufacturing lines in order to serve the changing needs of the customers.

The City of Wichita and Sedgwick County have partnered to offer economic development assistance to the company. The City and Sedgwick County will provide $25,000 each in forgivable loan funds to offset construction costs, subject to governing body approval. NTP has agreed to retain 121 existing Wichita positions, and as a condition for forgiveness of the loan, will increase that employment by 55 jobs, to a minimum of 176 positions within the next five years, with an average salary of $34,944 per year. The State of Kansas incentive offer includes training funds and tax credits for job creation and capital investment.

**Financial Considerations**: The forgivable loan proceeds in the amount of $25,000 will be provided to NTP from funds budgeted in the Economic Development Fund for economic development incentives in 2010. There is no property tax abatement offered for this project.

As part of GWEDC's analysis of this project, the return-on-investment was calculated for the proposed incentive package:

| | |
|---|---|
| City of Wichita | 3.10 to one |
| General Fund | 1.55 to one |
| Debt Service | N/A |
| Sedgwick County | 1.62 to one |

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

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

**Recommendation/Actions**: It is recommended that the City Council approve the forgivable loan agreement for Nex-Tech Processing, place the home rule ordinance on first reading and authorize the necessary signatures.

**Attachments**: Forgivable Loan Agreement and Promissory Note, Ordinance

(PUBLISHED IN THE WICHITA EAGLE ON NOVEMBER 12, 2010) 028001

ORDINANCE NO. 48-890

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, PRESCRIBING THE FORM AND AUTHORIZING THE EXECUTION OF A FORGIVABLE LOAN AGREEMENT AND PROMISSORY NOTE BY AND BETWEEN NEX-TECH PROCESSING, INC. AND THE CITY OF WICHITA, KANSAS.

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

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

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

Section 1. Findings and Approval of Forgivable Loan. The City's Governing Body hereby finds that providing a forgivable loan in the amount of $25,000, to Nex-Tech Processing, Inc., will advance economic development in Wichita, Kansas and will serve a public purpose.

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

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

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

PASSED by the Governing Body of the City of Wichita, Kansas this 9th day of November, 2010.

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

[Seal]

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, City Attorney

**FORGIVABLE LOAN AGREEMENT and PROMISSORY NOTE**

This Loan Agreement and Promissory Note (the "Agreement"), effective this ____ day of November 2010, is entered into between the following parties:

Lender: City of Wichita, Kansas ("Lender")
455 N. Main
Wichita, Kansas 67202
Contact Person/Title: Allen Bell, Urban Development Director
Phone: 316-268-4524 FAX: 316-858-7890

Borrower: Nex-Tech Aerospace, Inc. ("Borrower")
1702 S Knight Street
Wichita, KS 67215
Contact Person/Title: Terry Karst, General Manager
Phone: 316-529-0504
FEIN: 20-8745170

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

WHEREAS, the Borrower has specified that this funding will be used to finance the relocation of machinery and equipment to the facility located at 1702 South Knight in Sedgwick County, Kansas; and

WHEREAS, the Lender has authorized an expenditure of up to $25,000 for the purpose of making a loan to the Borrower under such terms and conditions as may be prescribed by the Lender.

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

1) **Loan Amount and Terms**: Subject to the terms and conditions of the Agreement, the Lender hereby agrees to provide the Borrower with the principal sum of up to $25,000 for a sixty (60) month period. Interest will accrue from the date of disbursement at the rate of zero percent (0.0%) per annum on the unpaid balance. Should a default occur, repayment of all principal and interest will be made immediately in accordance with the provisions shown below. This loan is not transferable.

2) **Forgiveness of Debt**: The Borrower promises to create and maintain minimum employment levels at the Wichita, Kansas facility by December 31, 2014 as shown in the following schedule:

| Year | Retained Employment | New Employment | Total Employment | Minimum Payroll (cumulative) |
|---|---|---|---|---|
| 2010 | 121 | 12 | 133 | $ 4,736,000 |
| 2010 | 0 | 43 | 176 | $ 6,265,000 |
| 2011 | 0 | 0 | 176 | $ 6,265,000 |
| 2012 | 0 | 0 | 176 | $ 6,265,000 |
| 2013 | 0 | 0 | 176 | $ 6,265,000 |

Job figures reflect full-time equivalent (FTE) positions only. One FTE is equal to 2080 hours earned per year, including vacation. Average salary of all positions shall be at least $16.80/hour.

The first anniversary date for meeting the first year's job creation commitment shall be December 31, 2010. On this first anniversary and at each scheduled anniversary thereafter, the outstanding principal balance will be divided by the number of remaining anniversary dates. By December 31, 2014, the number of new FTE positions created and maintained will be no less than 176. The base figure for employment will be 121 FTEs. The resultant amount and all interest accrued since the previous anniversary date will be forgiven if the scheduled job and wage commitments have been met. However, in the event the

Borrower leaves Wichita, Kansas during the term of this agreement, any principal and interest which has been forgiven will be repaid in accordance with item (17) below.

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

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

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

5) **Insurance**: The Borrower agrees to provide and maintain at its own expense casualty and hazard insurance covering loss by fire or wind with extended coverage insuring all of the real estate, buildings, fixtures and improvements and all business machinery, equipment, furnishings and furniture at its Wichita, Kansas facility. Evidence of such coverage will be provided to the Lender upon written request.

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

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

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

9) **Use of Funds**: The monies from this loan shall (i) be used by the Borrower to pay for costs related to the expansion of facilities and acquisition of machinery and equipment at the Borrower's worksite in Wichita, Kansas, (ii) become a permanent part of Borrower's capital, (iii) only be used for corporate purposes, and (iv) be employed in connection with, or directly or indirectly contribute to, the production of additional income for Borrower. No portion of the borrowed funds shall be used to pay or subsidize any dividend or other payment or distribution made to shareholders, officers or employees of Borrower. Lender shall disburse funds to the Borrower upon presentation of written proof that the aforementioned costs have been incurred by the Borrower.

Any machinery and equipment obtained using these loan funds will be promptly identified to the Lender, including narrative description and serial number, and will remain in the Wichita, Kansas facility for the duration of this agreement. The Lender or its representative shall be afforded the right of inspection of such machinery and equipment throughout the term of this agreement.

10) **No Compensation for Services**: The funds to be lent and any amounts which may be forgiven by Lender hereunder do not and shall not compensate Borrower for the performance of any service undertaken or to be undertaken by Borrower for the Lender. Borrower is not obligated to perform, will not perform, and has not performed, any specific or quantifiable service in exchange for such amounts. The Lender is not obligated to provide any services to the Borrower other than those specified in the Agreement.

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

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

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

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

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

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

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

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

A. Upon any default or failure to properly perform under any clause in this Agreement (or the provisions of any security agreement(s) or mortgage documents which secure this Agreement).
   i. If, on the scheduled anniversary, employment levels are below the minimums specified in item (2) of this Agreement, the following repayment is required within thirty (30) days after written notice of such default from Lender to Borrower.
      a. the outstanding principal balance will be divided by the number of remaining anniversary dates, to produce the principal amount due, plus
      b. interest accrued since the previously scheduled anniversary date.
   ii. If the Borrower ceases to operate in Wichita, Kansas during the term of this Agreement, the following repayment is required:
      a. the entire outstanding principal amount is immediately due and payable, plus
      b. any principal and interest previously forgiven as specified in item (2) above, plus
      c. default interest equal to a twelve percent (12%) compounded annual rate calculated for a 5 year period against the highest outstanding principal amount over the term of the loan.
   iii. Upon audit, any loan funds shown to have been used for other than the intended purposes shall be repaid with interest to Lender by Borrower. Such unintended purposes would include, but not be limited to, the acquisition of machinery and equipment which is not used at the Wichita, Kansas facility throughout the term of this loan. The amount to be repaid shall be such principal plus twenty-five percent (25%) compounding interest accrued from the date of the initial draw-down against this loan.
   iv. If the Borrower otherwise defaults in any manner on the obligations set forth in this Agreement, which default continues for 30 days after written notice of such default from Lender to Borrower, the following repayment is required:
      a. any principal balance outstanding on the loan is due and payable; and
      b. default interest equal to a twelve percent (12%) compounded annual rate calculated against the principal balance for the period during which it has been outstanding.
B. Upon any occurrence under this Agreement or security agreements or mortgage documents by which this loan may or shall become due and payable.
C. At any time that the Lender determines in good faith that the prospect of any payment required by this note is impaired.

In the event of continued default following a thirty (30) day written notice of default, the Lender may, at its option, declare all unpaid indebtedness evidenced by this Agreement and any modifications thereof, immediately due and payable, without further notice, regardless of date of maturity. The Lender's failure to exercise this option when available at any point in time shall in no way invalidate its right to exercise the option in future default situations. Should it become necessary to collect the monetary obligations of this Agreement through an attorney, the Borrower agrees to pay all costs of collecting these monies, including reasonable attorneys' fees to the extent permitted by law, whether collected by suit, foreclosure, or otherwise.

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

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

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

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

21) **Termination of Agreement**: Lender may terminate the loan, in whole or in part, if the Borrower has failed to comply with the conditions of the Agreement and such failure has resulted in a "default" as set forth in Section 16 of this Agreement. The Borrower will receive written notice and the reasons for termination.

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

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

24) **Assignment**: The parties further agree that this Agreement may not be assigned by the Borrower without prior written approval by the Lender other than to an affiliate or in connection with a sale of all or substantially all of the assets of the Borrower (by merger, reorganization or otherwise).

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

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

Borrower: Nex-Tech Aerospace, Inc.
Attn: Terry Karst
1702 S Knight
Wichita, KS 67215

City: City Manager's Office
Attn: Allen Bell, Urban Development Director
455 N Main, 13th Floor
Wichita, KS 67202

Department of Law
Attn: Gary Rebenstorf, City Attorney
455 N Main, 13th Floor
Wichita, KS 67202

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

28) **Equal Opportunity and Affirmative Action.** In carrying out this contract, Borrower shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 et seq.

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

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

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

D. If Borrower is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Borrower shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by Lender.

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

IN WITNESS WHEREOF, the parties have signed their names below.

LENDER:

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

BORROWER:

NEX-TECH PROCESSING, INC.

_____
Terry Karst, General Manager

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf
City Attorney

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Approval of Economic Development Incentives (TECT Power, Inc.) (District IV)

**INITIATED BY:** Urban Development Office

**AGENDA:** New Business

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**Recommendation:** Approve the Forgivable Loan Agreement.

**Background:** TECT Power ("TECT") manufactures critical rotating components of turbine engines for aviation and industrial applications, as well as components for other industries with similar engineering and quality requirements. TECT's five manufacturing facilities are located in Newington, Conn., Cleveland, Ohio, Utica, N.Y., Santa Fe Springs, Calif., and Thomasville, Ga. TECT produces aerospace turbine engine components, locomotive turbocharger impellers and industrial products. TECT also produces disks, hubs, shafts, rings and seals with a completely integrated supply chain and supporting capabilities to allow all manufacturing processes to be performed in-house.

While considering expansion in multiple locations, TECT worked with the Greater Wichita Economic Development Coalition (GWEDC) to locate the new facility in Wichita. Working with the City, Sedgwick County and the State of Kansas, the GWEDC developed an incentive package, subject to approval by governing bodies that includes forgivable loans.

**Analysis:** TECT has been in operation throughout the United States since 2001. TECT is one of a few suppliers that produce large components for use in the turbines for large passenger jets. TECT has moved into the former TECT aerospace facility located at 2019 Southwest Boulevard in southwest Wichita. TECT will be creating twenty-six new positions at an average wage of $50,919 annually. Fifteen existing positions will also be maintained at the facility for a total of 41. The manufacture of the components requires a fairly high skill level and cannot be completely automated. Skilled machinists are important to the operation and production at TECT. Spirit is the primary client for TECT, however, this new facility may increase market share to include Airbus, Boeing and Vought.

TECT will be investing $2,764,000 in building improvements and new machinery and equipment. The renovation project has already made significant progress and the company has hired personnel to support the new facility. The City of Wichita and Sedgwick County have partnered to offer economic development assistance to TECT. The City and Sedgwick County will provide $25,000 each in forgivable loan funds to offset construction costs and costs of acquiring machinery and equipment, subject to governing body approval. The State of Kansas has provided training assistance funds as well as tax credits for job creation and capital investment.

**Financial Considerations**: The forgivable loan proceeds in the amount of $25,000 will be provided to TECT from funds budgeted in the Economic Development Fund for economic development incentives in 2010.

Wichita State University Center for Economic Development and Business Research calculated a cost-benefit analysis indicating benefit-to-cost ratios, which are as follow:

| | |
|---|---|
| City of Wichita | 5.35 to one |
| General Fund | 2.82 to one |
| Debt Service | N/A |
| Sedgwick County | 3.16 to one |
| USD 266 | N/A |
| State of Kansas | N/A |

**Goal Impact:** Economic Vitality and Affordable Living. Providing economic development incentives to TECT creates critical manufacturing jobs and investment and encourages future growth of the economy.

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

**Recommendation/Actions**: It is recommended that the City Council approve the forgivable loan agreement for TECT Power, place the home rule ordinance on first reading and authorize the necessary signatures.

**Attachments**: Forgivable Loan Agreement and Promissory Note, Ordinance

(PUBLISHED IN THE WICHITA EAGLE ON NOVEMBER 12, 2010)

ORDINANCE NO. 48-891

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, PRESCRIBING THE FORM AND AUTHORIZING THE EXECUTION OF A FORGIVABLE LOAN AGREEMENT AND PROMISSORY NOTE BY AND BETWEEN TECT POWER, INC. AND THE CITY OF WICHITA, KANSAS.

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

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

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

Section 1. Findings and Approval of Forgivable Loan. The City's Governing Body hereby finds that providing a forgivable loan in the amount of $25,000, to TECT Power, Inc., will advance economic development in Wichita, Kansas and will serve a public purpose.

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

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

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

PASSED by the Governing Body of the City of Wichita, Kansas this 9th day of November, 2010.

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

[Seal]

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, City Attorney

**FORGIVABLE LOAN AGREEMENT and PROMISSORY NOTE**

This Loan Agreement and Promissory Note (the "Agreement"), effective this ____ day of September 2010, is entered into between the following parties:

Lender: City of Wichita ("Lender")
525 N. Main
Wichita, Kansas 67203
Contact Person/Title: Allen Bell, Director of Urban Development
Phone: 316-268-4524 FAX: 316-858-7890

Borrower: TECT Power, Corporation ("Borrower")
334 Beechwood Road, Suite 303
Ft. Mitchell, KY 41017
Contact Person/Title: Peter W. Knapper, Vice President of Operations
Phone: (859) 426-0144 FAX: (859) 426-0433
FEIN: 58-2642076

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

WHEREAS, the Borrower has specified that this funding will be used to _____ in Wichita, Kansas; and

WHEREAS, the Lender has authorized an expenditure of up to $25,000 for the purpose of making a loan to the Borrower under such terms and conditions as may be prescribed by the Lender.

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

1) **Loan Amount and Terms**: Subject to the terms and conditions of the Agreement, the Lender hereby agrees to provide the Borrower with the principal sum of up to $25,000 for a sixty (60) month period. Interest will accrue from the date of disbursement at the rate of zero percent (0.0%) per annum on the unpaid balance. Should a default occur, repayment of all principal and interest will be made immediately in accordance with the provisions shown below. This loan is not transferable.

2) **Forgiveness of Debt**: The Borrower promises to create and maintain minimum employment levels at the Wichita, Kansas facility, starting from a base employment level of 15 jobs, at the end of each of five (5) years as shown in the following schedule:

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 |
|---|---|---|---|---|---|
| Total Employment: | 17 | 21 | 29 | 37 | 41 |
| Total Wages: | **$865,623** | **$1,069,299** | **$1,476,651** | **$1,884,003** | **$2,087,679** |

Job figures reflect full-time equivalent (FTE) positions only. One FTE is equal to 2080 hours earned per year, including vacation. Average salary of all positions shall be at least $50,919/year.

The outstanding principal balance will be divided by the total number of years in the term, and the resulting figure will be the "installment". The first anniversary date for meeting the first year's job creation commitment shall be September 30, 2011. On the first anniversary and at each scheduled anniversary date thereafter where the Borrower has achieved the required job and wage commitment, an amount equal to an installment, plus any accrued interest, will be forgiven

However, in the event the Borrower ceases to operate asTECT Power Corporation in Wichita, Kansas during the term of this agreement, any principal and interest which has been forgiven will be repaid in accordance with paragraph (16) below.

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

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

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

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

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

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

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

9) **Use of Funds**: The monies from this loan shall be used by the Borrower to pay for costs directly related to _____, _____ at the Borrower's worksite in Wichita, Kansas. Lender shall disburse funds to the Borrower upon presentation of written proof that the aforementioned costs have been incurred by the Borrower. Any machinery and equipment obtained using these loan funds will be promptly identified to the Lender, including narrative description and serial number, and will remain in the Wichita, Kansas facility for the duration of this agreement. The Lender or its representative shall be afforded the right of inspection of such machinery and equipment throughout the term of this agreement.

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

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

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

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

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

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

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

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

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

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

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

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

b) interest accrued since the previously scheduled anniversary date.

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

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

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

c) interest penalties equal to a twelve percent (12%) compounded annual rate calculated for a 5 year period against the highest outstanding principal amount over the term of the loan.

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

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

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

b) interest penalties equal to a twelve percent (12%) compounded annual rate calculated against the principal balance for the period during which it has been outstanding.

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

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

In the event of continued default following a fifteen (15) day written notice of default, the Lender may, at its option, declare all unpaid indebtedness evidenced by this Agreement and any modifications thereof, immediately due and payable, without further notice, regardless of date of maturity. The Lender's failure to exercise this option when available at any point in time shall in no way invalidate its right to exercise the option in future default situations. Should it become necessary to collect the monetary obligations of this Agreement through an attorney, the Borrower agrees to pay all costs of collecting these monies, including reasonable attorneys' fees to the extent permitted by law, whether collected by suit, foreclosure, or otherwise.

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

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

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

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

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

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

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334 Beechwood Road, Suite 303
Ft. Mitchell, KY 41017

City: City Manager's Office
Attn: Allen Bell, Urban Development Director
455 N. Main, 13th Floor
Wichita, KS 67202

Department of Law
Attn: Gary Rebenstorf, City Attorney
455 N. Main, 13th Floor
Wichita, KS 67202

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

28) **Kansas Law.** This agreement shall be construed in accordance with the laws of the State of Kansas.

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

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

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

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

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

D. If Borrower is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Borrower shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by Lender.

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

IN WITNESS WHEREOF, the parties have signed their names below.

LENDER:

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

TECT POWER CORPORATION:

_____
Pete Knapper, Vice President of Operations

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf
City Attorney

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Ordinance to Terminate the Planeview Redevelopment District, Tax Increment Financing (District III)

**INITIATED BY:** Office of Urban Development

**AGENDA:** New Business

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**Recommendations**: Approve the request for declaration of emergency and adopt the ordinance on first reading.

**Background**: On September 14, 2010, the City Council held a public hearing and approved an ordinance establishing a redevelopment district in the area southeast of George Washington Boulevard and Pawnee Avenue for the purpose of providing tax increment financing (TIF) to pay a portion of the costs of building a grocery store to serve the Planeview area. State law requires cities to pass an ordinance terminating a redevelopment district if the county commission or school board exercises its right to veto the establishment of the district within 30 days of the public hearing, which Sedgwick County has done.

**Analysis**: The Board of Sedgwick County Commissioners and the USD 259 Board of Education had until October 14, 2010 to determine whether establishment of the district would have an adverse impact on the County or School District. If either the County or School District determines an adverse impact, the district cannot be established. By law, the City has 30 days from receipt of a resolution determining an adverse impact to pass an ordinance terminating the district.

On October 8, 2010, the City received a copy of Sedgwick County Resolution 180-10, stating that the Planeview Redevelopment District will have an adverse affect on Sedgwick County. The City Council has until November 7, 2010 to adopt the attached Ordinance terminating the Planeview Redevelopment District.

**Financial Considerations**: Repeal of the Ordinance establishing a redevelopment district will eliminate tax increment financing for the Planeview Grocery Store project.

**Goal Impact**: Economic Vitality and Affordable Living and Quality of Life. Redevelopment of blighted and declining areas are needed to avoid economic stagnation. Business prospects and workers seeking to relocate are attracted to a city that takes care of its older sections.

**Legal Considerations**: The attached resolution declaring an emergency and the repealing ordinance have been reviewed by the City's Law Department and approved as to form.

**Recommendation/Action**: It is recommended that the City Council approve the request for declaration of emergency and adopt the ordinance on first reading.

**Attachment(s)**: Declaration of Emergency and Ordinance

**ORDINANCE NO. 48-889**

**AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, REPEALING ORDINANCE NO. 48-837 OF SAID CITY.**

**WHEREAS**, Ordinance No. 48-837 of the City of Wichita, adopted September 21, 2010, provided for the establishment of the Planeview Redevelopment District; and,

**WHEREAS**, The Board of Commissioners of Sedgwick County ("County") passed Resolution 180-10 stating that the County has determined that the Planeview Redevelopment District would have an adverse effect on the County; and,

**WHEREAS**, the Governing Body of the City of Wichita wishes to repeal Ordinance No. 48-837 pursuant to K.S.A. 12-1771;

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

**SECTION 1**. **Repeal of Ordinance No. 48-837**. Ordinance No. 48-837 of the City of Wichita is hereby repealed.

**SECTION 2. Effective Date**. This Ordinance shall take effect and be in full force from and after its adoption by the Governing Body of the City of Wichita, Kansas, and publication once in the official newspaper of the City. PASSED by the Governing Body of the City of Wichita, Kansas this 2nd day of November, 2010.

CITY OF WICHITA, KANSAS

By_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

(SEAL)

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 ADOPTION OF AN ORDINANCE BELOW DESIGNATED.

TO THE MEMBERS OF THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS:

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 day of its introduction, to wit, November 2, 2010, of an Ordinance entitled:

ORDINANCE NO. __-___

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS, REPEALING ORDINANCE NO. 48-837 OF SAID CITY.

The general nature of such public emergency lies in the need to pass and publish the proposed repeal as soon as possible, to ensure that the City repeals Ordinance 48-837 within 30 days of receipt of a resolution from the Board of County Commissioners of Sedgwick County determining that a redevelopment district will have an adverse impact on the County.

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

Executed at Wichita, Kansas on this 2nd day of November, 2010.

MAYOR OF THE CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

(Seal)

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, City Attorney

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Revisions to Community Improvement District Policy

**INITIATED BY:** Office of Urban Development

**AGENDA:** New Business

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**Recommendation**: Approve the revised policy.

**Background:** On April 6, 2010, the City Council approved the Community Improvement District (CID) Policy to govern the City's use of recently enacted legislation which allows cities and counties to provide financial assistance to real estate developers through the imposition of special sales taxes or special assessment taxes within CID districts created pursuant to petitions by landowners. The approved CID Policy sets stricter limits than those imposed by the CID legislation in certain areas, including:

- requiring 100% petitions and public hearings for all CID projects,
- prohibiting the use of full faith and credit CID bonds,
- requiring gap analysis to demonstrate a financial need for all CID projects except those funded with CID sales taxes on a "pay-as-you-go" basis and
- limiting the use of the CID program to commercial, industrial and mixed-use projects with total costs exceeding $500,000 for "pay-as-you-go" projects and $2,000,000 for bonded projects.

On April 20, 2010, the City Council amended the CID Policy to eliminate the requirement to determine a financial need for use of CID financing for a development project if the financing is on a pay-as-you-go basis. The Council deferred consideration of an amendment pertaining to the use of CID financing for residential developments to a later date. At this time, staff presents a policy revision that includes that issue, among others.

**Analysis:** The proposed CID Policy amendments address seven (7) primary issues:

1) What method of on-going public disclosure is appropriate for CID projects?
2) Should there be a specific public purpose justification determined for each CID project?
3) Should the total amount of CID reimbursements paid to a developer be limited?
4) Should CID sales tax revenue be used to reimburse operating costs?
5) Should residential developments be added to the permitted uses of CID?
6) Should the use of CID financing be allowed in Greenfield areas?
7) What restrictions should be placed on the assignment CID revenues to third parties?

1. On-going Public Disclosure

There has been some public discussion about the need for the on-going disclosure of retail establishments where a special sales tax is collected, as opposed to a general sales tax that is collected uniformly throughout the local jurisdiction. Developers interested in using CID believe strongly that an on-site signage requirement would defeat the purpose of providing them with CID financing because it will make it impossible to attract tenant retailers who would be required to post the signs, which they believe would deter shoppers. Staff has researched the possibility of requiring retailers in CIDs to list the CID sales tax as a separate line item on the sales receipt, as an alternative to signage. The Kansas Department of

Revenue has advised that administrative regulations would not allow this as a requirement, since retailers are required by official regulation to list total sales tax as a lump sum.

Staff recommends that the City will maintain a CID website, where the public can learn where all existing CIDs are located and how they work, including maps. Staff also recommends that existing tenants in a proposed CID be given notice of public hearings. If the City Council decides that on-site disclosure should be required, retailers could be given the option of posting a sign near the store entrance or voluntarily itemizing the CID sales tax amount on the sales ticket. The sign should be at least 24 square inches in size, use a font size of at least 36 points and state the percentage amount of CID tax collected there. The attached CID policy shows a revision in brackets, in the Public Disclosure section, that could be used if the City Council votes to include a signage requirement.

2. Public Purpose Justification

Developers have asserted the general justification that hard economic times make it difficult to undertake commercial developments, in terms of attracting tenants and obtaining adequate financing. However, not all developments are the same in terms of market feasibility, competitive situation and financial need, and it is reasonable that City Council Members be provided with a basis for determining whether a proposed CID assistance is warranted and needed. Developers feel that the best way to avoid issues of competitive advantage is to make CID generally available, in the same way as special assessment financing is available for duly petitioned special benefit districts.

Staff recommends that developers be required to state, in the petition, what public purpose is being served by the project and what factors make it necessary to request assistance. Additionally, CIDs should not be approved for projects in which construction is already underway.

3. Limits on CID Reimbursement Amount

As part of the approval process, developers are required to provide the City with an estimate of the proposed Sources and Uses of Funds needed for their development project. The Uses of Funds will include all eligible capital costs of the project, while the Sources will show the estimated amount of CID revenue that would be generated by the CID sales tax over the 22-year term of the district, along with other contemplated sources of funding such as bank loans and developer equity. By showing the other sources of funding, the developer is presumably demonstrating the ability to fully fund the project using only the amount of CID revenue shown in the Sources and Uses of Funds.

In a pay-as-you-go CID project, the CID sales tax would reimburse the developer for actual costs and would likely be used to make loan payments. There is no risk to the City if CID revenue falls short of projections, and developers believe that they should be entitled to receive any excess over projections, up to the total amount of eligible costs, as compensation for the risk. Developers point out that estimating CID revenues is not an exact science and that CID approval is often required before the amount of bank financing has been finalized. They also point out that banks take into consideration the “up-side” potential for CID revenues in underwriting the loan. Elimination of any “up-side” could impact the availability of bank financing. Generally in commercial lending, a coverage ratio of 125% is a minimum requirement.

Staff recommends that total reimbursement be capped at 125% of the estimated amount of CID sales tax revenues projected over 22 years.

4. Operating Cost Reimbursement

State law allows certain specified operating costs to be paid for with CID taxes, in keeping with the purported reasoning that it will be easier for developers to undertake development projects in difficult economic times if the burden of operating costs can be partially shifted from rents to taxes. This view

does not take into account the unfair competition issue created when some developers have the ability to use this tool and others do not. This issue is mitigated by the fact that the amount of CID sales tax revenue is limited by the gross sales; and in most cases, eligible *capital* costs of a project will far exceed the amount of CID sales tax revenue that can be generated in 22 years. In spite of this, developers would like to keep the flexibility of using CID taxes to pay both operating costs and capital costs, since either will allow them to offer more competitive lease rates.

Staff recommends allowing reimbursement of eligible operating costs, if stipulated in the petition. This would be limited by the overall cap on reimbursements based on the estimated amount of CID revenue that can be generated over 22 years.

5. Add Residential to Permitted Uses

The current CID Policy permits the use of CID financing for mixed-use projects which would include a residential component, but not for projects that are purely residential. Residential projects do not generate sales tax, so special assessment taxes are the sole source of CID revenue. Developers have requested reconsideration of this policy, but limited to construction of common-area amenities, such as swimming pools, recreational facilities and green space. Such amenities are usually financed by developers and cost recouped through the margin on the sale of lots or houses. The operation and maintenance of these amenities is usually paid from homeowners association fees. The City has adopted the Parks, Recreation and Open Space (PROS) Plan which urges developers to include these types of amenities in their developments.

Staff recommends allowing the use of CID special assessment taxes to finance common amenities within residential developments that are called for by the PROS Plan. CID should not be used to pay operating costs in residential developments.

6. Limits on Greenfield Development

Neither state law nor the current City policy provide any geographic eligibility criteria for the use of CID financing. Often, financial incentives target areas in need of revitalization as a way of ensuring that a public purpose is served. Based on its genesis, it is apparent that the legislative intent was to assist with new commercial developments, which most often occur in Greenfield areas. Greenfield areas are often in the path of urban growth and might not require assistance to the same extent as in-fill areas. In-fill areas are in more densely developed parts of town where near-by retailers could be at a competitive disadvantage to developments supports by CID taxes. A geographic criterion for use of CID would be difficult to devise.

Staff recommends keeping the policy of not limiting the use of CID based on location. The requirement for a public purpose statement should address location issues, if they pertain.

7. Right of Assignment

The City's CID Policy requires the City and developers to enter into a development agreement which contractually governs the operation of the CID, including payment of CID revenues to developers, to reimburse documented eligible expenses. Typically, contractual rights can be assigned with consent of the parties, and the agreements set forth the conditions. CID developers need to be able to assign their rights to CID revenue as collateral to banks, and this should require only notice to the City. Assignment to other third parties may be needed, especially in the event of a sale of the development, and City approval should be sought. The extent of assignments can become a problem if a developer wants to carve off portions of the development and assign a portion of the revenue rights to multiple sub-developers or tenants. Apportionment of the revenue would be required and would be the responsibility of the City.

To avoid the liability and responsibility for subdividing the CID revenue and making payments to multiple recipients on behalf of developers, staff proposes a policy revision that limits assignments to a collateral assignment of all rights to a lender with notification to the City, and a one-time assignment of all rights to any assignee with consent of the City at the City's discretion. This latter assignment would allow developers to use a third-party fiduciary, if desired, to receive the payments, subdivide them and disburse funds to multiple recipients.

Staff recommends that collateral assignment of all CID revenue rights to a lender be allowed with written notice to the City and that full assignment of all CID revenue rights be allowed to any one assignee, with prior written approval by the City, at the City's discretion.

Technical Clarifications
Staff has also made revisions to clarify requirements relating to annual reporting and the disposition of administrative service fees.

**Financial Considerations:** There are no costs to the City resulting from the proposed amendments. On-site signage requirements will result in an unknown but relatively modest cost to the developers or retailers in a CID.

**Goal Impact:** Economic Vitality and Affordable Living; Quality of Life. The ability to pass some of the cost of real estate development on to customers will stimulate this important economic activity in difficult economic times.

**Legal Considerations:** The revisions to the CID Policy have been reviewed by the Law Department. Revisions to the CID Policy should not be applied retroactively where such would require revisions that are adverse to developers and already executed development agreements.

**Recommendations/Actions:** It is recommended that the City Council approve the Revised Community Improvement District Policy.

**Attachments:** Revised CID Policy

# CITY OF WICHITA COMMUNITY IMPROVEMENT DISTRICT POLICY

## PURPOSE AND BACKGROUND

In 2009, the Kansas Legislature enacted the Community Improvement District Act (the "CID Act"), pursuant to which municipalities may create districts in which certain special taxes imposed and the revenue used to fund certain public and private improvements and the payment of certain ongoing operating costs within the geographic bounds of the specified district. The creation of a Community Improvement District ("CID") is a particularly useful tool of economic development in that it can help facilitate beneficial private development and redevelopment without negatively impacting the tax base of the approving municipality.

It is the policy of the City of Wichita to utilize the provisions of the CID Act to assist private developers by providing financing for commercial, industrial and mixed-use projects that meet the local eligibility criteria outlined below, subject to certain special local policy limitations outlined below. A CID can exist for a maximum of 22 years.

## LOCAL ELIGIBILITY CRITERIA

It shall be the policy of the City to create a CID if, in the opinion of the City Council, the petition satisfies all statutory requirements of the CID Act and if creation of such CID would meet the following criteria:

(1) The CID will attract development which would enhance the economic climate of the City or otherwise benefit the City or its residents.

(2) The CID will result in the construction of public or private property improvements and infrastructure, or the provision of ongoing services, that would otherwise not be financially feasible.

(3) The CID will promote redevelopment or rejuvenation of properties within the City which would otherwise be unlikely to happen. Special consideration will be given to projects located in the Neighborhood Revitalization Area, the Central Business District or an area for which a neighborhood plan, a corridor plan or a redevelopment plan have been adopted by the City of Wichita.

(4) The CID will be used to assist the development of commercial, industrial and mixed-use projects, and for common area amenities in residential developments that are called for in the Parks, Recreation and Open Space (PROS) Plan.

(5) The CID will not be used for projects that are incompatible or inconsistent with a neighborhood plan including any of the

following: sexually oriented businesses, community correctional facilities, half-way houses, drug or alcohol rehabilitation facilities, new or used car lots, multi-game, casino-style gambling facilities, and commercial billboard siting.

(6) The CID will support projects with total costs of not less than $2,000,000 for bonded projects or $500,000 for pay-as-you go.

## CID PETITION PROCESS

A CID is formed by the petition of landowners within the proposed CID. According to the CID Act, a petition to create a CID must be signed by the owners of at least 55% of the total land area and total assessed property value within the proposed district. However, it is the policy of the City of Wichita that only petitions signed by 100% of property owners will be accepted. Upon receipt of the petition, the City Council may approve the CID. In cases in which no special sales tax is requested (i.e. only special property tax assessments are requested), the City Council may create the requested CID without notice or a public hearing. If a special sales tax is requested, the City Council must give notice and hold a public hearing pursuant to the CID Act.

A CID petition must contain:

1. the general nature of the proposed CID project;
2. a statement of the public purpose being served by the use of CID financing;
3. the estimated cost of the proposed CID project including maximum amount of CID funding to be paid prior to termination of CID, based on 125% of the total estimated amount of CID revenue during the 22-year term of the CID;
4. the proposed method of financing the project (special assessments or special sales tax);
5. the proposed amount and method of assessment;
6. the proposed method of financing (pay-as-you-go or special obligation bonds);
7. a map of the proposed CID; and
8. the legal description of the boundaries of the proposed CID.

## SOURCES OF FUNDING FOR CID IMPROVEMENTS

Landowners or developers seeking to form a CID may request to draw upon one of the following two revenue sources, or a combination of both, to fund eligible improvements:

(1) Special property tax assessments on the property within the district, or

(2) A special sales tax of up to 2% on all taxable sales within the district.

Upon the creation of a CID by the City Council, revenue generated by these sources is available to pay for eligible improvements and costs. This can occur in one of two ways: a bond issuance or a pay-as-you-go dedicated account.

Bond Issuance – In cases in which a bond issuance is requested, the City's Urban Development Office will work with the landowners within the CID to calculate how much revenue will be

raised from the CID revenues (the special property tax and/or special sales tax levied within the CID) and the principal amount of bonds that can be issued based on the CID revenue stream and a minimum 1.2 debt service coverage ratio. The City may then issue bonds in that amount and use the CID revenue to retire the debt. The proceeds from the sale of the bonds will be used on eligible improvements and costs pursuant to the development agreement. While the CID Act permits the issuance of either full-faith and credit general obligation bonds or special obligation bonds, payable solely from the CID revenue, it is the policy of the City of Wichita to issue only special obligation CID bonds.

Pay-As-You-Go Account – As an alternative to a bond issuance, the landowners within the CID may request the establishment of a pay-as-you-go account. This account will be a dedicated account into which the CID revenues will be deposited and will be available to be used as funds accrue to pay eligible costs.

Funds used to pay eligible CID costs, whether from bond proceeds or a pay-as-you-go account, will be held by the City or a third-party trustee, and disbursed to pay actual costs pursuant to a development agreement. Preference will be given to projects that use pay-as-you-go financing.

## ELIGIBLE CID COSTS

The CID Act provides an exclusive list of eligible improvements and costs that may be paid for with CID funding. CID funds may be used to acquire, plan, design, engineer, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip, extend or finance:

(1) Buildings, structures, and facilities;
(2) Site improvements, including without limit sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heating and electrical services and connections located within or without the public right-of-way, and water mains and extensions;
(3) Parking garages;
(4) Streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers;
(5) Parks, lawns, trees and other landscaping;
(6) Communication and information booths, bus stops and other shelters, stations, terminals, hangars, rest rooms and kiosks;
(7) Paintings, murals, display cases sculptures, fountains and other cultural amenities;
(8) Airports, railroads, light rail and other mass transit facilities; and
(9) Lakes, dams, docks, wharfs, lakes or river ports, channels and levies, waterways and drainage conduits.

The CID Act also permits the use of CID funds to pay ongoing operating expenses, including security, entertainment, public events, business promotion, employee training, and market

studies; however, it is the policy of the City of Wichita that CID funds may only be used to pay eligible operating costs up to the maximum amount identified in the petition and may not be used for operating costs in residential developments. CID funds may be used to reimburse capital costs incurred not earlier than one year prior to City Council action initiating the establishment of a CID, and City administrative costs and costs of issuance.

## PROCESS FOR CREATING A CID

**All of the projects will be subject to the notice and hearing process.**

- Approval Process
  - The City Council shall adopt a resolution giving notice of a public hearing to consider the advisability of creating the CID.
    - Such resolution shall be published once each week for two consecutive weeks in the City's official newspaper and shall be sent by certified mail to all owners and occupants of property within the proposed district.
    - The second publication of such resolution shall occur at least seven (7) days prior to the date of the hearing and the certified mailed notice shall be sent at least ten (10) days prior to the hearing.
    - Such resolution shall contain the following information:
      - Time and place of the hearing;
      - General nature of the proposed district;
      - Estimated cost of the project;
      - Proposed method of financing the project, including, if applicable, the issuance of full-faith and credit bonds;
      - The proposed amount of the CID sales tax, if any;
      - The proposed amount and method of assessment, if any;
      - A map of the proposed district; and
      - A legal description of the proposed district.
  - Following the hearing, the City Council may by majority vote approve the CID by ordinance.
    - The ordinance shall:
      - Authorize the project;
      - Approve the estimated costs of the project;
      - Contain a legal description and map of the proposed district;
      - Levy the CID sales tax, if any;
      - Approve the maximum amount and method of assessment, if any; and
      - Approve the method of financing.
    - Such ordinance shall become effective upon publication once in the newspaper.
    - The ordinance shall also be submitted for recording in the office of the register of deeds of the county in which the district is located.

## PRELIMINARY REVIEW MEETING

Prior to consideration by the City Council, parties intending to request the creation of a CID must submit a draft version of the intended petition to the City Manager, the Director of Urban Development and any other City Staff designated by the City Manager. Such draft petition need not be signed by any landowners within the proposed district until such time as it is formally submitted for consideration by the City Council. Within ten (10) days after the submission of any such draft petition, the City Manager, Director of Urban Development and other City Staff designated by the City Manager, shall hold a pre-petition meeting with the party submitting such petition to evaluate the sufficiency thereof and gather information needed to determine the eligibility of the project.

## DEVELOPMENT AGREEMENT REQUIRED

Concurrently with, or prior to, the creation of a CID by the City Council, the City and the petitioner shall enter into a Development Agreement governing the conduct of the respective parties in relation to the proposed CID. The Development Agreement will include a site plan and elevation drawings or renderings of the CID project, and a Sources and Uses of Funds table that identifies the various sources of public and private project funds and how they will be used.

Among all other provisions, the Development Agreement will set forth the method and manner for disbursement of CID funds by the City, including the proceeds of bonds paid with CID funds, to pay for eligible project costs pursuant to acceptable documentation that such costs have been incurred. The assignment of Development Agreement rights shall be limited to a collateral assignment of all rights to a lender with written notice to the City, or assignment of all rights to any third party assignee with the written consent of the City or City Representative, at the discretion of the City. The assignment of rights shall not impair the City's right to determine the eligibility of CID costs nor require the City to subdivide any CID funds due to the developer.

In addition, the agreement shall provide for rapid repayment of the bonds and termination of the tax. City administrative fees and costs of issuance shall be paid from CID funds. For "pay-as-you-go" CID projects, the agreement will set forth the method and manner of disbursement of CID funds to the developers and shall include provisions for the termination of the CID taxes when developers have been fully reimbursed for eligible CID costs.

## "GAP" FINANCING REQUIREMENT

CID projects financed with special obligation bonds will not be approved without a financial analysis that demonstrates that the project would not otherwise be possible without the use of CID funding ("gap" analysis). CID projects financed on a "pay-as-you-go" basis do not require a "gap" analysis. Any applicant requesting use of special obligation bonds will be required to provide City Staff with pro forma cash flow analyses and sources and uses of funds in sufficient detail to demonstrate that reasonably available conventional debt and equity financing sources will not fund the entire cost of the project and still provide the applicant a reasonable market rate of return on investment. "Gap" financing, including CID and any other public financing, should not exceed 30% of the total project cost.

## BACKGROUND CHECK

The City will conduct a background check on all CID applicants and applicants' project partners. Applicants are required to furnish City Staff the personal and business information needed to carry out such a background check. Such information will be treated as confidential information to the maximum extent allowed by the KORA.

## PROJECT MANAGEMENT AND DEVELOPMENT FEES

CID funds may not be used to pay development fees. Project management fees may be financed through CID revenues only if the need for such financing is established through analysis of financial information showing that private funding is not available to pay such costs based on a market rate of return on investment. If allowed, project management fees paid through CID revenues must be documented as actual costs incurred.

## CITY ADMINISTRATIVE FEES

The City shall be paid a non-refundable application fee of $5,000 with the formal submittal of any CID petition. For any approved CID, the City shall be paid an on-going administrative service fee, in an amount equal to 5% of the total CID revenues received by the City. The $5,000 application fee shall serve as a credit against the 5% on-going administrative service fee.

## STANDARD DESIGN GUIDELINES GOVERN

All property improvements commenced under an approved CID shall be subject to City regulations, standards, and policies, including, but not limited to: zoning and subdivision regulations, building codes, the City code, and any applicable design guidelines currently in place or hereafter approved. In addition, project plans and renderings shall be reviewed by the City's Design Council and any suggestions provided by that body will be incorporated into the design of the project unless expressly overruled by the City Manager.

## FINANCIAL REPORTING

Developer will provide a certified annual accounting to the City on the amount and use of CID funds used to pay CID costs, by June 1 of the following year. City reserves the right to audit the use of CID financing at its discretion and expense.

## PUBLIC DISCLOSURE

The City shall establish and maintain a special website, linked to the City's official website, which lists all approved CIDs existing within the City and provides a description of the CID, including a map of its location, the amount of CID taxes and the intended use of CID funding.

[In addition, developers will be responsible for signs being posted adjacent to the main entrance of every retail establishment within the CID where a special sales tax is charged. The signs must

be at least 24 square inches in size and contain the words: "COMMUNITY IMPROVEMENT DISTRICT SALES TAX OF 2% COLLECTED HERE" (with the appropriate tax rate inserted), using type face of at least 36 points in size. As an alternative to this requirement, retail establishments may elect to list the amount of the CID sales tax as a separate line item on the sales invoice or receipt provided to each customer. Continuing failure to comply with this requirement will result in termination of CID reimbursement payments.]

**TERMINATION OF CIDS**

Subject to provisions contained in development agreements, the City shall take appropriate action to terminate CIDs when all eligible project costs have been fully paid, including the principal and interest on any special obligation CID bonds or in the case of pay-as-you-go projects, the maximum CID funding amount provided in the petition.

**WAIVER OF POLICY**

Should the City Council determine the terms of this policy inappropriate to evaluate a particular CID application, it may, by majority vote, waive the binding effect of this policy in regard to that application.

# CITY OF WICHITA COMMUNITY IMPROVEMENT DISTRICT POLICY

## PURPOSE AND BACKGROUND

In 2009, the Kansas Legislature enacted the Community Improvement District Act (the "CID Act"), pursuant to which municipalities may create districts in which certain special taxes imposed and the revenue used to fund certain public and private improvements and the payment of certain ongoing operating costs within the geographic bounds of the specified district. The creation of a Community Improvement District ("CID") is a particularly useful tool of economic development in that it can help facilitate beneficial private development and redevelopment without negatively impacting the tax base of the approving municipality.

It is the policy of the City of Wichita to utilize the provisions of the CID Act to assist private developers by providing financing for commercial, industrial and mixed-use projects that meet the local eligibility criteria outlined below, subject to certain special local policy limitations outlined below. A CID can exist for a maximum of 22 years.

## LOCAL ELIGIBILITY CRITERIA

It shall be the policy of the City to create a CID if, in the opinion of the City Council, the petition satisfies all statutory requirements of the CID Act and if creation of such CID would meet the following criteria:

(1) The CID will attract development which would enhance the economic climate of the City or otherwise benefit the City or its residents.

(2) The CID will result in the construction of public or private property improvements and infrastructure, or the provision of ongoing services, that would otherwise not be financially feasible.

(3) The CID will promote redevelopment or rejuvenation of properties within the City which would otherwise be unlikely to happen. Special consideration will be given to projects located in the Neighborhood Revitalization Area, the Central Business District or an area for which a neighborhood plan, a corridor plan or a redevelopment plan have been adopted by the City of Wichita.

(4) The CID will be used to assist the development of commercial, industrial and mixed-use projects, and for common area amenities in residential developments that are called for in the Parks, Recreation and Open Space (PROS) Plan.

(5) The CID will not be used for projects that are incompatible or inconsistent with a neighborhood plan including any of the

following: sexually oriented businesses, community correctional facilities, half-way houses, drug or alcohol rehabilitation facilities, new or used car lots, multi-game, casino-style gambling facilities, and commercial billboard siting.

(6) The CID will support projects with total costs of not less than $2,000,000 for bonded projects or $500,000 for pay-as-you go.

## CID PETITION PROCESS

A CID is formed by the petition of landowners within the proposed CID. According to the CID Act, a petition to create a CID must be signed by the owners of at least 55% of the total land area and total assessed property value within the proposed district. However, it is the policy of the City of Wichita that only petitions signed by 100% of property owners will be accepted. Upon receipt of the petition, the City Council may approve the CID. In cases in which no special sales tax is requested (i.e. only special property tax assessments are requested), the City Council may create the requested CID without notice or a public hearing. If a special sales tax is requested, the City Council must give notice and hold a public hearing pursuant to the CID Act.

A CID petition must contain:

1. the general nature of the proposed CID project;
2. a statement of the public purpose being served by the use of CID financing;
3. the estimated cost of the proposed CID project including maximum amount of CID funding to be paid prior to termination of CID, based on 125% of the total estimated amount of CID revenue during the 22-year term of the CID;
4. the proposed method of financing the project (special assessments or special sales tax);
5. the proposed amount and method of assessment;
6. the proposed method of financing (pay-as-you-go or special obligation bonds);
7. a map of the proposed CID; and
8. the legal description of the boundaries of the proposed CID.

## SOURCES OF FUNDING FOR CID IMPROVEMENTS

Landowners or developers seeking to form a CID may request to draw upon one of the following two revenue sources, or a combination of both, to fund eligible improvements:

(1) Special property tax assessments on the property within the district, or

(2) A special sales tax of up to 2% on all taxable sales within the district.

Upon the creation of a CID by the City Council, revenue generated by these sources is available to pay for eligible improvements and costs. This can occur in one of two ways: a bond issuance or a pay-as-you-go dedicated account.

Bond Issuance – In cases in which a bond issuance is requested, the City's Urban Development Office will work with the landowners within the CID to calculate how much revenue will be

raised from the CID revenues (the special property tax and/or special sales tax levied within the CID) and the principal amount of bonds that can be issued based on the CID revenue stream and a minimum 1.2 debt service coverage ratio. The City may then issue bonds in that amount and use the CID revenue to retire the debt. The proceeds from the sale of the bonds will be used on eligible improvements and costs pursuant to the development agreement. While the CID Act permits the issuance of either full-faith and credit general obligation bonds or special obligation bonds, payable solely from the CID revenue, it is the policy of the City of Wichita to issue only special obligation CID bonds.

Pay-As-You-Go Account – As an alternative to a bond issuance, the landowners within the CID may request the establishment of a pay-as-you-go account. This account will be a dedicated account into which the CID revenues will be deposited and will be available to be used as funds accrue to pay eligible costs.

Funds used to pay eligible CID costs, whether from bond proceeds or a pay-as-you-go account, will be held by the City or a third-party trustee, and disbursed to pay actual costs pursuant to a development agreement. Preference will be given to projects that use pay-as-you-go financing.

## ELIGIBLE CID COSTS

The CID Act provides an exclusive list of eligible improvements and costs that may be paid for with CID funding. CID funds may be used to acquire, plan, design, engineer, improve, construct, demolish, remove, renovate, reconstruct, rehabilitate, maintain, restore, replace, renew, repair, install, relocate, furnish, equip, extend or finance:

(1) Buildings, structures, and facilities;
(2) Site improvements, including without limit sidewalks, streets, roads, interchanges, highway access roads, intersections, alleys, parking lots, bridges, ramps, tunnels, overpasses and underpasses, traffic signs and signals, utilities, pedestrian amenities, abandoned cemeteries, drainage systems, water systems, storm systems, sewer systems, lift stations, underground gas, heating and electrical services and connections located within or without the public right-of-way, and water mains and extensions;
(3) Parking garages;
(4) Streetscape, lighting, street light fixtures, street light connections, street light facilities, benches or other seating furniture, trash receptacles, marquees, awnings, canopies, walls and barriers;
(5) Parks, lawns, trees and other landscaping;
(6) Communication and information booths, bus stops and other shelters, stations, terminals, hangars, rest rooms and kiosks;
(7) Paintings, murals, display cases sculptures, fountains and other cultural amenities;
(8) Airports, railroads, light rail and other mass transit facilities; and
(9) Lakes, dams, docks, wharfs, lakes or river ports, channels and levies, waterways and drainage conduits.

The CID Act also permits the use of CID funds to pay ongoing operating expenses, including security, entertainment, public events, business promotion, employee training, and market

studies; however, it is the policy of the City of Wichita that CID funds may only be used to pay eligible operating costs up to the maximum amount identified in the petition and may not be used for operating costs in residential developments. CID funds may be used to reimburse capital costs incurred not earlier than one year prior to City Council action initiating the establishment of a CID, and City administrative costs and costs of issuance.

## PROCESS FOR CREATING A CID

**All of the projects will be subject to the notice and hearing process.**

- Approval Process
  - The City Council shall adopt a resolution giving notice of a public hearing to consider the advisability of creating the CID.
    - Such resolution shall be published once each week for two consecutive weeks in the City's official newspaper and shall be sent by certified mail to all owners and occupants of property within the proposed district.
    - The second publication of such resolution shall occur at least seven (7) days prior to the date of the hearing and the certified mailed notice shall be sent at least ten (10) days prior to the hearing.
    - Such resolution shall contain the following information:
      - Time and place of the hearing;
      - General nature of the proposed district;
      - Estimated cost of the project;
      - Proposed method of financing the project, including, if applicable, the issuance of full-faith and credit bonds;
      - The proposed amount of the CID sales tax, if any;
      - The proposed amount and method of assessment, if any;
      - A map of the proposed district; and
      - A legal description of the proposed district.
  - Following the hearing, the City Council may by majority vote approve the CID by ordinance.
    - The ordinance shall:
      - Authorize the project;
      - Approve the estimated costs of the project;
      - Contain a legal description and map of the proposed district;
      - Levy the CID sales tax, if any;
      - Approve the maximum amount and method of assessment, if any; and
      - Approve the method of financing.
    - Such ordinance shall become effective upon publication once in the newspaper.
    - The ordinance shall also be submitted for recording in the office of the register of deeds of the county in which the district is located.

## PRELIMINARY REVIEW MEETING

Prior to consideration by the City Council, parties intending to request the creation of a CID must submit a draft version of the intended petition to the City Manager, the Director of Urban Development and any other City Staff designated by the City Manager. Such draft petition need not be signed by any landowners within the proposed district until such time as it is formally submitted for consideration by the City Council. Within ten (10) days after the submission of any such draft petition, the City Manager, Director of Urban Development and other City Staff designated by the City Manager, shall hold a pre-petition meeting with the party submitting such petition to evaluate the sufficiency thereof and gather information needed to determine the eligibility of the project.

## DEVELOPMENT AGREEMENT REQUIRED

Concurrently with, or prior to, the creation of a CID by the City Council, the City and the petitioner shall enter into a Development Agreement governing the conduct of the respective parties in relation to the proposed CID. The Development Agreement will include a site plan and elevation drawings or renderings of the CID project, and a Sources and Uses of Funds table that identifies the various sources of public and private project funds and how they will be used.

Among all other provisions, the Development Agreement will set forth the method and manner for disbursement of CID funds by the City, including the proceeds of bonds paid with CID funds, to pay for eligible project costs pursuant to acceptable documentation that such costs have been incurred. The assignment of Development Agreement rights shall be limited to a collateral assignment of all rights to a lender with written notice to the City, or assignment of all rights to any third party assignee with the written consent of the City or City Representative, at the discretion of the City. The assignment of rights shall not impair the City's right to determine the eligibility of CID costs nor require the City to subdivide any CID funds due to the developer.

In addition, the agreement shall provide for rapid repayment of the bonds and termination of the tax. City administrative fees and costs of issuance shall be paid from CID funds. For "pay-as-you-go" CID projects, the agreement will set forth the method and manner of disbursement of CID funds to the developers and shall include provisions for the termination of the CID taxes when developers have been fully reimbursed for eligible CID costs.

## "GAP" FINANCING REQUIREMENT

CID projects financed with special obligation bonds will not be approved without a financial analysis that demonstrates that the project would not otherwise be possible without the use of CID funding ("gap" analysis). CID projects financed on a "pay-as-you-go" basis do not require a "gap" analysis. Any applicant requesting use of special obligation bonds will be required to provide City Staff with pro forma cash flow analyses and sources and uses of funds in sufficient detail to demonstrate that reasonably available conventional debt and equity financing sources will not fund the entire cost of the project and still provide the applicant a reasonable market rate of return on investment. "Gap" financing, including CID and any other public financing, should not exceed 30% of the total project cost.

## BACKGROUND CHECK

The City will conduct a background check on all CID applicants and applicants' project partners. Applicants are required to furnish City Staff the personal and business information needed to carry out such a background check. Such information will be treated as confidential information to the maximum extent allowed by the KORA.

## PROJECT MANAGEMENT AND DEVELOPMENT FEES

CID funds may not be used to pay development fees. Project management fees may be financed through CID revenues only if the need for such financing is established through analysis of financial information showing that private funding is not available to pay such costs based on a market rate of return on investment. If allowed, project management fees paid through CID revenues must be documented as actual costs incurred.

## CITY ADMINISTRATIVE FEES

The City shall be paid a non-refundable application fee of $5,000 with the formal submittal of any CID petition. For any approved CID, the City shall be paid an on-going administrative service fee, in an amount equal to 5% of the total CID revenues received by the City. The $5,000 application fee shall serve as a credit against the 5% on-going administrative service fee.

## STANDARD DESIGN GUIDELINES GOVERN

All property improvements commenced under an approved CID shall be subject to City regulations, standards, and policies, including, but not limited to: zoning and subdivision regulations, building codes, the City code, and any applicable design guidelines currently in place or hereafter approved. In addition, project plans and renderings shall be reviewed by the City's Design Council and any suggestions provided by that body will be incorporated into the design of the project unless expressly overruled by the City Manager.

## FINANCIAL REPORTING

Developer will provide a certified annual accounting to the City on the amount and use of CID funds used to pay CID costs, by June 1 of the following year. City reserves the right to audit the use of CID financing at its discretion and expense.

## PUBLIC DISCLOSURE

The City shall establish and maintain a special website, linked to the City's official website, which lists all approved CIDs existing within the City and provides a description of the CID, including a map of its location, the amount of CID taxes and the intended use of CID funding.

[In addition, developers will be responsible for signs being posted adjacent to the main entrance of every retail establishment within the CID where a special sales tax is charged. The signs must

be at least 24 square inches in size and contain the words: "COMMUNITY IMPROVEMENT DISTRICT SALES TAX OF 2% COLLECTED HERE" (with the appropriate tax rate inserted), using type face of at least 36 points in size. As an alternative to this requirement, retail establishments may elect to list the amount of the CID sales tax as a separate line item on the sales invoice or receipt provided to each customer. Continuing failure to comply with this requirement will result in termination of CID reimbursement payments.]

**TERMINATION OF CIDS**

Subject to provisions contained in development agreements, the City shall take appropriate action to terminate CIDs when all eligible project costs have been fully paid, including the principal and interest on any special obligation CID bonds or in the case of pay-as-you-go projects, the maximum CID funding amount provided in the petition.

**WAIVER OF POLICY**

Should the City Council determine the terms of this policy inappropriate to evaluate a particular CID application, it may, by majority vote, waive the binding effect of this policy in regard to that application.

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council Members

**SUBJECT:** Contract with Cox for Metro Ethernet Wide Area Network Services

**INITIATED BY:** Wichita Police Department

**AGENDA:** New Business

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**Recommendation:** Approve the contract.

**Background:** In June of 2008, the City Council approved a contract between the Police Department and ICOP Digital Inc. to provide for In-Car Digital Surveillance Systems in a limited number of police patrol cars. The contract covered eight video systems, servers, software and other computer equipment to download and store data. In October of 2008, the In-Car Digital Surveillance System was implemented in a trial phase. Each bureau has two units and each patrol station is equipped with a computer server which allows for management of the digital recordings. The data management of video recordings is the largest hurdle in any video recording program. At this time the servers are linked to the City IT network. However, the system is not capable of transferring video files on the network due to limited bandwidth. The files are viewable only on station servers.

**Analysis:** The current bandwidth used to support the In-Car Digital Surveillance System does not meet needs of the prosecutor's office to view the video both before trial and then possibly during trial. When a prosecutor needs a video for court, they contact the patrol station and a supervisor burns the video to DVD. A one hour video file can take approximately two hours to burn to disc. This burden on the supervisor takes them away from other tasks. A Request for Proposal (RFP) was created to solicit bids to provide enhanced bandwidth. The proposal from Cox Communications was selected as the lowest bid.

**Financial Consideration:** The proposed contract with Cox Communications is for up-front construction costs of $26,000, and $5,000 for the bandwidth monthly rate. The Police Department has allocated the up-front costs from the Narcotics Seizure account. Monthly charges are in the Police Department's General Fund budget.

**Goal Impact:** Provide a Safe and Secure Community for the City of Wichita.

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

**Recommendation/Actions:** It is recommended that City Council approve the contract and authorize the appropriate signatures.

**Attachments:** Contract.

# CONTRACT
# For
# CITY OF WICHITA
# METRO ETHERNET WIDE AREA NETWORK SERVICES

### BLANKET PURCHASE ORDER NUMBER BP030079

**THIS CONTRACT** entered into this ___ day of, _____ 2010, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called "**CITY"**, and **COX COMMUNICATIONS KANSAS LLC / COX KANSAS TELCOM LLC,** (Vendor Code number (818443-007) , whose principal office is at 901 S. George Washington Blvd, Wichita, Kansas, 67211, Telephone Number (316) 260-7637 hereinafter called **"VENDOR"**.

**WITNESSETH:**

**WHEREAS**, the **CITY** has solicited proposals for **City of Wichita Metro Ethernet Wide Area Network (WAN) Services** (Formal Proposal – FP030022) [Commodity Code Number [20464]; and

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

**NOW, THEREFORE**, the parties hereto agree as follows:

1. **Scope of Services. VENDOR** shall provide to the **CITY** all those commodities and/or services specified in its response to Formal Proposal Number – FP030022, [Commodity Code Number 20464] which is incorporated herein by this reference the same as if it were fully set forth. The proposal package, including all specifications and plans provided by the City of Wichita as part of the proposal process for Formal Proposal FP030022, shall be considered a part of this contract and is incorporated by reference herein. Should there be any conflict between/ among the documents, this Contract shall govern.

2. **Compensation. CITY** agrees to pay to **VENDOR** the following **price(s)** for City of Wichita Metro Ethernet Wide Area Network Services (WAN) for Formal Proposal – FP030022 [Commodity Code Number 20464], for each of the sites listed in this Request for Proposal at the monthly on-going charges and construction costs identified below as compensation as per the plans, specifications, addenda and **VENDOR'S proposal of April 2, 2010**, and as approved by the City Council on _____.
The monthly on-going charges and construction cost to provide 100 Mbps Ethernet service to the designated WAN sites are as follows: Each of the sites listed are converged voice and data links.

**Monthly Rates**

| Site Name | 100Mbps | Construction Cost |
|---|---|---|
| Hub Site – City Hall | $ 2,200.00 | $ 10,000.00 |
| Police Substation East | $ 700.00 | $ 4,000.00 |
| Fire Station #10 | $ 700.00 | $ 4,000.00 |
| Wichita Water Center | $ 700.00 | $ 4,000.00 |
| Police Substation West | $ 700.00 | $ 4,000.00 |

***Prices listed do not include applicable taxes, fees, assessments or surcharges.**

The City desires for future additional sites to be upgraded or added at the proposed monthly rate structure. Any addendum to the contract for a site upgrade or addition of a new site to the Metro-Ethernet WAN will be coterminous with the original contract. Additional sites may incur additional construction/installation charges.

3. **Term.** The term of this contract shall be from _____2010 **through** _____ 2013 **for a three (3) year period with options available to renew for an additional one (1) or two (2) year consecutive terms.** This contract is subject to cancellation by the city, at its discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to **VENDOR.**

4. **Indemnification and Insurance.**

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

b. **VENDOR** will carry insurance coverage during the term of this contract and any extensions thereof in the amounts and manner provided as follows:

1. Comprehensive General Liability covering premises—operations, xcu (explosion, collapse and underground) hazards when applicable, Product/Completed operations, Broad Form Property Damage, (Environmental**)** and Contractual Liability with minimum limits as follows:

| | |
|---|---|
| Bodily Injury Liability | $500,000 each occurrence<br>$500,000 each aggregate |
| Property Damage Liability | $500,000 each occurrence<br>$500,000 each aggregate |
| Or | |
| Bodily Injury and Property Damage Liability (Combined Single Limit) | $500,000 each occurrence<br>$500,000 each aggregate |

2. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

| | |
|---|---|
| Bodily Injury Liability | $500,000 each accident |
| Property Damage Liability | $500,000 each accident |
| Or | |
| Bodily Injury and Property Damage Liability (Combined Single Limit) | $500,000 each accident |

| | |
|---|---|
| 3. Workers' Compensation | Statutory |
| Employers Liability | $100,000 Each Accident<br>$500,000 Aggregate<br>$100,000 Occupational Disease |

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

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

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

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

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

10. **No Arbitration**. The Contractor and the City shall not be obligated to resolve any claim or dispute related to the Contract by arbitration. Any reference to arbitration in bid or proposal documents is deemed void.

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

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

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

**ATTEST:**

_____
Janis Edwards
Deputy City Clerk

**CITY OF WICHITA, KANSAS**

_____
Carl G. Brewer
Mayor

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf
Director of Law

**COX COMMUNICATIONS KANSAS LLC/**
**COX KANSAS TELCOM LLC**

_____
*Signature*

_____
*Print Name*

_____
*Title (Managing Member)*

## EXHIBIT A

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

D. Exempted from these requirements are:

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

further Equal Employment Opportunity or Affirmative Action Program submittal.

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

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Amendments to Title 15 - Adoption of 2006 International Fire Code
Change of Terminology in 15.02.010 Smoke Detector Ordinance

**INITIATED BY:** Wichita Fire Department

**AGENDA:** New Business

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**Recommendations**: Approve first reading of the ordinances.

**Background:** The City's current Fire Code is adopted from model building codes developed and published by the International Code Council, and includes the 2000 Edition of the International Fire Code (IFC). The IFC is considered a maintenance code to the International Building Code (IBC). In the United States, most jurisdictions with building codes use model building codes as the basis for their local ordinances. Model building codes, such as those developed and published by the International Code Council, are generally updated every three years. For nearly 50 years, Wichita has reviewed, amended, and adopted model building and fire codes on a three or six year cycle. This has helped ensure that Wichita is using current codes, as well as current tested and certified installation practices, materials and products.

**Analysis:** With respect to review of the 2006 edition of the IFC, Fire Department staff met with Central Inspection staff on numerous occasions. Fire staff studied and reviewed both the 2006 IBC and the 2006 International Residential Code (IRC) to ensure consistency with the IFC and developed recommendations for review by both staff and the Board of Code Standards and Appeals (BCSA).

Presentations and discussion of the 2006 IFC, with recommended modifications, were made to the BCSA at their August 2010 meeting. Public comment was also invited for BCSA consideration. The BCSA recommended adoption of the 2006 IFC, with proposed local amendments, at its August 2010 meeting.

From early August 2010, Fire Department staff, working closely with the Law Department, developed adopting ordinances. Final review and approval of the proposed adopting ordinances as to form was provided by the Law Department in September 2010.

Summaries of the most significant changes between the current 2000 IFC code, as locally amended, and the proposed 2006 IFC code, with local amendments, are included in the attachment.

**Financial Considerations**: The cost associated with the adoption of the 2006 IFC would be the purchase of new code books, reference materials and citations. The cost of new code books is estimated at $1,500.

**Goal Impact:** The proposed Fire Code ordinances supports the “Provide a Safe and Secure Community” goal by ensuring Wichita’s use of the most up-to-date and tested/certified construction safety standards, installation methods and products for new, expanded, remodeled and/or repaired buildings in Wichita.

**Legal Considerations**: The Law Department has reviewed and approved the adopting ordinances as to form.

**Recommendation/Actions**: It is recommended that the City Council approve first reading of the proposed ordinances to: (1) repeal Chapters 15.01 of the Code of the City of Wichita, which adopted the

2000 Edition of the International Fire Code; and (2) create Chapters 15.01 of the Code of the City of Wichita, which adopts the 2006 Edition of the International Fire Code, with amendments; and (3) repeal Chapters 15.02 of the Code of the City of Wichita, Smoke Detector Ordinance and (4) create Chapters 15.02 of the Code of the City of Wichita, Smoke Alarm Ordinance which pertains to smoke alarm terminology.

**Attachments:** Attachment 1 - Summary of Significant Changes Between the 2000 IFC (as amended) and the 2006 IFC (as amended); Attachment 2 - Delineated ordinance for Chapter 15.01; Attachment 3 – delineated ordinance for Chapter 15.02.

# Attachment 1

# Attachment 2

# Attachment 3

# EXPLANATION OF AMENDMENT PACKAGE TO THE 2006 INTERNATIONAL FIRE CODE

**August, 2010**

1. Adoption of Appendices B,C,D,E,F,G and 2009 H, I and J. Pg 1.

H,I, and J, which deal with Hazardous Materials Management Plans, Non-compliance Fire Protection Systems in Commercial Occupancies and Emergency Responder Radio Coverage have long been in practice, just not formally adopted.

2. IFC 102.6 Historic Buildings Pg 2.

No change from 2000 Edition. Follow Existing Building Code.

3. IFC 104.2.1 Plans review and consultation Pg 2.

Charge a fee of $130.00 for on-site preliminary consultations, underground fire protection main review and alternative fire suppression systems.

4. IFC 105.1.1 Permits required Pg 3.

No change from 2000 Edition. Requires joint approval from all departments concerned in permit process.

5. IFC 105.1.1.1 Permits fee Pg 3.

Change of permit fee (if required) from $40.00 to $65.00

6. IFC 105.6.7.1 Community events stand by fees Pg. 4

Charge a fee of $120/hour for a squad. $210/hour for a engine at events required to have WFD standby. This fee is to cover cost to COW. In addition we will not take a unit out of service to cover the event.

7. 105.6.27 LP gas Pg 5

Permit is required for storage or use of LP gas tanks. Exception for residential occupancies of 100 gallons or less, and tankers.

8. IFC 105.6.32 Open flames and candles Pg 6

Requires a permit for the use of open flames and candles in places of assembly.

9. IFC 105.7.3 Temporary membrane structures, tents and canopies Pg 6

Change of permit fee to $85.00

10. IFC Section 106.2.1 Inspection Request Pg 7

No change from 2000 edition. This section requires a one-working day time frame for requesting an inspection

11. IFC 107.6 Overcrowding Pg 8

No change from 2000 edition.

12. IFC 109.3 Violation Penalties Pg 9

No change from 2000 edition. This section lays our current fine/penalty of misdemeanor up to $500.00 or imprisonment not to exceed one year.

13. IFC Section 111.4 Failure to comply Pg 10

No change from 2000 edition. This section lays out current fine/penalty of misdemeanor up to $500.00 or imprisonment not exceeding one year.

14. IFC Section 202(B) Education Group E, Day care Pg 10

No change from 2000 edition. Consistent with IBC count from 5 children to 10.

15. IFC Section 202(b) Group I-4, Day care pg 11

No change from 2000 edition. Consistent with IBC count from 5 persons to 10.

16. IFC Section 202(B) Group I-4 Day care facility, Child care facility Pg 11

No change from 2000 edition. Consistent with IBC count from 5 children to 10.

17. IFC Section 202(B) R-3 child care facility Pg 12

No change from 20000 edition. Consistent with IBC count from five person to 10 for less than 24-hours.

18. IFC 302.1 Asphalt Kettle Pg 12

Better define asphalt kettle to include pots, and similar processes which use heated materials applied to roof structures.

19. IFC Section 307.2 Permit required Pg 13

No Change. Burn permit required and must follow burn permit instructions.

20. IFC 307.2.1 Permit required, fee Pg 14

Burn permit shall be $100.00 per permit

21. IFC Section 307.4 Location Pg 14

Still requires 1000 feet of clearance for burn permit, unless an incinerator or destructor is used, then distance is reduced to 300 feet.

22. IFC Section 307.4.3 Portable outdoor fireplace Pg 15

No change from 2000 edition. Chimenea and outdoor fireplaces are now defined as the same types of devices and are still regulated except for one- and two-family dwellings

23. IFC Section 507.5.1 Hydrants where required, Exception Pg 16

No change from 2000 edition. Requires fire hydrants within 400 feet of all buildings (increased to 500 feet for R-3, U and those equipped with a sprinkler system).

24. IFC Section 901.4 Installation Pg 16

No change from 2000 edition. Requires fire protection systems to be installed or altered by a NICET II licensed Fire Protection Contractor.

25. IFC Section 901.6 Inspection, testing and maintenance Pg 17

No change from 2000 edition. Requires fire detection, alarm and extinguishing systems to be inspected, installed and altered by NICET II licensed Fire Protection Contractor.

26. IFC Section 903.2.1.2 Group A-2 Pg 17

No change from 2000 edition. Increase occupant load from 100 to 300 to require sprinkler system in assembly.

27. IFC Section 903.2.1.3 Group A-3 Pg 18

No change from 2000 edition. Requires sprinkler system in areas exceeding 12,000 square feet.

28. IFC Section 903.2.3.1 Woodworking operations Pg 18

No change from 2000 edition. Exempts wood working areas within a fire area 2,500 square feet or less with non-combustible constructed walls

29. IFC Section 903.2.3 Group F-1 Pg 19

Deleted

30. IFC Section 903.2.8 Group R Pg 19

No Change

31. Section 903.2.10.1 Commercial Parking garages Pg 20

No change from 2000 edition. Increase fire area from 5,000 to 12,000 square feet

32. Section 903.2.11.1.1 Opening dimensions and access Pg 20

No change from 2000 edition. Add language for opening width of 30 inches and height of 48 inches

33. IFC 903.3.1.2.1 Balconies and decks Pg 21

No change

34. Section 903.3.6 Hose thread Pg 21

No change from 2000 edition. Requires compatible hose threads with National Standard hose

35. Section 903.3.7 Fire Department connections pg 22

No change from 2000 edition. Requires maximum distance of 150 feet from fire hydrant to fire department connection and hydrant no closer than 40 feet to building.

36. IFC 907.2 Were required – New buildings and structures pg 22

Allows for manual fire alarm box to be in a secure location to reduce the possibility of tampering

37. Section 907.2.1 Group A pg 23

No change from 2000 edition. Requires manual fire alarm with an occupant load of 300 or more

38. Section 907.2.1.1 System initiation in rooms containing Group A occupancies with an occupant load of 1,000 or more pg 24

No change from 2000 edition. Allows for voice evacuation system with pre-recorded message.

39. Section 907.2.6.4 Group I-4 pg 24

No change from 2000 edition. Required automatic fire alarm with smoke detection per Kansas State Statute.

40. Section 910.2.1 Group F-1 or S-1 pg 25

Areas separated by non-combustible partitions so than no area exceeds 50,000 square feet are not required to be sprinklered if openings are automatic and self closing.

41. Section 910.3.5 Draft curtains pg 25

No change from 2000 edition.

42. Section 1004.1 Designed Occupant Load pg 26

Added language to reference overcrowding conditions

43. Section 1006.3 Illumination emergency power pg 26

No change from 2000 edition.

44. IFC 1007.1 Accessible means of egress required pg 27

No change. Made reference to American's with Disabilities Act

45. IFC 1007.3 Exit Stairways pg 28

No change from 2000 edition. Added language about Areas of Refuge not required in sprinkler protected and smoke protected areas

46. 1007.4 Elevators pg 29

No change from 2000 IFC

47. 1008.1.2 Door Swing pg 30

No change

48. 1008.1.4 Floor elevation pg 31

No change

49. 1008.1.8.4 Bolt Locks pg 33

Adopted to allow for certain types of occupancies, such as B, F, S and I-2 to have bolt locks on inactive leaf of doors. We currently allow this with a letter from OCI or WFD.

50. 1008.1.8.8 Special Locking Arrangements in Group I-2 pg 35

Adopted from 2009 IBC and IFC to allow for I-2 Occupancies to have delayed egress devices which are protecting persons receiving special care. This is a current practice with permission from OCI and WFD.

51. 1008.1.8.9 Electromagnetically locked egress doors pg 36

Adopted from 2009 IBC and IFC to allow doors in certain occupancies to install these devices. This is a current practice with permission from OCI and WFD.

52. IFC 1009.12 Access to equipment rooms and areas pg 37

No change - Adopted from IBC changes

53. IFC 1014.3 Common path of egress travel pg 37

No change - Adopted from IBC changes

54. IFC 1017.3 Dead ends pg 38

No change - Adopted from IBC changes

55. IFC 1019.1 Minimum number of exits pg 39

No change - Adopted from IBC changes

56. IFC 1019.2 Buildings with one exit pgs 40-43

No change - Adopted from IBC changes

57. Section 1030.9 Standby personnel pg 43

Fire code official has been able to require standby personnel when essential for public safety. We propose a stand by fee to cover cost and reduce taking units out of service to cover events

58. IFC 1904.4 Automatic Sprinkler systems pg 44

Code reference change for wood shops to make reference to correct code number

59. Section 2403.2 Approval required pg 45

No change from 2000 edition. Tents 200 square feet or larger are required to have a permit

60. Section 2505.1 individual piles pg 45

No change from 2000 edition. Piles of tires cannot exceed 3,750 square feet of continuous area.

61. Section 3301.1.3 Fireworks pg 45-47

Fireworks must be tested and approved by WFD. Fireworks cannot emit sparks larger than 6 feet in any direction, cannot emit flaming balls. Identified dates and time to legally shoot fireworks. Also allows for WPD officers to enforce fireworks ordinance.

62. Section 3301.2 Permit required pg 47

Change permit fee for public display of fireworks from $50.00 per event to $150.00 per event.

63. Section 3301.2.4 Financial responsibility pg 48

No change from 2000 edition. Increase surety bond amount from $100,000 to $500,000.

64. Section 3308.2.3 Permit for indoor pyrotechnic special effects pg 48

Increase license fee from $50.00 to $150.00 per event.

65. Section 3308.4 Clearance pg 49

No change from 2000 edition. Required clearance of spectators and dwellings/buildings from fire works display sites.

66. Section 3804.2 Maximum capacity within established limits pg 50

Limits the amount of LP gas in heavily populated or congested areas of 100 water gallons. Exception does allow for WFD approval of particular installations and exempts storage of containers waiting resale at distribution stores. Also exempts pre-existing residential occupancies until a change in ownership.

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CLEAN 11/02/2010

ORDINANCE NO. 48-892

AN ORDINANCE ADOPTING THE 2006 INTERNATIONAL FIRE CODE AND CITY OF WICHITA AMENDMENTS THERETO, AMENDING CHAPTER 15.01 AND REPEALING THE ORIGINAL OF CHAPTER 15.01 OF SAID CODE.

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

Section 1**.** Section 15.01.010 of the Code of the City of Wichita, is hereby created to read as follows:

"Adoption of the International Fire Code. The International Fire Code, as published by the International Codes Council, Inc., 2006 Edition, including Appendices B, C, D, E, F, and G and from the 2009 Edition of the International Fire Code, Appendices H, I & J, is hereby adopted and incorporated herein by reference, subject to such amendments thereto as are set forth hereinafter."

Section 2. Section 15.01.020 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

**"Chapter 1, Section 102.5 amended - Historic buildings.** Chapter 1, Section 102.5 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 102.5 Historic buildings.** The provisions of this code relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local jurisdiction as historic buildings when such buildings or structures do not constitute a distinct hazard to life or property. Fire protection in designated historic buildings and structures shall be provided in accordance with an approved fire protection plan developed in accordance with the provisions of the *2006 Edition International Existing Building Code."*

Section 3. Section 15.01.030 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Chapter 1, Section 104.2.1 created – Plan review and consultation.** Chapter 1, Section 104.2.1 of the International Fire Code, 2006 Edition, is created to read as follows:

**Section 104.2.1 Plan review and consultation.** When submittal documents or consultation requests are required by Section 104.2 of the *International Fire Code*, a plan review fee or consultation fee shall be paid at the time of submitting the documents for plan review or consultation services for on-site preliminary consultations, underground fire protection main plans review and site inspections, and plan review and on-site inspection for alternative fire suppression systems. Said plan review or consultation fee shall be $130.00. The plan review or consultation fees specified in this section are separate fees from those fees set forth in Section

108.2 of the *International Building Code* and are in addition to building permit fees. When submittal documents are incomplete or changed so as to require additional plan review or consultation or when the project involves deferred submittal items as defined in Section 106.3.4.2 of the *International Building Code*, an additional plan review fee or consultation fee shall be charged at the same rate.

Section 4. Section 15.01.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 105.1.1 amended – Permits required.** Chapter 1, Section 105.1.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 105.1.1 Permits required.** Permits required by this code shall be obtained from the fire code official. Permit fees, if any, shall be paid prior to issuance of the permit. Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire code official. In instances where laws or regulations are enforceable by departments other than the fire department, joint approval shall be obtained from all departments concerned."

Section 5. Section 15.01.050 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Chapter 1, Section 105.1.1.1 created – Permits required, fee.** Chapter 1, Section 105.1.1.1 of the International Fire Code, 2006 Edition, is created to read as follows:

**Section 105.1.1.1 Permit fee**. The permit fee shall be $65.00."

Section 6. Section 15.01.060 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

**"Chapter 1, Section 105.6.7.1 created – Community event stand-by permit.** Chapter 1, Section 105.5.7.1 of the International Fire Code, 2006 Edition, is created to read as follows:

**Section 105.6.7.1 Community event stand-by fee.** An operational permit is required for community events. Completion of a Community Event Application is required when all of the following conditions apply: *The City of Wichita defines a Community Event as follows:*

1. Outdoor event on public and/or private property
2. Attendance in excess of 50 persons on public property and/or 250 persons on private or park property. *Excludes invitation only events taking place on private property.*
3. Involves a particular purpose and time.

When in the opinion of the fire code official, it is essential for public safety where people congregate, because of the number of persons, or the nature of the performance, exhibition, display, contest or activity, the owner, agent or lessee shall comply with the Fire Department regulation formula to determine the need and number of firefighter's required for stand-by. All costs associated for event stand-by are the responsibility of the owner, agent or lessee. The rate for stand-by will be figured at $120.00 per hour for a 2-person team on a light response vehicle and $210.00 per hour for a minimum 3-person team on a heavy response vehicle. The regulation formula identified below will be used by the fire code official to determine the number of stand-by personnel required.

| FACTOR | GRADATION | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| CROWD SIZE* | 250+ | 4000 | 8000 | 12000 | 16000 | 20000 | 24000 | 28000 | 32000 | 36000 | 40000 |
| | 2 | 3 | 6 | 6 | 9 | 12 | 12 | 14 | 14 | 16 | 16 |
| ALCOHOL ALLOWED? | NO | | | | | SOLD | | | | | BYO/FREE |
| | 0 | | | | | 2 | | | | | 8 |
| COST OF ADMISSION | $20+ | | | | | $1- 19 | | | | | FREE |
| | 0 | | | | | 2 | | | | | 4 |
| DAYTIME OR NIGHTIME? | DAY | | | | | | | | | | NIGHT |
| | 0 | | | | | | | | | | 2 |
| ACCESS ADEQUATE? | VERY | | | | | MOD | | | | | NOT |
| | 0 | | | | | 1 | | | | | 2 |

| | | | | |
|---|---|---|---|---|
| **IS EVENT INSURED?** | **YES** | | **NOT** | |
| | **0** | | **2** | _ |
| **HAZ CONDITIONS ?** | **NO** | **MOD** | **YES** | |
| **fireworks** | **0** | **3** | **6** | _ |
| **Overcrowding** | | | | |
| **APPROVED IN HOUSE MEDICAL/FIRE STAFF?** | | | **(+ OR -)** | _ |
| **EXPERIENCE WITH EVENT** | | | **(+ OR -)** | _ |
| | | | **Total:** | _ |

***Figure 3 firefighters per 4000 attendees above 40000**

**Use of this matrix will estimate the number of personnel necessary to adequately staff medical/fire for special events. Certain annual events will also factor in past experience, which can affect the staffing levels necessary.**

Section 7. Section 15.01.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 105.6.27 amended – LP-gas.** Chapter 1, Section 105.6.27 of the International Fire Code, 2006 Edition, is amended to read as follows:

**105.6.27 LP-gas.** An operational permit is required for:

1. Storage and use of LP-gas.

   **Exception**: A permit is not required for individual containers with a 100-gallon (378.5412 L) water capacity or less serving occupancies in Group R-3.

2. Operation of cargo tankers that transport LP-gas.

3. Failure to obtain said permit could result in the fire code official ordering the removal of any tank over 100 gallon (378.5412 L) water capacity.

Section 8. Section 15.01.080 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 105.6.32 amended – Open flames and candles.** Chapter 1, Section 105.6.32 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 105.6.32 Open flames and candles**. An operational permit is required to use open flames or candles in connection with all assembly areas. Exceptions can be made by the fire code official.

Section 9. Section 15.01.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 105.7.13 amended – Temporary membrane structures, tents and canopies.** Chapter 1, Section 105.7.13 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 105.7.13 Temporary membrane structures, tents and canopies**. A construction permit is required to erect an air-supported temporary membrane structure or a tent having an area in excess of 200 square feet (37 m2) and canopies in excess of 400 square feet (37m2). Permit fee for tents and air supported structures 1,000 square feet (92.90304 m2) or less in floor area is $85.00. A $10.00 charge will be added for each additional 1,000 square feet (92.90304 m2) or fraction thereof.

**Exceptions**:

1. Tents used exclusively for recreational camping purposes.

2. Funeral tents and curtains or extensions attached thereto, when used for funeral services.

3. Fabric canopies and awnings open on all sides which comply with all of the following:

3.1 Individual canopies shall have a maximum size of 700 square feet (65m2).

3.2 The aggregate area of multiple canopies placed side by side without a fire break clearance of not less than 12 feet (3658 mm) shall not exceed 700 square feet (65m2) total.

3.3 A minimum clearance of 12 feet (3658 mm) to structures and other tents shall be maintained.

Section 10. Section 15.01.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 106.2.1 amended– Inspection Requests.** Chapter 1, Section 106.2.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 106.2.1 Inspection Requests**. It shall be the duty of the holder of the permit or their duly authorized agent to notify the fire code official that such work is ready for inspection. The fire code official is authorized to require that every request for inspection be filed not less than one working day before such inspection is desired. Such request may be in writing or by telephone at the option of the fire code official. It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this code."

Section 11. Section 15.01.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 107.6 amended – Overcrowding.** Chapter 1, Section 107.6 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 107.6 Overcrowding.** No person shall permit overcrowding or admittance of any person beyond the approved capacity, as set forth in the International Building Code, of a building or a portion thereof. In determining whether the capacity of a building or any portion thereof has been exceeded, all persons within or upon the premises in questions shall be considered, including patrons, guests, employees, entertainers and management personnel.

Upon finding any overcrowding conditions or obstructions in aisles, passageways or other means of egress, or any condition which constitutes a life safety hazard, the Fire Chief, the Chief's authorized agent, or any law enforcement officer shall be authorized to take such action as is necessary to insure the safety of persons in and around the building or portion thereof, including causing the event or ongoing operation of business to be stopped until such condition or obstruction is corrected, or, upon approval of the Fire Chief, any Deputy Fire Chief or Fire Marshal, may cause the premises to be locked until such condition is corrected.

In the event any building or portion thereof is ordered locked by the Fire Chief or the Chief's designee as provided herein, the owner or occupant of such building or portion thereof may appeal the order to the City Council within ten (10) calendar days from the date of the order. The appeal must be in writing and filed with the city clerk and shall be heard promptly. Such an appeal shall stay the order locking the premises. In the event the order is upheld by the City Council, the owner or occupant of such building or portion thereof may appeal to the district court as provided by state law; however such appeal shall not stay the order locking the premises.

Any person violating the provision of this Section shall be guilty of a misdemeanor and in addition to the penalties provided herein, the court may, upon conviction, order the building or portion thereof in which the overcrowded conditions existed to be locked for a period not to exceed thirty (30) calendar days.

Section 12. Section 15.01.120 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 109.3 amended – Violation penalties.** Chapter 1, Section 109.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 109.3 Violation penalties.** Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $2,500.00 dollars or by imprisonment not exceeding one year, or both such fine and imprisonment."

Section 13. Section 15.01.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 111.4 amended – Failure to comply.** Chapter 1, Section 111.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 111.4 Failure to comply.** Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be deemed guilty of a misdemeanor, punishable by a fine of

not more than $2,500.00 dollars or by imprisonment not exceeding one year, or both such fine and imprisonment."

Section 14. Section 15.01.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 2, Section 202[B] amended – Educational Group E, Day care.** Chapter 2, Section 202[B] of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 202 Day care.** The use of a building or structure, or portion thereof, for educational, supervision or personal care services for more than ten children older than 2 1 /2 years of age shall be classified as an E occupancy."

Section 15. Section 15.01.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 2, Section 202[B] amended – Group I-4 amended – Day Care Facilities.** Chapter 2, Section 202[B] of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 202 Group I-4, day care facilities.** This group shall include buildings and structures occupied by persons of any age who receive custodial care for less than 24 hours by individuals other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for. A facility such as the above with ten or fewer persons shall be classified as Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2 of the International Building Code. Places of worship during religious functions are not included."

Section 16. Section 15.01.160 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 2, Section 202[B]amended – Group 1-4, day care facilities, Child care facility.** Chapter 2, Section 202[B] of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 202Group I-4, day care facility, Child care facility.** Child care facilities that provide supervision and personal care on less than a 24-hour basis for more than ten children 2 ½ years of age or less shall be classified as Group I-4.

**Exception:** A child day care facility that provides care for more than ten but no more than 100 children 2 1/ 2 years or less of age, where the rooms where such children are cared for are located on the level of exit discharge serving such rooms and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E."

Section 17. Section 15.01.170 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 2, Section 202[B]amended – R-3 (child care facility).** Chapter 2, Section 202[B] of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 202 R-3.** Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I, including:

1. Buildings that do not contain more than two dwelling units.

2. Adult facilities that provide accommodations for ten or fewer persons of any age for less than 24 hours.

3. Child care facilities that provide accommodations for ten or fewer persons of any age for less than 24 hours.

4. Congregate living facilities with 16 or fewer persons."

Section 18. Section 15.01.180 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Chapter 3, Section 302.1 created – Asphalt Kettles.** Chapter 3, Section 302.1 of the International Fire Code, 2006 Edition, is created to read as follows:

**Section 302.1 Definitions - Asphalt Kettles.** Asphalt kettles, pots or similar or like processes utilizing heated materials applied to roof structures, shall meet the requirements of section 303 of the International Fire Code, 2006 Edition.

Section 19. Section 15.01.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 3, Section 307.1.1 amended – Prohibited open burning.** Chapter 3, Section 307.1.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 307.1.1 Prohibited open burning**. Open burning that is offensive or objectionable because of smoke or odor emissions or when atmospheric conditions or local circumstances make such fires hazardous shall be prohibited. The fire code official is authorized to order the extinguishment by the permit holder or the fire department of open burning that creates or adds to a hazardous or objectionable situation. Open burning shall be conducted between the hours of sunrise to sunset unless otherwise approved by the fire code official.

Section 20. Section 15.01.200 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 3, Section 307.2 amended – Permit required.** Chapter 3, Section 307.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 307.2 Permit required.** A permit shall be obtained from the fire code official in accordance with Section 105.6 prior to kindling a fire for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, or a bonfire. Application for such approval shall only be presented by and permits issued to the owner, or the designate of the owner, of the land upon which the fire is to be kindled. Burn permit instructions and stipulations of the permit shall be adhered to."

Section 21. Section 15.01.210 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Chapter 3, Section 307.2.1 created – Permits required, fee.** Chapter 3, Section 307.2.1 of the International Fire Code, 2006 Edition, is created to read as follows:

**Section 307.2.1 Permit fee**. The burn permit fee shall be $100.00 for the duration of the permit and is not refundable."

Section 22. Section 15.01.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 3, Section 307.4 amended - Location.** Chapter 3, Section 307.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 307.4 Location.** The location for open burning shall not be less than 1,000 feet (304,800 mm) from any property line, structure or road way, or within two miles of any airport or flyway, and provisions shall be made to prevent the fire from spreading to within 50 feet (15 240 mm) of any structure.

**Exceptions:**

1. Fires in approved containers, incinerators or destructors, or those identified and approved by the fire code official and that are used per the manufacturer's instructions shall not be less than 300 feet (91,440 mm) from property line, structure, road way, airport or flyway."

Section 23. Section 15.01.230 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 3, Section 307.4.3 amended – Portable outdoor fireplaces.** Chapter 3, Section 307.4.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 307.4.3 Portable outdoor fireplaces**. Portable outdoor fireplaces shall be used in accordance with the manufacturer's instructions and shall not be operated within 15 feet (4,572 mm) of a structure or combustible material. In addition the following requirements shall be met:

1. Portable outdoor fireplaces shall be placed on a non-combustible surface and shall not be used on balconies or wood decks.

    **a. EXCEPTION**: Portable outdoor fireplaces used at one- and two-family dwellings.

2. Portable outdoor fireplace use shall be discontinued when there is a ban or moratorium on burning issued by federal, state or local agencies.
3. Portable outdoor fireplaces shall not be used when the wind speed is in excess of 15 mph.
4. Portable outdoor fireplaces shall not be used within 500 feet (152,400 mm) of any shake shingle roof, unless provided with spark arrestor with a minimum ½ inch (12.7 mm) metal screen secured by metal wire, located on the vent/chimney.
5. Only firewood, limbs, leaves, and wood chips may be burned within the portable outdoor fireplace. Products such as paper, plastic and rubbish are not allowed."

Section 24. Section 15.01.240 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 5, Section 508.5.1 amended – Where required, Exception.** Chapter 5, Section 508.5.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 508.5.1 Where required.** Where a potion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet (122m) from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

**Exceptions:**

1. For Group R-3 and Group U occupancies, the distance requirement shall be 500 feet (152,400 mm).

2. For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the distance requirement shall be 500 feet (152,400 mm)."

Section 25. Section 15.01.250 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 9, Section 901.4 amended - Installation.** Chapter 9, Section 901.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 901.4 Installation.** Fire protection systems shall be maintained in accordance with the original installation standards for that system. Required systems shall be extended, altered, or augmented as necessary to maintain and continue protection whenever the building is altered, remodeled or added to. Installation and alterations to fire protection systems shall be done in accordance with applicable standards and shall be performed by a NICET II Wichita Licensed Fire Protection Contractor"

Section 26. Section 15.01.260 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 9, Section 901.6 amended – Inspection, testing and maintenance.** Chapter 9, Section 901.6 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 901.6 Inspection, testing and maintenance.** Fire detection, alarm and extinguishing systems shall be maintained in an operative condition at all times, and shall be replaced or repaired where defective. Non-required fire protection systems and equipment shall be inspected, tested and maintained or removed. Installation and alterations to fire detection, alarm

and extinguishing systems shall be done in accordance with applicable standards and shall be performed by a NICET II Wichita Licensed Fire Protection Contractor."

Section 27. Section 15.01.270 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Section 903.2.1.2 amended - Group A-2.** Chapter 9, Section 903.2.1.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 903.2.1.2 Group A-2**. An *automatic sprinkler system* shall be provided for Group A-2 occupancies where one of the following conditions exists:

1. The *fire area* exceeds 5,000 square feet (465 $m^2$);
2. The *fire area* has an occupant load of 300 or more; or
3. The *fire area* is located on a floor other than the *level of exit discharge* serving such occupancies."

Section 28. Section 15.01.280 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 903.2.1.3 amended - Group A-3.** Chapter 9, Section 903.2.1.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 903.2.1.3 Group A-3.** An *automatic sprinkler system* shall be provided for Group A-3 occupancies where one of the following conditions exists:

1. The fire area exceeds 12,000 square feet (1115 $m^2$ )
2. The fire area is located on a floor other than the *level of exit discharge* serving such occupancies."

Section 29. Section 15.01.290 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 903.2.3.1 amended - Woodworking operations.** Chapter 9, Section 903.2.3.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 903.2.3.1 Woodworking operations.** An *automatic sprinkler system* shall be provided throughout all Group F-1 occupancy *fire areas* that contain woodworking operations in excess of 2,500 square feet (232 $m^2$) in area which generate finely divided combustible waste or use finely divided combustible materials.

**EXCEPTION:** A room or the aggregate area of rooms containing woodworking operations within a fire area where the area is 2,500 square foot (232 $m^2$) or less. Walls that define the rooms that contain the wood working operations shall be of non-combustible construction."

Section 30. Section 15.01.300 of the Code of the City of Wichita, is hereby deleted to read as follows:

"**Section 903.2.3 deleted – Group F-1 Occupancies.** Chapter 9, Section 903.2.3 of the International Fire Code, 2006 Edition, is deleted."

Section 31. Section 15.01.310 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 903.2.8 amended - Group R.** Chapter 9, Section 903.2.8 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 903.2.8 Group R.** An *automatic sprinkler system* installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R *fire area*.

**Exceptions:**

1. Apartment buildings of four units or less.

2. Group R-3 occupancies as regulated by this code."

Section 32. Section 15.01.320 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 903.2.9 amended - Group S2.** Chapter 9, Section 903.2.9 of the International Fire Code, 2006 Edition, is amended."

**[B] Section 903.2.9 Group S2** An automatic sprinkler system shall be provided throughout buildings having a fire area that exceeds 12,000 square feet (1115m2) and classified as enclosed parking garages in accordance with Section 406.4 of the International Building Code or where located beneath other groups.

Exception: Enclosed parking garages located beneath Group R-3 occupancies."

Section 33. Section 15.01.330 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 903.2.9.1 amended - Commercial parking garages.** Chapter 9, Section 903.2.9.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 903.2.9.1 Commercial parking garages.** An *automatic sprinkler system* shall be provided throughout buildings used for storage of commercial trucks or buses where the *fire area* exceeds 12,000 square feet (1115 $m^2$)."

Section 34. Section 15.01.340 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 903.2.11.1.1 amended - Opening dimensions and access.** Chapter 9, Section 903.2.11.1.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 903.2.11.1.1 Opening dimensions and access.** Openings shall have a minimum dimension of not less than 30 inches (762 mm) in width and 48 inches (1219 mm) in height. Such openings shall be accessible to the fire department from the exterior and shall not be obstructed in a manner that fire fighting or rescue cannot be accomplished from the exterior."

Section 35. Section 15.01.350 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 9, Section 903.3.1.2.1 amended – Balconies and decks.** Chapter 9, Section 903.3.1.2.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 903.3.1.2.1 Balconies and decks.** Sprinkler protection shall be provided for exterior balconies, decks and ground floor patios of dwelling units where the building is of Type V construction, provided there is a roof or deck above. Sidewall sprinklers that are used to protect such areas shall be permitted to be located such that their deflectors are within 1 inch (25 mm) to 6 inches (152 mm) below the structural members and a maximum distance of 14 inches (356 mm) below the deck of the exterior balconies and decks that are constructed of open wood construction."

Section 36. Section 15.01.360 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 9, Section 903.3.6 amended – Hose thread.** Chapter 9, Section 903.3.6 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 903.3.6 Hose threads.** Fire hose threads and fittings used in connection with automatic sprinkler systems shall comply with NFPA 1963 or as otherwise approved, and shall be compatible with fire department hose threads. Fire hose thread used in connection with fire-extinguishing systems shall be national standard hose thread or as approved by the fire code official."

Section 37. Section 15.01.370 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 9, Section 903.3.7 amended – Fire department connections.** Chapter 9, Section 903.3.7 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 903.3.7 Fire department connections.** The location of fire department hose connections shall be approved by the fire code official. The maximum distance shall be 150 feet (45 720 mm) from a fire hydrant. The required hydrant shall be no closer than 40 feet (12 192 mm) to the structure."

Section 38. Section 15.01.380 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 9, Section 907.2 amended – Where required – new buildings and structures.** Chapter 9, Section 907.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 907.2 Where required-new buildings and structures.** An approved fire alarm system installed in accordance with the provisions of this code and NFPA 72 shall be provided in new buildings and structures in accordance with Sections 907.2.1 through 907.2.23 and provide occupant notification in accordance with section 907.9 unless other requirements are provided by another section of this code

A minimum of one manual fire alarm box shall be provided in an approved location to initiate a fire alarm signal for fire alarm systems employing automatic fire detectors or water flow detection devices. Where other sections of this code allow elimination of fire alarm boxes due to sprinklers, a single fire alarm box shall be installed.

**Exceptions:**

1. The manual fire alarm box is not required for fire alarm systems dedicated to elevator recall control and supervisory service.
2. The manual fire alarm box is not required for Group R-2 occupancies unless required by the fire code official to provide a means for fire watch personnel to initiate an alarm during a sprinkler system impairment event. Where provided, the manual fire alarm box shall not be located in an area that is accessible to the public."

Section 39. Section 15.01.390 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

”**Chapter 9, Section 907.2.1 amended - Group A.** Chapter 9, Section 907.2.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 907.2.1 Group A.** A manual fire alarm system shall be installed in rooms containing Group A occupancies having an *occupant load* of 300 or more. Portions of Group E occupancies occupied for assembly purposes shall be provided with a fire alarm system as required for the Group E occupancy.

**Exception:** Manual fire alarm boxes are not required where the building is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1 and the occupant notification appliances will activate throughout the notification zones upon sprinkler water flow.”

Section 40. Section 15.01.400 of the Code of the City of Wichita, is hereby amended to read as follows:

**“Section 907.2.1.1 amended - System initiation in Group A occupancies with an occupant load of 1,000 or more.** Chapter 9, Section 907.2.1.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 907.2.1.1 System initiation in rooms containing Group A occupancies with an occupant load of 1,000 or more.** Activation of the fire alarm in rooms containing Group A occupancies with an occupant load of 1,000 or more shall initiate a signal using an emergency voice/alarm communications system in accordance with NFPA 72.

**Exception**: Where approved, the prerecorded announcement is allowed to be manually deactivated for a period of time, not to exceed 3 minutes, for the sole purpose of allowing a live voice announcement from an approved, constantly attended location.”

Section 41. Section 15.01.410 of the Code of the City of Wichita, is hereby created to read as follows:

**"Chapter 9, Section 907.2.6.4 created - Group I-4.** Chapter 9, Section 907.2.6.4 of the International Fire Code, 2006 Edition, is created to read as follows:

**[B] Section 907.2.6.4 Group I-4.** Group I-4 occupancies shall be equipped with an automatic fire alarm system with smoke detection in accordance with provisions set forth in K.A.R. 22-1-3, NFPA 101 Life Safety Code Section 16.3.4 and Section 907.2.6.3.3 of this code."

Section 42. Section 15.01.420 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 910.2.1 amended - Group F-1 or S-1**. Chapter 9, Section 910.2.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 910.2.1 Group F-1 or S-1.** Buildings and portions thereof used as Group F-1 or S-1 occupancy having more than 50,000 square feet (4645 $m^2$) in undivided area.

**Exception:**

1. Group S-1 aircraft repair hangars.
2. Areas completely separated by non-combustible partitions so that no one area exceeds 50,000 square feet (4645 $m^2$). Openings shall be provided with approved automatic or self-closing devices to ensure closure of the opening."

Section 43. Section 15.01.430 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 910.3.5 amended - Draft curtains.** Chapter 9, Section 910.3.5 of the International Fire Code, 2006 Edition is amended to read as follows:

**[B] Section 910.3.5 Draft curtains.** Where required by Table 910.3, draft curtains shall be provided in accordance with this section. The requirement for curtain boards in buildings designed to accommodate high-piled stock, as defined by the International Fire Code, shall be in accordance with Title 15 of the City Code.

**Exception:** Where areas of buildings are equipped with ESFR sprinklers, draft curtains shall not be provided within these areas. Draft curtains shall only be provided at the separation between the ESFR sprinklers and the conventional sprinklers."

Section 44. Section 15.01.440 of the Code of the City of Wichita, is hereby amended to read as follows:

**"Chapter 10, Section 1004.1 amended - Design occupant load.** Chapter 10, Section 1004.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1004.1 Design occupant load.** In determining means of egress requirements, the number of occupants for whom means of egress facilities shall be provided shall be determined in accordance with this section. Where occupants from accessory areas egress through a primary space, the calculated occupant load for the primary space shall include the total occupant load of the primary space plus the number of occupants aggressing though it from the accessory area. See Chapter 1, Section 107.6 – Overcrowding for exceeding the designed occupant load.

Section 45. Section 15.01.450 of the Code of the City of Wichita, is hereby amended to read as follows:

**"Chapter 10, Section 1006.3 amended - Illumination emergency power.** Chapter 10, Section 1006.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1006.3 Illumination emergency power.** The power supply for *means of egress* illumination shall normally be provided by the premises' electrical supply.

In event of power supply failure, an emergency electrical system shall automatically illuminate the following areas:

1. Aisles and enclosed egress s*tairways* in rooms and spaces that require two or more means of egress.

2. *Corridors, exit enclosures* and *exit passageways* in buildings required to have two or more *exits*.

3. Exterior egress components at other than their *levels of exit discharge* until *exit discharge* is accomplished for buildings required to have two or more exits.

4. Interior *exit discharge* elements, as permitted in Section 1024.1, in buildings required to have two or more *exits*.

The emergency power system shall provide power for duration of not less than 90 minutes and shall consist of storage batteries, unit equipment or an on-site generator. The installation of the emergency power system shall be in accordance with Chapter 27 of the International Building Code."

Section 46. Section 15.01.460 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1007.1 amended – Accessible means of egress required.** Chapter 10, Section 1007.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1007.1 Accessible means of egress required.** Accessible means of egress shall comply with this section. Accessible spaces shall be provided with not less than one accessible means of egress. Where more than one means of egress is required by Section 1015.1 or 1019.1 from any accessible space, each accessible portion of the space shall be served by not less than two accessible means of egress. Accessible means of egress for alterations shall comply with the American's with Disabilities Act.

Section 47. Section 15.01.470 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1007.3 amended – Exit stairways.** Chapter 10, Section 1007.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1007.3. Exit Stairways.** In order to be considered part of an accessible means of egress, an exit stairway shall have a clear width of 48 inches (1,219.2 mm) minimum between handrails and shall either incorporate an area of refuge within an enlarged floor-level landing or shall be accessed from either an area of refuge complying with Section 1007.6 or a horizontal exit.

**Exceptions:**

1. Unenclosed exit stairways as permitted by Section 1020.1 are permitted to be considered part of an accessible means of egress.
2. The area of refuge is not required at unenclosed exit stairways as permitted by Section 1020.1 in buildings or facilities equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

3. The clear width of 48 inches between handrails is not required at exit stairways in buildings or facilities equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.
4. The clear width of 48 inches (1,219.2 mm) between handrails is not required for exit stairways accessed from a horizontal exit.
5. Areas of refuge are not required at exit stairways serving open parking garages.
6. Areas of refuge are not required at exit stairways in buildings equipped throughout by an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.
7. Areas of refuge are not required for smoke-protected seating areas complying with Section 1025.6.2.
8. The areas of refuge are not required in Group R-2 occupancies."

Section 48. Section 15.01.480 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1007.4 amended – Elevators.** Chapter 10, Section 1007.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1007.4 Elevators.** In order to be considered part of an accessible means of egress, an elevator shall comply with the emergency operation and signaling device requirements of Section 2.27 of ASME A17.1. Standby power shall be provided in accordance with Sections 2702 and 3003. The elevator shall be accessed from either an area of refuge complying with Section 1007.6 or a horizontal exit.

**Exceptions:**

1. Elevators are not required to be accessed from an area of refuge or horizontal exit in open parking garages.
2. Elevators are not required to be accessed from an area of refuge or horizontal exit in buildings and facilities equipped throughout by an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.
3. Elevators not required to be located in a shaft in accordance with Section 707.2 are not required to be accessed from an area of refuge or horizontal exit.
4. Elevators are not required to be accessed from an area of refuge or horizontal exit for smoke protected seating areas complying with Section 1025.6.2."

Section 49. Section 15.01.490 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1008.1.2 amended – Door swing.** Chapter 10, Section 1008.1.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1008.1.2 Door swing.** Egress doors shall be side-hinged or pivot hinged swinging.

**Exceptions:**

1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.
2. Group I-3 occupancies used as a place of detention.
3. Critical or intensive care patient rooms within suites of health care facilities.

4. Doors within or serving a single dwelling unit in groups R-2 and R-3.
5. In other than group H occupancies, revolving doors complying with Section 1008.1.3.1.
6. In other than Group H occupancies, horizontal sliding doors complying with Section 1008.1.3.3 are permitted in a means of egress.
7. Power-operated doors in accordance with Section 1008.1.3.2.
8. Doors serving a bathroom within an individual sleeping unit in Group R-1.
9. In other than Group H occupancies, manually operated horizontal sliding doors are permitted in a means of egress from spaces with an occupant load of 10 or less."

Section 50. Section 15.01.500 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1008.1.4 amended – Floor Elevation.** Chapter 10, Section 1008.1.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1008.1.4 Floor Elevation.** There shall be a floor or landing on each side of a door. Such floor or landing shall be at the same elevation on each side of the door. Landings shall be level except for exterior landings, which are permitted to have a slope not to exceed 1 vertical to 50 horizontal (2-percent slope).

**Exceptions:**

1. Doors serving individual dwelling units Groups R-2 and R-3 where the following apply:

1.1 A door is permitted to open at the top step of an interior flight of stairs, provided the door does not swing over the top step.

1.2 Screen doors and storm doors are permitted to swing over stairs or landings.

1.3 A door is permitted to open at the top step of a flight of interior stairs in an attached garage, provided the door does not swing over the top step.

1.4 A door is permitted to open at the top step of a flight of exterior stairs from a patio, provided there are no more than four risers.

2 Exterior doors as provided for in Section 1003.5, Exception 1, and Section 1018.2, which are not on an accessible route.

3 In Group R-3 occupancies not required to be Accessible units, Type A units or Type B units, the landing at an exterior doorway shall not be more than 7.75 inches (197 mm) below the top of the threshold, provided the door, other than an exterior storm or screen door, does not swing over the landing.

4 Variations in elevation due to differences in finish materials, but not more than 0.5 inch (12.7 mm).

5 Exterior decks, patios or balconies that are part of Type B dwelling units, have impervious surfaces and that are not more than 4 inches (102 mm) below the finished floor level of the adjacent interior space of the dwelling unit.

6. Doors, gates and panels that serve as access points to buildings equipment rooms that are not normally occupied, except where serving the following:

a. Electrical rooms with equipment rated 1,200 amperes or more and over 6 feet (1829 mm) wide that contain overcurrent devices, switching devices or control devices (See IBC Section 1008.1.10).

b. Rooms or spaces having a floor area larger than 1,000 square feet (93 $m^2$), containing a refrigerant evaporator and maintained at a temperature below $68^0$ F ($20^0$ C) (see IBC Section 1015.5)."

Section 51. Section 15.01.510 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1008.1.8.4 amended – Bolt locks.** Chapter 10, Section 1008.1.8.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1008.1.8.4 Bolt locks.** Manually operated flush bolts or surface bolts are not permitted.

**Exceptions:**

1. On doors not required for egress in individual dwelling units or sleeping units.

2. Where a pair of doors serves a storage or equipment room, manually operated edge- or surface- mounted bolts are permitted on the inactive leaf.
3. Where a pair of doors serves an occupant load of less than 50 persons in a Group B, F, or S occupancy, manually operated edge- or surface-mounted bolts are permitted on the inactive leaf. The inactive leaf shall contain no doorknobs, panic bars, or similar operating hardware.
4. Where a pair of doors serves a Group B, F, or S occupancy, manually operated edge- or surface-mounted bolts are permitted on the inactive leaf provided such inactive leaf is not needed to meet egress width requirements and the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1. The inactive leaf shall contain no doorknobs, panic bars or similar operating hardware.
5. Where a pair of doors serves patient care rooms in Group I-2 occupancies, self-latching edge- or surface-mounted bolts are permitted on the inactive leaf provided that the inactive leaf is not needed to meet egress width requirements and the inactive leaf contains no doorknobs, panic bars, or similar operating hardware."

Section 52. Section 15.01.520 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1008.1.8.8 amended – Special locking arrangements in Group I-2.** Chapter 10, Section 1008.1.8.8 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B[ Section 1008.1.8.8 Special Locking Arrangements in Group I-2.** Approved delayed egress locks shall be permitted in a Group I-2 occupancy where the clinical needs of persons receiving care require such locking. Delayed egress locks shall be permitted in such occupancies where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors unlock in accordance with items 1 thru 6 below. A building occupant shall not be required to pass through more than one door equipped with a delayed egress lock before entering an exit.

**1.** The doors unlock upon activation of the automatic sprinkler system or automatic fire detection system.

**2.** The doors unlock upon the loss of power controlling the lock or lock mechanism.

**3.** The door locks shall have the capability of being unlocked by a signal from the fire command center, a nursing station or other approved location.

**4.** The procedures for the operation(s) of the unlocking system shall be described and approved as part of the emergency planning and preparedness required by the International Fire Code.

**5.** All clinical staff shall have the keys, codes, or other means necessary to operate the locking devices.

**6.** Emergency lighting shall be provided at the door.

**Exception:** Items 1 through 3 shall not apply to doors to areas where persons, because of clinical needs, require restraint or containment as part of the function of a mental hospital."

Section 53. Section 15.01.530 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1008.1.8.9 amended – Electromagnetically locked egress doors.** Chapter 10, Section 1008.1.8.9 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1008.1.8.9 Electromagnetically Locked Egress Doors.** Doors in the means of egress that are not otherwise required to have panic doors in buildings within an occupancy in Group A, B, E, M, R-1, or R-2 and doors to tenant spaces in Group A, B, E, M, R-1 or R-2 shall be permitted to be electromagnetically locked if equipped with listed hardware that incorporates a built-in switch and meets the requirements listed below:

1. The listed hardware that is affixed to the door leaf has an obvious method of operation that is readily operated under all lighting conditions.

2. The listed hardware is capable of being operated with one hand.

3. Operation of the listed hardware releases to the electromagnetic lock and unlocks the door immediately.

4. Loss of power to the listed hardware automatically unlocks the door."

Section 54. Section 15.01.540 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1009.12 amended – Access to equipment rooms and areas.** Chapter 10, Section 1009.12 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1009.12 Access to equipment rooms and areas.** Room and areas containing equipment that must be accessed for maintenance are not required to be accessed by a stairway. Access compliance to equipment rooms and areas is subject to provisions of other adopted standards of the City of Wichita and that of OSHA."

Section 55. Section 15.01.550 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1014.3 amended – Common path of egress travel.** Chapter 10, Section 1014.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1014.3 Common path of egress travel.** In occupancies other than Group H-1, H-2 and H-3, the common path of egress travel shall not exceed 75 feet (22,806 mm). In Groups H-1, H-2 and H-3 occupancies, the common path of egress travel shall not exceed 25 feet (7620 mm). For common path of egress travel in Group A occupancies and assembly occupancies in Group E occupancies having fixed seating, see Section 1025.8.

**Exceptions:**

1. The length of a common path of egress travel in Group B, F and S occupancies shall not be more than 100 feet (30,480 mm), provided that the building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1.

2. Where a tenant space in Group B, S and U occupancies has an occupant load of not more than 30, the length of a common path of egress travel shall not be more than 100 feet (30,480 mm).
3. The length of a common path of egress travel in a Group I-3 occupancy shall not be more than 100 feet (30,480 mm).
4. The length of a common path of egress travel in a Group R-2 occupancy shall not be more than 125 feet (38,100 mm), provided that the building is protected throughout with an approved automatic system in accordance with Section 903.3.1.1 or 903.3.1.2."

Section 56. Section 15.01.560 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1017.3 amended – Dead ends.** Chapter 10, Section 1017.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1017.3 Dead ends.** Where more than one exit or exit access doorway is required, the exit access shall be arranged such that there are no dead ends in corridors more than 20 feet (6096 mm) in length.

**Exceptions:**

1. In occupancies in Group I-3 of Occupancy Condition 2, 3 or 4 (see section 308.4), the dead end in a corridor shall not exceed 50 feet (15,240 mm).
2. In occupancies in Groups B, E, F, I-1, M, R-1, R-2, R-4, S, and U, where the building is equipped throughout with an automatic sprinkler system in

accordance with 903.3.1.1, the length of the dead-end corridors shall not exceed 50 feet (15,240 mm).

3. A dead-end corridor shall not be limited in length where the length of the dead-end corridor is less than 2.5 times the least width of the dead-end corridor."

Section 57. Section 15.01.570 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1019.1 amended – Minimum number of exits.** Chapter 10, Section 1019.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1019.1 Minimum number of exits.** All rooms and spaces within each story shall be provided with and have access to the minimum number of approved independent exits required by Table 1019.1 based on the occupant load of the story, except as modified in Section 1015.1 or 1019.2. For the purpose of this chapter, occupied roofs shall be provided with exits as required for stories. The required number of exits from any story, basement or individual space shall be maintained until arrival at grade or grade or the public way.

**Exception:** Floors and basements used exclusively for the service of the building or equipment and not normally occupied, may have access to only one exit, unless classified as an H occupancy or required due to the type or size of equipment utilized. For purpose of this exception, storage rooms, maintenance offices and similar uses shall not be considered as providing service to the building."

**TABLE 1019.1**
**MINIMUM NUMBER OF EXITS FOR OCCUPANT LOAD**

| OCCUPANT LOAD (persons per story) | MINIMUM NUMBER OF EXITS (per story) |
|---|---|
| 1-500 | 2 |
| 501-1,000 | 3 |
| More than 1,000 | 4 |

Section 58. Section 15.01.580 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1019.2 amended – Buildings with one exit.** Chapter 10, Section 1019.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1019.2 Single exits.** Only one exit shall be required from Group R-3 occupancy buildings or from stories of other buildings as indicated in Table 1019.2. Occupancies shall be permitted to have a single exit in buildings otherwise required to have more than one exit if the areas served by the single exit do not exceed the limitations of Table 1019.2. Mixed occupancies shall be permitted to be served by single exits provided each individual occupancy complies with the applicable requirements of Table 1019.2 for that occupancy. Where applicable, cumulative occupant loads from adjacent occupancies shall be considered in accordance with the provisions of Section 1004.1. Basements with a single exit shall not be located more than one story below grade plane.

**TABLE 1019.2**
**STORIES WITH ONE EXIT**

| STORY | OCCUPANCY | MAXIMUM OCCUPANTS (OR DWELLING UNITS) PER FLOOR AND TRAVEL DISTANCE |
|---|---|---|
| First Story or Basement | A, B[d], E[e], F[d], M, U, S[d] | 49 occupants and 75 feet (22,860 mm) travel distance |
| | H-2, H-3 | 3 occupants and 25 feet (7,620 mm) travel distance |
| | H-4, H-5, I, R | 10 occupants and 75 feet (22,860 mm) travel distance |
| | S[a] | 29 occupants and 100 feet (30,480 mm) travel distance |
| Second Story | B[b], F, M, S[a] | 29 occupants and 75 feet (22,860 mm) travel distance |
| | R-2 | 4 dwelling units and 50 feet (15,240 mm) travel distance |
| Third Story | R-2[c] | 4 dwelling units and 50 feet (15,240 mm) travel distance |

For SI: 1 foot = 304.8 mm.

a. For the required number of exits for parking structures, see Section 1019.1.1.
b. For the required number of exits for air traffic control towers, see Section 412.1.
c. Buildings classified as Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.1.2 and provided with emergency escape and rescue openings in accordance with Section 1026.
d. Group B, F and S occupancies in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 shall have a maximum travel distance of 100 feet (30,480 mm).
e. Day care maximum occupant load is 10.

Section 59. Section 15.01.590 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Chapter 10, Section 1030.9 created – Standby personnel.** Chapter 10, Section 1030.9 of the International Fire Code, 2006 Edition, is created to read as follows:

**Section 1030.9 Standby personnel**. When, in the opinion of the fire code official, it is essential for public safety in a place of assembly or any other place where people congregate, due to the number of persons, or the nature of the performance, exhibition, display, contest or activity, the owner, agent or lessee shall employ one or more qualified persons, as required and approved, to be on duty at such place. All costs associated with event standby are the responsibility of the owner, agent or lessee. Such individuals shall be subject to the fire code official's orders at all times when so employed and shall be in uniform and remain on duty during the times such places are open to the public, or when such activity is being conducted. Before each performance or the start of such activity, such individuals shall inspect the required fire appliances provided to see that they are in proper place and in good working order and shall keep diligent watch for fires during the time such place is open to the public or such activity is being conducted and take prompt measures for extinguishment of fires that may occur. Such individuals shall not be required or permitted, while on duty, to perform any other duties than those herein specified. See Section 105.6.7.1 for stand-by fees."

Section 60. Section 15.01.600 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 19, Section 1904.3 amended – Automatic Sprinkler Systems.** Chapter 19, Section 1904.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 1904 .3 Automatic sprinkler systems.** Automatic sprinkler systems shall be installed in accordance with Section 903.2.3.1

Section 61. Section 15.01.610 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 24, Section 2403.2 amended – Approval required.** Chapter 24, Section 2403.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 2403.2 Approval required.** Tents and membrane structures having an area in excess of 200 square feet (37 m2) and canopies in excess of 400 square feet (37m2) shall not be erected, operated or maintained for any purpose without first obtaining a permit and approval from the fire code official.

Section 62. Section 15.01.620 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 24, Section 2403.4 amended – Permits.** Chapter 24, Section 2403.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 2403.4 Permits**. Permits shall be required as set forth in Section 105.5 and 105.7. Permit fee for tents and air supported structures 1,000 square feet (92.90304 m2) or less in floor area is $85.00. A $10.00 charge will be added for each additional 1,000 square feet (92.90304 m2) or fraction thereof.

Section 63. Section 15.01.630 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 25, Section 2505.1 amended – Individual piles.** Chapter 25, Section 2505.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 2505.1 Individual piles.** Tire storage shall be restricted to individual piles not exceeding 3,750 square feet (114,300 m2) of continuous area. Piles shall not exceed 50,000 cubic feet (1416 m 3) in volume or 10 feet (3048 mm) in height."

Section 64. Section 15.01.640 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 33, Section 3301.1.3 amended – Fireworks.** Chapter 33, Section 3301.1.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 3301.1.3 Fireworks.** The possession, manufacture, storage, sale, handling and use of fireworks are prohibited.

**Exception:**

1. Storage and handling of fireworks are allowed as permitted in Section 3304.
2. Manufacture, assembly and testing of fireworks is permitted in Section 3305.
3. The use of fireworks for display as permitted in Section 3308.
4. The possession , storage, sale, handling and use of specific types of Division 1.4G fireworks which have been tested and approved by the Wichita Fire Department for use and sale within the city limits are allowed during legalized time periods prescribed by the City of Wichita. Such fireworks shall comply with the following guidelines:

4.1 the fireworks comply with CPSC 16 CFR, Parts 1500-1507, and DOTn 49 CFR, Parts 100-185, for consumer fireworks

4.2 the fireworks shall be classified as Class C and/or 1.4G; and

4.3 shall emit a shower of sparks no more than 6 feet (1,828.8 mm) in any direction; and

4.4 shall not be labeled as emitting flaming balls

4.5 shall be discharged from 6:00 a.m. June 27th to 12:00 p.m. July 5th, or by permission from the fire code official. The Fire Chief, or their designate, can ban the use of fireworks if conditions exist that pose a hazard to life or property

4.6 no firework shall be discharged before 6:00 a.m. or after 12:00 p.m. on any date without permission from the fire code official

4.7 members of the Wichita Police Department are authorized to enforce this provision and all applicable provisions of Title 15 pertaining to the storage, use, handling and possession of fireworks within the City of Wichita

5. A list of approved fireworks shall be published annually in the official city newspaper and a copy shall be in the offices of the City Clerk and the Wichita Fire Department.
6. The sale of fireworks shall comply with requirements as determined by the Kansas State Fire Marshal's Office."

Section 65. Section 15.01.650 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 33, Section 3301.2 amended – Permit required.** Chapter 33, Section 3301.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 3301.2 Permit required.** Permits shall be required as set forth in Section 105.6 and regulated in accordance with this section. Permit application shall be made not less than 14 days prior to the scheduled date of the display. No permit shall be submitted more than 60 days prior to the scheduled date of display unless a signed contract for such display is in the applicant's possession and presented at the time of application. The permit application shall include a diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged; the location of buildings, highways, and other lines of communication; the lines behind which the audience will be restrained; and the location of nearby trees, telegraph or telephone lines and other overhead obstructions. At the time of permit application, the fire code official shall be consulted regarding the requirements for standby fire apparatus. After the permit is issued, sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit shall be transferable. Permits shall be issued by the City License Collector after a recommendation from the fire code official. The license fee to engage in a public display of fireworks shall be $150.00 per event."

Section 66. Section 15.01.660 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 33, Section 3301.2.4 amended – Financial responsibility.** Chapter 33, Section 3301.2.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 3301.2.4 Financial responsibility.** Before a permit is issued, as required by Section 3301.2, the applicant shall file with the City Clerk a corporate surety bond in the principal sum of not less than $500,000 or a public liability insurance policy for the same amount, for injury or death to persons or injury to property for the purpose of the payment of all damages to persons or

property which arise from, or are caused by, the conduct of any act authorized by the permit upon which any judicial judgment results. The fire code official is authorized to specify a greater or lesser amount when, in his or her opinion, conditions at the location of use indicate a greater or lesser amount is required. Government entities shall be exempt from this bond or insurance requirement."

Section 67. Section 15.01.670 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Chapter 33, Section 3308.2.3 created – permit for indoor pyrotechnic special effects material.** Chapter 33, Section 3308.2.3 of the International Fire Code, 2006 Edition, is created to read as follows:

**Section 3308.2.3 Permit for Indoor Pyrotechnic Special Effects Material.** A permit is required to manufacture, compound, store, or use pyrotechnic special effect material. A permit for the use of pyrotechnic special effect material, or to conduct an indoor pyrotechnic display, shall be granted only to a pyrotechnic operator. Permit applications shall be made not less than 14 days prior to the scheduled use or date of the display. No permit shall be submitted more than 60 days prior to the scheduled date of a use or display unless a signed contract for such use of display is in the applicant's possession and presented at the time of application. The permit application shall include a diagram of the location and a plan or the use of the pyrotechnic material. At the time of the permit application, the fire code official shall be consulted regarding requirements for standby fire apparatus. After the permit has been issued, possession, storage and use of pyrotechnic material of the purpose indicated in the plan at the location shown shall be lawful for that purpose only. No permit shall be transferable. Permits shall be issued by the City

Treasurer's Office after a recommendation from the fire code official. The license fee to engage in the use of pyrotechnic material or to conduct an indoor pyrotechnic display shall be $150.00 per event."

Section 68. Section 15.01.680 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 33, Section 3308.4 amended – Clearance.** Chapter 33, Section 3308.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 3308.4 Clearance.** Spectators, spectator parking areas, fire and emergency response personnel and their vehicles, and dwellings, buildings, or structures shall not be located within the display site.

**Exceptions:**

1. This provision shall not apply to pyrotechnic special effects and displays using Division 1.4G materials before a proximate audience in accordance with NFPA 1126.

2. This provision shall not apply to unoccupied dwellings, buildings and structures with the approval of the building owner and the fire code official.

3. Where the fire code official requires additional distance to dwellings, buildings, structures or areas with special hazards. The fire code official shall determine the approved minimum distance to outdoor display sites and sites shall be in accordance with NFPA 1123, table 3.1.3."

Section 69. Section 15.01.690 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 38, Section 3804.2 amended – Maximum capacity within established limits.** Chapter 38, Section 3804.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 3804.2 Maximum capacity within established limits.** Within the limits established by law restricting the storage of liquefied petroleum gas for the protection of heavily populated or congested areas, the aggregate capacity of any one installation shall not exceed a water capacity of 100 gallons (378.5412 L). Containers greater than 100 gallons (378.5412 L) are prohibited within the city limits where public gas utilities are provided.

**Exceptions:** 1. In particular installations, this capacity limit shall be determined by the fire code official, after consideration of special features, such as topographical conditions, nature of occupancy, proximity to buildings, capacity of proposed LP-gas containers, degree of fire protection to be provided and capabilities of the local fire department.

2. Pre existing installations until said property changes ownership

3. Storage of portable LP-gas containers awaiting use or resale. See section 3809"

Section 70. The original of section 15.01 of the Code of the City of Wichita, Kansas, is hereby amended.

Section 71. The ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon publication once in the official paper.

ADOPTED at Wichita, Kansas, this 9th day of November, 2010.

_____

Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

## APPENDIX H

# HAZARDOUS MATERIALS MANAGEMENT PLAN (HMMP) AND HAZARDOUS MATERIALS INVENTORY STATEMENT (HMIS) INSTRUCTIONS

*The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.*

### SECTION H101
### HMMP

**H101.1 Part A** (See Example Format in Figure 1).

1. Fill out items and sign the declaration.
2. Part A of this section is required to be updated and submitted annually, or within 30 days of a process or management change.

**H101.2 Part B—General Facility Description/Site Plan** (See Example Format in Figure 2).

1. Provide a site plan on 8½- by 11-inch (215 mm by 279 mm) paper, showing the locations of all buildings, structures, outdoor chemical control or storage and use areas, parking lots, internal roads, storm and sanitary sewers, wells and adjacent property uses. Indicate the approximate scale, northern direction and date the drawing was completed.

**H101.3 Part C—Facility Storage Map—Confidential Information** (See Example Format in Figure 3).

1. Provide a floor plan of each building identified on the site plan as containing hazardous materials on 8½- by 11-inch (215 mm by 279 mm) paper, identifying the northern direction, and showing the location of each storage and use area.
2. Identify storage and use areas, including hazard waste storage areas.
3. Show the following:
   - 3.1. Accesses to each storage and use area.
   - 3.2. Location of emergency equipment.
   - 3.3. Location where liaison will meet emergency responders.
   - 3.4. Facility evacuation meeting point locations.
   - 3.5. The general purpose of other areas within the building.
   - 3.6. Location of all aboveground and underground tanks to include sumps, vaults, below-grade treatment systems, piping, etc.
   - 3.7. Show hazard classes in each area.
   - 3.8. Show locations of all H occupancies, control areas, and exterior storage and use areas.
   - 3.9. Show emergency exits.

**H101.4 HMMP short form.** Facilities with the *maximum allowable quantities or less per control area* in Tables 2703.3.2(1) through 2703.1.1(4) of the *International Fire Code* and where the threshold planning quantities at EPA 40 CFR Part 355, Sections 302 and 304 are not exceeded, shall be allowed to file a short-form HMMP which shall include all of the following components:

1. General facility information.
2. A simple line drawing of the facility showing the location of storage facilities and indicating the hazard class or classes and physical state of the hazardous materials being stored.
3. Information that the hazardous materials will be stored and handled in a safe manner and will be appropriately contained, separated and monitored.
4. Assurance that security precautions have been taken, employees have been appropriately trained to handle the hazardous materials and react to emergency situations, adequate labeling and warning signs are posted, adequate emergency equipment is maintained and the disposal of hazardous materials will be in an appropriate manner.

Facilities which have prepared, filed and submitted a Tier II Inventory Report required by the U.S. Environmental Protection Agency (USEPA) or required by a state which has secured USEPA approval for a similar form shall be deemed to have complied with this section.

### SECTION H102
### HMIS

**H102.1 Inventory statement contents.**

1. HMIS Summary Report (see Example Format in Figure 4).
   - 1.1. Complete a summary report for each control area and H occupancy.
   - 1.2. The storage summary report includes the HMIS Inventory Report amounts in storage, use-closed and use-open conditions.
   - 1.3. Provide separate summary reports for storage, use-closed and use-open conditions.
   - 1.4. IBC/IFC Hazard Class.
   - 1.5. Inventory Amount [Solid (lb) / Liquid (gal), Gas (cu ft, gal or lbs)].
   - 1.6. IBC/IFC Maximum Allowable Quantity per control area (MAQ). (If applicable, double MAQ for sprinkler protection and/or storage in cabinets. For wholesale and retail sales occupancies, go to Tables

## APPENDIX H

# HAZARDOUS MATERIALS MANAGEMENT PLAN (HMMP) AND HAZARDOUS MATERIALS INVENTORY STATEMENT (HMIS) INSTRUCTIONS

***The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.***

### SECTION H101
### HMMP

**H101.1 Part A** (See Example Format in Figure 1).

1. Fill out items and sign the declaration.
2. Part A of this section is required to be updated and submitted annually, or within 30 days of a process or management change.

**H101.2 Part B–General Facility Description/Site Plan** (See Example Format in Figure 2).

1. Provide a site plan on 8½- by 11-inch (215 mm by 279 mm) paper showing the locations of all buildings, structures, outdoor chemical control or storage and use areas, parking lots, internal roads, storm and sanitary sewers, wells and adjacent property uses. Indicate the approximate scale, northern direction and date the drawing was completed.

**H101.3 Part C–Facility Storage Map–Confidential Information** (See Example Format in Figure 3).

1. Provide a floor plan of each building identified on the site plan as containing hazardous materials on 8½- by 11-inch (215 mm by 279 mm) paper, identifying the northern direction, and showing the location of each storage and use area.
2. Identify storage and use areas, including hazard waste storage areas.
3. Show the following:
   - 3.1. Accesses to each storage and use area.
   - 3.2. Location of emergency equipment.
   - 3.3. Location where liaison will meet emergency responders.
   - 3.4. Facility evacuation meeting point locations.
   - 3.5. The general purpose of other areas within the building.
   - 3.6. Location of all aboveground and underground tanks to include sumps, vaults, below-grade treatment systems, piping, etc.
   - 3.7. Show hazard classes in each area.
   - 3.8. Show locations of all H occupancies, control areas, and exterior storage and use areas.
   - 3.9. Show emergency exits.

**H101.4 HMMP short form.** Facilities with the *maximum allowable quantities or less per control area* in Tables 27(b)3.3(10) through 27(b)1.1(4) of the *International Fire Code* and where the threshold planning quantities at EPA 40 CFR Part 355, Sections 302 and 304 are not exceeded, shall be allowed to file a short-form HMMP which shall include all of the following components:

1. General facility information.
2. A simple line drawing of the facility showing the location of storage facilities and indicating the hazard class or classes and physical state of the hazardous materials being stored.
3. Information that the hazardous materials will be stored and handled in a safe manner and will be appropriately contained, separated and monitored.
4. Assurance that security precautions have been taken, employees have been appropriately trained to handle the hazardous materials and react to emergency situations, adequate labeling and warning signs are posted, adequate emergency equipment is maintained and the disposal of hazardous materials will be in an appropriate manner.

Facilities which have prepared, filed and submitted a Tier II Inventory Report required by the U.S. Environmental Protection Agency (USEPA) or required by a state which has secured USEPA approval for a similar form shall be deemed to have complied with this section.

### SECTION H102
### HMIS

**H102.1 Inventory statement contents.**

1. HMIS Summary Report (see Example Format in Figure 4).
   - 1.1. Complete a summary report for each control area and H occupancy.
   - 1.2. The storage summary report includes the HMIS Inventory Report amounts in storage, use-closed and use-open conditions.
   - 1.3. Provide separate summary reports for storage, use-closed and use-open conditions.
   - 1.4. IBC/IFC Hazard Class.
   - 1.5. Inventory Amount. [Solid (lb), Liquid (gal), Gas (cu ft, gal or lbs)].
   - 1.6. IBC/IFC Maximum Allowable Quantity per control area (MAQ). (If applicable, double MAQ for sprinkler protection and/or storage in cabinets. For wholesale and retail sales occupancies, go to Tables

FIGURE 1
HAZARDOUS MATERIALS MANAGEMENT PLAN
SECTION I: FACILITY DESCRIPTION

1. Business Name: _____ Phone: _____
   Address: _____

2. Person Responsible for the Business

| Name | Title | Phone |
|---|---|---|
| | | |

3. Emergency Contacts:

| Name | Title | Home Number | Work Number |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

4. Person Responsible for the Application/Principal Contact:

| Name | Title | Phone |
|---|---|---|
| | | |

5. Principal Business Activity:

_____
_____
_____

6. Number of Employees: _____

7. Number of Shifts: _____
   a. Number of Employees per Shift

_____
_____
_____

8. Hours of Operation: _____

3705.11.1 and 3404.3.4.1 of the *International Fire Code* for MAQs.).

2. HMIS Inventory Report (see Example Format in Figure 5).

   2.1. Complete an inventory report by listing products by location.

   2.2. Product Name.

   2.3. Components. (For mixtures specify percentages of major components if available.)

   2.4. Chemical Abstract Service (CAS) Number. (For mixtures list CAS Numbers of major components if available.)

   2.5. Location. (Identify the control area or, if it is an Group H occupancy, provide the classification, such as H-2, H-3, etc.)

   2.6. Container with a capacity of greater than 55 gallons (208 L). (If product container, vessel or tank could exceed 55 gallons, indicate yes in column.)

   2.7. Hazard Classification. (List applicable classifications for each product.)

   2.8. Stored. (Amount of product in storage conditions.)

   2.9. Closed. (Amount of product in use-closed systems.)

   2.10. Open. (Amount of product in use-open systems.)

## SECTION H103
## EMERGENCY PLAN

1. Emergency Notification. (See Example Format in Figure 6.)

2. Where OSHA or state regulations require a facility to have either an Emergency Action Plan (EAP) or an Emergency Response Plan (ERP), the EAP or ERP shall be included as part of the HMMP.

## SECTION H104
## REFERENCED STANDARDS

| | | |
|---|---|---|
| EPA 40 CFR Part 355—2002 | Emergency Planning and Notification | H101.1 |
| ICC IBC-09 | International Building Code | H102.1 |
| ICC IFC-09 | International Fire Code | H101.4, H102.1 |

3705.11.1 and 3404.3.4.1 of the *International Fire Code* for MAQs.).

2. HMIS Inventory Report (see Example Format in Figure 5).

   2.1. Complete an inventory report by listing products by location.

   2.2. Product Name.

   2.3. Components. (For mixtures specify percentages of major components if available.)

   2.4. Chemical Abstract Service (CAS) Number. (For mixtures list CAS Numbers of major components if available.)

   2.5. Location. (Identify the control area or, if it is an Group H occupancy, provide the classification, such as H-2, H-3, etc.)

   2.6. Container with a capacity of greater than 55 gallons (208 L). (If product container, vessel or tank could exceed 55 gallons, indicate yes in column.)

   2.7. Hazard Classification. (List applicable classifications for each product.)

   2.8. Stored. (Amount of product in storage conditions.)

   2.9. Closed. (Amount of product in use-closed systems.)

   2.10. Open. (Amount of product in use-open systems.)

## SECTION H103
## EMERGENCY PLAN

1. Emergency Notification. (See Example Format in Figure 6.)

2. Where OSHA or state regulations require a facility to have either an Emergency Action Plan (EAP) or an Emergency Response Plan (ERP), the EAP or ERP shall be included as part of the HMMP.

## SECTION H104
## REFERENCED STANDARDS

| | | |
|---|---|---|
| EPA 40 CFR Part 355—2002 | Emergency Planning and Notification | H101.1 |
| ICC IBC-09 | International Building Code | H102.1 |
| ICC IFC-09 | International Fire Code | H101.4, H102.1 |

2703.2.2.1 and 3701.3.4.1 of the *International Fire Code* for MAQs.)

2. HMIS Inventory Report (see Example Format in Figure 5).

   2.1. Complete an inventory report by listing products by location.

   2.2. Product Name.

   2.3. Components. (For mixtures specify percentages of major components if available.)

   2.4. Chemical Abstract Service (CAS) Number. (For mixtures list CAS Numbers of major components if available.)

   2.5. Location. (Identify the control area, if it is in Group H occupancy, provide the classification, such as H-2, H-3, etc.)

   2.6. Container with a capacity of greater than 55 gallons (208 L). (If product container, vessel or tank could exceed 55 gallons, indicate yes in column.)

   2.7. Hazard Classification. (List applicable classifications for each product.)

   2.8. Stored. (Amount of product in storage conditions.)

   2.9. Closed. (Amount of product in use-closed systems.)

   2.10. Open. (Amount of product in use-open systems.)

## SECTION H103
## EMERGENCY PLAN

1. Emergency Notification. (See Example Format in Figure 6.)

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## SECTION H104
## REFERENCED STANDARDS

| | | |
|---|---|---|
| EPA 40 CFR Part 355—2008 | Emergency Planning and Notification | H101.2 |
| ICC IBC-09 | International Building Code | H102.1 |
| ICC IFC-09 | International Fire Code | H101.2, H102.1 |

FIGURE 1
HAZARDOUS MATERIALS MANAGEMENT PLAN
SECTION I: FACILITY DESCRIPTION

1. Business Name: _____ Phone: _____
   Address: _____

2. Person Responsible for the Business
   Name | Title | Phone

3. Emergency Contacts:
   Name | Title | Home Number | Work Number

4. Person Responsible for the Application/Principal Contact:
   Name | Title | Phone

5. Principal Business Activity:

6. Number of Employees: _____

7. Number of Shifts: _____
   a. Number of Employees per Shift

8. Hours of Operation: _____

FIGURE 2
HAZARDOUS MATERIALS MANAGEMENT PLAN SECTION I: FACILITY DESCRIPTION

FIGURE 2
HAZARDOUS MATERIALS MANAGEMENT PLAN

## SECTION I: FACILITY DESCRIPTION
## PART C—FACILITY MAP

| | |
|---|---|
| Business Name | Date |
| Address | Page of |

**FIGURE 4**
**SECTION II — HAZARDOUS MATERIALS INVENTORY STATEMENT (HMIS) HMIS SUMMARY REPORT[a]**
**(Storage[b] Conditions)[c]**

| IBC/IFC HAZARD CLASS | HAZARD CLASS (Abbrev) | INVENTORY AMOUNT Solid (lb) | Liquid (gal) | Gas (cu ft, gal, lb) | IBC/IFC MAXIMUM ALLOWABLE QUANT Solid (lb) | Liquid (gal) | Gas (cu |
|---|---|---|---|---|---|---|---|
| Combustible Liquid | C2 | | 5 | | | 120 | |
| | C3A | | | | | 330 | |
| | C3B | | 6 | | | 13200 | |
| Combustible Fiber | Loose Baled | | | | | | |
| Cryogenics, Flammable | CryO-Flam | | | | | 45 | |
| Cryogenic, Oxidizing | CryO-OX | | | | | 45 | |
| Flammable Gas | FLG | | | | | | |
| (Gaseous) | | | | 150 | | | 10 |
| (Liquefied) | | | | | | 30 | |
| Flammable Liquid | F1A | | | | | 30 | |
| | F1B & F1C | | 5 | | | 120 | |
| Combination (1A, 1B, 1C) | | | 5 | | | 120 | |
| Flammable Solid | FLS | | | | 125 | | |
| Organic Peroxide | OPU | | | | 0 | | |
| | OP1 | | | | 5 | | |
| | OP2 | | | | 50 | | |
| | OP3 | | | | 125 | | |
| | OP4 | | | | NL | | |
| | OP5 | | | | NL | | |
| Oxidizer | OX4 | | | | 0 | | |
| | OX3 | | | | 10 | | |
| | OX2 | | | | 250 | | |
| | OX1 | | | | 4000 | | |

a. Complete a summary report for each control area and H occupancy.
b. Storage = storage + use-closed + use-open systems
c. Separate reports are required for use-closed and use-open systems

**FIGURE 5**
**SECTION II — HAZARDOUS MATERIALS INVENTORY STATEMENT (HMIS) HMIS INVENTORY REPORT**
*(Sort Products Alphabetically by Location of Product and then Alphabetically by Product Name)*

| Product Name (Components)[c] | CAS Number | Location[a] | Container > 55 gal[b] | Haz Class 1 | Haz Class 2 | Haz Class 3 | Stored (lbs) | Stored (gal) | Stored (gas)[d] | Closed (lbs) | Closed (gal) | Closed gas[d] | Open (lbs) | Open (gal) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ACETYLENE (Acetylene gas) | 74-86-2 | Control Area 1 | | FLG | UR2 | | | | 150 | | | | | |
| BLACK AEROSOL SPRAY PAINT (Mixture) | Mixture | Control Area 1 | | A-I 3 | | | 24 | | | | | | | |
| GASOLINE, UNLEADED (Gasoline-Mixture) Methyl-t-Butyl-Ether 15% Diisopropyl Ether 7% Ethanol-11% Toluene-17% Xylene 11% | 8006-61-9 1634-04-4 108-20-3 64-17-5 108-88-3 1330-20-7 | Control Area 1 | FUB | | | | | 5 | | | | | | |
| MOTOR OIL 10W40 (Hydrocarbon Heavy Paraffinic Distillates-55%; Additives-20%) | 61742-54-7 Mixture | Control Area 1 | | C3U | | | | 5 | | | | | | |
| DIESEL (Diesel-80-100%; Additives) | 68476-34-6 Proprietary | Control Area 2 | Yes | C2 | | | | 225 | | | | | | |
| TRANSMISSION FLUID (Oil Solvent-Neutral; Performance Additives) | 64742-65-0 | Control Area 2 | | C3B | | | | 5 | | | | | | |
| OXYGEN, GAS (Oxygen) | 7782-44-7 | H-5 | | OXG | | | | | 5000 | | | | | |

a. Identify the control area(s), if it is an H occupancy, provide the classification, such as H-2, H-3, etc.
b. If the product, container, vessel, or tank exceeds 55 gallons, indicate yes in the column.
c. Specify percentages of main components if available.
d. In cubic feet, gallons, or pounds.
(This is an example; add additional hazard classes as needed.)

APPENDIX H

**FIGURE 6**
**HAZARDOUS MATERIALS MANAGEMENT PLAN**
**SECTION III: EMERGENCY PLAN**

1. In the event of an emergency, the following shall be notified:

a. Facility Liaison

| Name | Title | Home Phone | Cell Phone |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

b. Agency

| Agency | Contact | Phone Number |
|---|---|---|
| Fire Department | | |
| LEPC | | |
| Other | | |

## APPENDIX I

# FIRE PROTECTION SYSTEMS—NONCOMPLIANT CONDITIONS

*The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.*

### SECTION I101
### NONCOMPLIANT CONDITIONS

**I101.1 General.** This appendix is intended to identify conditions that can occur when fire protection systems are not properly maintained or components have been damaged. This appendix is not intended to provide comprehensive inspection, testing and maintenance requirements, which are found in NFPA 10, 25 and 72. Rather, its intent is to identify problems that are readily observable during fire inspections.

**I101.2 Noncompliant conditions requiring component replacement.** The following conditions shall be deemed noncompliant and shall cause the related component(s) to be replaced to comply with the provisions of this code:

1. Sprinkler heads having any of the following conditions:
   - 1.1. Signs of leakage;
   - 1.2. Paint or other ornamentation that is not factory applied;
   - 1.3. Evidence of corrosion including, but not limited to, discoloration or rust;
   - 1.4. Deformation or damage to any part;
   - 1.5. Improper orientation of sprinkler head;
   - 1.6. Empty glass bulb;
   - 1.7. Sprinkler heads manufactured prior to 1920;
   - 1.8. Replacement sprinkler heads that do not match existing sprinkler heads in orifice size, K-factor temperature rating, coating or deflector type; or
   - 1.9. Sprinkler heads for the protection of cooking equipment that have not been replaced within one year.
2. Water pressure and air pressure gauges that have been installed for more than five years and have not been tested to within 3 percent accuracy.

**I101.3 Noncompliant conditions requiring component repair or replacement.** The following shall be deemed noncompliant conditions and shall cause the related component(s) to be repaired or replaced to comply with the provisions of this code:

1. Sprinkler and standpipe system piping and fittings having any of the following conditions:
   - 1.1. Signs of leakage;
   - 1.2. Evidence of corrosion;
   - 1.3. Misalignment; or
   - 1.4. Mechanical damage.
2. Sprinkler piping support having any of the following conditions:
   - 2.1. Materials resting on or hung from sprinkler piping;
   - 2.2. Damaged or loose hangers or braces.
3. Class II and Class III standpipe systems having any of the following conditions:
   - 3.1. No hose or nozzle, where required;
   - 3.2. Hose threads incompatible with fire department hose threads;
   - 3.3. Hose connection cap missing;
   - 3.4. Mildew, cuts, abrasions and deterioration evident;
   - 3.5. Coupling damaged;
   - 3.6. Gaskets missing or deteriorated; or
   - 3.7. Nozzle missing or obstructed.
4. Hose racks and cabinets having any of the following conditions:
   - 4.1. Difficult to operate or damaged;
   - 4.2. Hose improperly racked or rolled;
   - 4.3. Inability of rack to swing 90 degrees out of the cabinet;
   - 4.4. Cabinet locked, except as permitted by this code;
   - 4.5. Cabinet door will not fully open; or
   - 4.6. Door glazing cracked or broken.
5. Portable fire extinguishers having any of the following conditions:
   - 5.1. Broken seal or tamper indicator;
   - 5.2. Expired maintenance tag;
   - 5.3. Pressure gauge indicator in "red";
   - 5.4. Signs of leakage or corrosion;
   - 5.5. Mechanical damage, denting or abrasion of tank;
   - 5.6. Presence of repairs such as welding, soldering or brazing;
   - 5.7. Damaged threads; or
   - 5.8. Damaged hose assembly, couplings or swivel joints.

6. Fire alarm and detection control equipment, initiating devices and notification appliances having any of the following conditions:

   6.1. Corroded or leaking batteries or terminals;

   6.2. Smoke detectors having paint or other ornamentation that is not factory applied;

   6.3. Mechanical damage to heat or smoke detectors; or

   6.4. Tripped fuses.

7. Fire department connections having any of the following conditions:

   7.1. Fire department connections are not visible or accessible from the fire apparatus access road;

   7.2. Couplings or swivels are damaged;

   7.3. Plugs and caps are missing or damaged;

   7.4. Gaskets are deteriorated;

   7.5. Check valve is leaking; or

   7.6. Identification signs are missing.

8. Fire pumps having any of the following conditions:

   8.1. Pump room temperature is less than 40°F;

   8.2. Ventilating louvers are not freely operable;

   8.3. Corroded or leaking system piping;

   8.4. Diesel fuel tank is less than two-thirds full; or

   8.5. Battery readings, lubrication oil or cooling water levels are abnormal.

## SECTION 102
## REFERENCED STANDARDS

| | | |
|---|---|---|
| NFPA 10—07 | Portable Fire Extinguishers | 102.1 |
| NFPA 25—08 | Inspection, Testing and Maintenance of Water-based Fire Protection Systems | 102.1 |
| NFPA 72—07 | National Fire Alarm Code | 102.1 |

## APPENDIX J

# EMERGENCY RESPONDER RADIO COVERAGE

*The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.*

### SECTION J101
### GENERAL

**J101.1 Scope.** Systems, components and equipment required to provide emergency responder radio coverage shall be in accordance with this appendix.

**J101.2 Permit.** A construction permit is required for installation of or modification to emergency responder radio coverage systems and related equipment. Maintenance performed in accordance with this code is not considered a modification and does not require a permit.

### SECTION J102
### DEFINITIONS

**J102.1 Definitions.** For the purpose of this appendix, certain terms are defined as follows:

**AGENCY.** Any emergency responder department within the jurisdiction that utilizes radio frequencies for communication. This could include, but not be limited to, various public safety agencies such as fire department, emergency medical services and law enforcement.

### SECTION J103
### TECHNICAL REQUIREMENTS

**J103.1 System design.** The emergency responder radio coverage system shall be designed in accordance with Sections J103.1.1 through J103.1.5.

**J103.1.1 Amplification systems allowed.** Buildings and structures that cannot support the required level of radio coverage shall be equipped with a radiating cable system, a distributed antenna system with Federal Communications Commission (FCC)-certified signal boosters or other system approved by the *fire code official* in order to achieve the required adequate radio coverage.

**J103.1.2 Technical criteria.** The *fire code official* shall maintain a document providing the specific technical information and requirements for the emergency responder radio coverage system. This document shall contain, but not be limited to, the various frequencies required, the location of radio sites, the effective radiated power of radio sites and other supporting technical information.

**J103.1.3 Secondary power.** The emergency responder radio coverage system shall be equipped with a secondary source of power. The secondary source of power shall be either a battery system or an emergency generator. The secondary power supply shall supply power automatically when the primary power source is lost. The secondary source of power shall be capable of operating the emergency responder radio coverage system for a period of at least 12 hours.

**J103.1.3.1 Battery systems.** The active components of the installed system or systems shall be capable of operating on an independent battery system for a period of at least 12 hours without external power input. The battery system shall automatically charge in the presence of external power input.

**J103.1.4 Signal booster requirements.** If used, signal boosters shall meet the following requirements:

1. All signal booster components shall be contained in a NEMA4 type waterproof cabinet.
2. The battery system shall be contained in a NEMA4-type waterproof cabinet.
3. The system shall include automatic alarming of malfunctions of the signal booster and battery system. Any resulting trouble alarm shall be automatically transmitted to an approved central station or proprietary supervising station as defined in NFPA 72 or, when approved by the *fire code official*, shall sound an audible signal in a constantly attended location.
4. Equipment shall have FCC certification prior to installation.

**J103.1.5 Additional frequencies and change of frequencies.** The emergency responder radio coverage system shall be capable of modification or expansion in the event frequency changes are required by the FCC or additional frequencies are made available by the FCC.

**J103.2 Installation requirements.** The installation of the public safety radio coverage system shall be in accordance with Sections J103.2.1 through J103.2.5.

**J103.2.1 Approval prior to installation.** No amplification system capable of operating on frequencies licensed to any public safety agency by the FCC shall be installed without prior coordination and approval of the *fire code official*.

**J103.2.2 Permit required.** A construction permit, as required by Section 105.7.5 of the *International Fire Code*, shall be obtained prior to the installation of the emergency responder radio coverage system.

**J103.2.3 Minimum qualifications of personnel.** The minimum qualifications of the system designer and lead installation personnel shall include:

1. A valid FCC-issued General Radio Operators License, and
2. Certification of in-building system training issued by a nationally recognized organization or school or a

certificate issued by the manufacturer of the equipment being installed.

The agency may waive these requirements upon a successful demonstration of adequate skills and experience satisfactory to the *fire code official*.

**J103.2.4 Acceptance test procedure.** When an emergency responder radio coverage system is required, and upon completion of installation, the building *owner* shall have the radio system tested to ensure that two-way coverage on each floor of the building is a minimum of 90 percent. The test procedure shall be conducted as follows:

1. Each floor of the building shall be divided into a grid of 20 approximately equal areas.
2. The test shall be conducted using a calibrated portable radio of the latest brand and model used by the agency talking through the agency's radio communications system.
3. A maximum of two nonadjacent areas shall be allowed to fail the test.
4. In the event that three of the areas fail the test, in order to be more statistically accurate, the floor may be divided into 40 equal areas. A maximum of four nonadjacent areas shall be allowed to fail the test. If the system fails the 40-area test, the system shall be claimed not to meet the 90-percent coverage requirement.
5. A test location approximately in the center of each grid area shall be selected for the test, then the radio shall be enabled to verify two-way communications to and from the outside of the building through the public agency's radio communications system. Once the test location has been selected, that location shall represent the entire area. If the test fails in the selected test location, that grid area shall fail, and prospecting for a better spot within the grid area shall not be allowed.
6. The gain values of all amplifiers shall be measured and the test measurement results shall be kept on file with the building owner so that the measurements can be verified during annual tests. In the event that the measurement results become lost, the building owner shall be required to repeat the acceptance test to reestablish the gain values.
7. As part of the installation a spectrum analyzer or other suitable test equipment shall be utilized to insure spurious oscillations are not being generated by the subject signal booster. This test shall be conducted at time of installation and subsequent annual inspections.

**J103.2.5 FCC compliance.** The emergency responder radio coverage system installation and components shall also comply with all applicable federal regulations, including, but not limited to, FCC 47 CFR 90.219.

**J103.3 Maintenance.** The emergency responder radio coverage system shall be maintained in accordance with Sections J103.3.1 through J103.3.5.

**J103.3.1 Maintenance.** The public radio coverage system shall be maintained operational at all times.

**J103.3.2 Permit required.** A construction permit, as required by Section 105.7.5 of the *International Fire Code*, shall be obtained prior to the modification or alteration of the emergency responder radio coverage system.

**J103.3.3 Testing and proof of compliance.** The emergency responder radio coverage system shall be inspected and tested annually or whenever structural changes occur including additions or remodels that could materially change the original field performance tests. Testing shall consist of the following:

1. In-building coverage test as described in Section J103.2.4.
2. Signal boosters shall be tested to ensure that the gain is the same as it was upon initial installation and acceptance.
3. Backup batteries and power supplies shall be tested under load for a period of one hour to verify that they will properly operate during an actual power outage. If within the one hour test period the battery exhibits symptoms of failure, the test shall be extended for additional one hour periods until the integrity of the battery can be determined.
4. All other active components shall be checked to verify operation within the manufacturer's specifications.
5. At the conclusion of the testing a report which shall verify compliance with Section J103.2.4 shall be submitted to the *fire code official*.

**J103.3.4 Additional frequencies.** The building owner shall modify or expand the emergency responder radio coverage system at his or her expense in the event frequency changes are required by the FCC or additional frequencies are made available by the FCC. Prior approval of a public safety radio coverage system on previous frequencies does not exempt this section.

**J103.3.5 Field testing.** Agency personnel shall have the right to enter onto the property at any reasonable time to conduct field testing to verify the required level of radio coverage.

## SECTION J104
## REFERENCED STANDARDS

| | | |
|---|---|---|
| FCC 47 CFR 90.219—2007 | Private Land Mobile Radio Services—Use of Signal Boosters | J103.2.5 |
| ICC IFC—09 | International Fire Code | J103.2.2, J103.3.2 |
| NFPA 72—07 | National Fire Alarm Code | J103.1.4 |

First Published in The Wichita Eagle on _____

DELINEATED 11/02/2010

ORDINANCE NO. _____

AN ORDINANCE ADOPTING THE 2006 INTERNATIONAL FIRE CODE AND CITY OF WICHITA AMENDMENTS THERETO, AMENDING CHAPTER 15.01 AND REPEALING THE ORIGINAL OF CHAPTER 15.01 OF SAID CODE.

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

Section 1**.** Section 15.01.010 of the Code of the City of Wichita, is hereby created to read as follows:

"Adoption of the International Fire Code. The International Fire Code, as published by the International Codes Council, Inc., 2006 Edition, including Appendices B, C, D, E, F, and G and from the 2009 Edition of the International Fire Code, Appendices H, I & J, is hereby adopted and incorporated herein by reference, subject to such amendments thereto as are set forth hereinafter."

Section 2. Section 15.01.020 of the Code of the City of Wichita, Kansas is hereby amended to read as follows:

**"Chapter 1, Section 102.5 amended - Historic buildings.** Chapter 1, Section 102.5 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 102.5 Historic buildings.** The provisions of this code relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local jurisdiction as historic buildings when such buildings or structures do not constitute a distinct

hazard to life or property. Fire protection in designated historic buildings and structures shall be provided in accordance with an approved fire protection plan developed in accordance with the provisions of the ~~*City of Wichita Rehabilitation Code*~~ *2006 Edition International Existing Building Code."*

Section 3. Section 15.01.030 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Chapter 1, Section 104.2.1 created – Plan review and consultation.** Chapter 1, Section 104.2.1 of the International Fire Code, 2006 Edition, is created to read as follows:

**Section 104.2.1 Plan review and consultation.** When submittal documents or consultation requests are required by Section 104.2 of the *International Fire Code*, a plan review fee or consultation fee shall be paid at the time of submitting the documents for plan review or consultation services for on-site preliminary consultations, underground fire protection main plans review and site inspections, and plan review and on-site inspection for alternative fire suppression systems. Said plan review or consultation fee shall be $130.00. The plan review or consultation fees specified in this section are separate fees from those fees set forth in Section 108.2 of the *International Building Code* and are in addition to building permit fees. When submittal documents are incomplete or changed so as to require additional plan review or consultation or when the project involves deferred submittal items as defined in Section 106.3.4.2 of the *International Building Code*, an additional plan review fee or consultation fee shall be charged at the same rate.

Section 4. Section 15.01.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 105.1.1 amended – Permits required.** Chapter 1, Section 105.1.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 105.1.1 Permits required.** Permits required by this code shall be obtained from the fire code official. Permit fees, if any, shall be paid prior to issuance of the permit. Issued permits shall be kept on the premises designated therein at all times and shall be readily available for inspection by the fire code official. In instances where laws or regulations are enforceable by departments other than the fire department, joint approval shall be obtained from all departments concerned."

Section 5. Section 15.01.050 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Chapter 1, Section 105.1.1.1 created – Permits required, fee.** Chapter 1, Section 105.1.1.1 of the International Fire Code, 2006 Edition, is created to read as follows:

**Section 105.1.1.1 Permit fee**. The permit fee shall be $65.00."

Section 6. Section 15.01.060 of the Code of the City of Wichita, Kansas is hereby created to read as follows:

**"Chapter 1, Section 105.6.7.1 created – Community event stand-by permit.** Chapter 1, Section 105.5.7.1 of the International Fire Code, 2006 Edition, is created to read as follows:

**Section 105.6.7.1 Community event stand-by fee.** An operational permit is required for community events. Completion of a Community Event Application is required when all of the following conditions apply: *The City of Wichita defines a Community Event as follows:*

1. Outdoor event on public and/or private property
2. Attendance in excess of 50 persons on public property and/or 250 persons on private or park property. *Excludes invitation only events taking place on private property.*

3. Involves a particular purpose and time.

When in the opinion of the fire code official, it is essential for public safety where people congregate, because of the number of persons, or the nature of the performance, exhibition, display, contest or activity, the owner, agent or lessee shall comply with the Fire Department regulation formula to determine the need and number of firefighter's required for stand-by. All costs associated for event stand-by are the responsibility of the owner, agent or lessee. The rate for stand-by will be figured at $120.00 per hour for a 2-person team on a light response vehicle and $210.00 per hour for a minimum 3-person team on a heavy response vehicle. The regulation formula identified below will be used by the fire code official to determine the number of stand-by personnel required.

| FACTOR | GRADATION | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| CROWD SIZE* | 250+<br>2 | 4000<br>3 | 8000<br>6 | 12000<br>6 | 16000<br>9 | 20000<br>12 | 24000<br>12 | 28000<br>14 | 32 |
| ALCOHOL ALLOWED? | NO<br>0 | | | | | SOLD<br>2 | | | |
| COST OF ADMISSION | $20+<br>0 | | | | | $1-19<br>2 | | | |
| DAYTIME OR NIGHTIME? | DAY<br>0 | | | | | | | | |
| ACCESS ADEQUATE? | VERY<br>0 | | | | | MOD<br>1 | | | |
| IS EVENT INSURED? | YES<br>0 | | | | | | | | |
| HAZ CONDITIONS ?<br>fireworks<br>Overcrowding | NO<br>0 | | | | | MOD<br>3 | | | |
| APPROVED IN HOUSE MEDICAL/FIRE STAFF? | | | | | | | | | |
| EXPERIENCE WITH EVENT | | | | | | | | | |

***Figure 3 firefighters per 4000 attendees above 40000**

**Use of this matrix will estimate the number of personnel necessary to adequately staff med**
**Certain annual events will also factor in past experience, which can affect the staffing level**

Section 7. Section 15.01.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 105.6.27 amended – LP-gas.** Chapter 1, Section 105.6.27 of the International Fire Code, 2006 Edition, is amended to read as follows:

**105.6.27 LP-gas.** An operational permit is required for:

1. Storage and use of LP-gas.

   **Exception**: A permit is not required for individual containers with a 100-gallon (378.5412 L) ~~500-gallon (1893 L)~~ water capacity or less serving occupancies in Group R-3.

2. Operation of cargo tankers that transport LP-gas.

3. Failure to obtain said permit could result in the fire code official ordering the removal of any tank over 100 gallon (378.5412 L) water capacity.

Section 8. Section 15.01.080 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 105.6.32 amended – Open flames and candles.** Chapter 1, Section 105.6.32 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 105.6.32 Open flames and candles**. An operational permit is required to use open flames or candles in connection with all assembly areas. ~~dining areas of restaurants or drinking establishments.~~ Exceptions can be made by the fire code official.

Section 9. Section 15.01.090 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 105.7.13 amended – Temporary membrane structures, tents and canopies.** Chapter 1, Section 105.7.13 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 105.7.13 Temporary membrane structures, tents and canopies**. A construction permit is required to erect an air-supported temporary membrane structure or a tent having an area in excess of 200 square feet (37 m2) and canopies in excess of 400 square feet (37m2). Permit fee for tents and air supported structures 1,000 square feet (92.90304 m2) or less in floor area is $85.00. A $10.00 charge will be added for each additional 1,000 square feet (92.90304 m2) or fraction thereof.

**Exceptions**:

1. Tents used exclusively for recreational camping purposes.

2. Funeral tents and curtains or extensions attached thereto, when used for funeral services.

3. Fabric canopies and awnings open on all sides which comply with all of the following:

3.1 Individual canopies shall have a maximum size of 700 square feet (65m2).

3.2 The aggregate area of multiple canopies placed side by side without a fire break clearance of not less than 12 feet (3658 mm) shall not exceed 700 square feet (65m2) total.

3.3 A minimum clearance of 12 feet (3658 mm) to structures and other tents shall be maintained.

Section 10. Section 15.01.100 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 106.2.1 amended– Inspection Requests.** Chapter 1, Section 106.2.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 106.2.1 Inspection Requests**. It shall be the duty of the holder of the permit or their duly authorized agent to notify the fire code official that such work is ready for inspection. The fire code official is authorized to require that every request for inspection be filed not less than one working day before such inspection is desired. Such request may be in writing or by telephone at the option of the fire code official. It shall be the duty of the permit holder to provide access to and means for inspections of such work that are required by this code."

Section 11. Section 15.01.110 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 107.6 amended – Overcrowding.** Chapter 1, Section 107.6 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 107.6 Overcrowding.** ~~Overcrowding or admittance of any person beyond the approved capacity of a building or a portion thereof shall not be allowed. The fire code official, upon finding any overcrowding conditions or obstructions in aisles, passageways or other means of egress, or upon finding any condition which constitutes a life safety hazard, shall be authorized to cause the event to be stopped until such condition or obstruction is corrected.~~ No person shall permit overcrowding or admittance of any person beyond the approved capacity, as set forth in the International Building Code, of a building or a portion thereof. In determining whether the capacity of a building or any portion thereof has been exceeded, all persons within or upon the premises in questions shall be considered, including patrons, guests, employees, entertainers and management personnel.

Upon finding any overcrowding conditions or obstructions in aisles, passageways or other means of egress, or any condition which constitutes a life safety hazard, the Fire Chief, the Chief's authorized agent, or any law enforcement officer shall be authorized to take such action as is necessary to insure the safety of persons in and around the building or portion thereof, including causing the event or ongoing operation of business to be stopped until such condition or obstruction is corrected, or, upon approval of the Fire Chief, any Deputy Fire Chief or Fire Marshal, may cause the premises to be locked until such condition is corrected.

In the event any building or portion thereof is ordered locked by the Fire Chief or the Chief's designee as provided herein, the owner or occupant of such building or portion thereof may appeal the order to the City Council within ten (10) calendar days from the date of the order. The appeal must be in writing and filed with the city clerk and shall be heard promptly. Such an appeal shall stay the order locking the premises. In the event the order is upheld by the City Council, the owner or occupant of such building or portion thereof may appeal to the district

court as provided by state law; however such appeal shall not stay the order locking the premises.

Any person violating the provision of this Section shall be guilty of a misdemeanor and in addition to the penalties provided herein, the court may, upon conviction, order the building or portion thereof in which the overcrowded conditions existed to be locked for a period not to exceed thirty (30) calendar days.

Section 12. Section 15.01.120 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 109.3 amended – Violation penalties.** Chapter 1, Section 109.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 109.3 Violation penalties.** Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents or directive of the fire code official, or of a permit or certificate used under provisions of this code, shall be deemed guilty of a ~~[SPECIFY OFFENSE]~~ misdemeanor, punishable by a fine of not more than ~~[AMOUNT]~~ $2,500.00 dollars or by imprisonment not exceeding ~~[NUMBER OF DAYS]~~ one year, or both such fine and imprisonment. ~~Each day that a violation continues after due notice has been served shall be deemed a separate offense.~~"

Section 13. Section 15.01.130 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 1, Section 111.4 amended – Failure to comply.** Chapter 1, Section 111.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 111.4 Failure to comply.** Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, ~~shall be liable to a fine of not less than [AMOUNT] dollars or more than [AMOUNT] dollars.~~ shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $2,500.00 dollars or by imprisonment not exceeding one year, or both such fine and imprisonment."

Section 14. Section 15.01.140 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 2, Section 202[B] amended – Educational Group E, Day care.** Chapter 2, Section 202[B] of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 202 Day care.** The use of a building or structure, or portion thereof, for educational, supervision or personal care services for more than ~~five~~ ten children older than 2 1 /2 years of age shall be classified as an E occupancy."

Section 15. Section 15.01.150 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 2, Section 202[B] amended – Group I-4 amended – Day Care Facilities.** Chapter 2, Section 202[B] of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 202 Group I-4, day care facilities.** This group shall include buildings and structures occupied by persons of any age who receive custodial care for less than 24 hours by individuals other than parents or guardians, relatives by blood, marriage, or adoption, and in a place other than the home of the person cared for. A facility such as the above with ~~five~~ ten or fewer persons shall be classified as Group R-3 or shall comply with the International Residential Code in accordance with Section 101.2 of the International Building Code. Places of worship during religious functions are not included."

Section 16. Section 15.01.160 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 2, Section 202[B]amended – Group 1-4, day care facilities, Child care facility.** Chapter 2, Section 202[B] of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 202Group I-4, day care facility, Child care facility.** Child care facilities that provide supervision and personal care on less than a 24-hour basis for more than ~~five~~ ten children 2 ½ years of age or less shall be classified as Group I-4.

**Exception:** A child day care facility that provides care for more than ~~five~~ ten but no more than 100 children 2 1/ 2 years or less of age, where the rooms where such children are cared for are located on the level of exit discharge serving such rooms and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E."

Section 17. Section 15.01.170 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 2, Section 202[B]amended – R-3 (child care facility).** Chapter 2, Section 202[B] of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 202 R-3.** Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4 or I, including:

1. Buildings that do not contain more than two dwelling units.

2. Adult facilities that provide accommodations for ~~five~~ ten or fewer persons of any age for less than 24 hours.

3. Child care facilities that provide accommodations for ~~five~~ ten or fewer persons of any age for less than 24 hours.

4. Congregate living facilities with 16 or fewer persons."

Section 18. Section 15.01.180 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Chapter 3, Section 302.1 created – Asphalt Kettles.** Chapter 3, Section 302.1 of the International Fire Code, 2006 Edition, is created to read as follows:

**Section 302.1 Definitions - Asphalt Kettles.** Asphalt kettles, pots or similar or like processes utilizing heated materials applied to roof structures, shall meet the requirements of section 303 of the International Fire Code, 2006 Edition.

Section 19. Section 15.01.190 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 3, Section 307.1.1 amended – Prohibited open burning.** Chapter 3, Section 307.1.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 307.1.1 Prohibited open burning**. Open burning that is offensive or objectionable because of smoke or odor emissions or when atmospheric conditions or local circumstances make such fires hazardous shall be prohibited. The fire code official is authorized to order the extinguishment by the permit holder or the fire department of open burning that creates or adds to a hazardous or objectionable situation. Open burning shall be conducted between the hours of sunrise to sunset unless otherwise approved by the fire code official.

Section 20. Section 15.01.200 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 3, Section 307.2 amended – Permit required.** Chapter 3, Section 307.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 307.2 Permit required.** A permit shall be obtained from the fire code official in accordance with Section 105.6 prior to kindling a fire for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, or a bonfire. Application for such approval shall only be presented by and permits issued to the owner, or the designate of the owner, of the land upon which the fire is to be kindled. Burn permit instructions and stipulations of the permit shall be adhered to."

Section 21. Section 15.01.210 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Chapter 3, Section 307.2.1 created – Permits required, fee.** Chapter 3, Section 307.2.1 of the International Fire Code, 2006 Edition, is created to read as follows:

**Section 307.2.1 Permit fee**. The burn permit fee shall be $100.00 for the duration of the permit and is not refundable."

Section 22. Section 15.01.220 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 3, Section 307.4 amended - Location.** Chapter 3, Section 307.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 307.4 Location.** The location for open burning shall not be less than ~~50 feet (15 240mm)~~ 1,000 feet (304,800 mm) from any property line, structure or road way, or within two miles of any airport or flyway, and provisions shall be made to prevent the fire from spreading to within 50 feet (15 240 mm) of any structure.

**Exceptions:**

1. Fires in approved containers ~~that are not less than 15 feet (4572mm) from a structure~~, incinerators or destructors, or those identified and approved by the fire code official and that are used per the manufacturer's instructions shall not be less than 300 feet (91,440 mm) from property line, structure, road way, airport or flyway.

~~The minimum required distance from a structure shall be 25 feet (7620 mm) when the pile size is 3 feet (914 mm) or less in diameter and 2 feet (610 mm) or less in height."~~

Section 23. Section 15.01.230 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 3, Section 307.4.3 amended – Portable outdoor fireplaces.** Chapter 3, Section 307.4.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 307.4.3 Portable outdoor fireplaces**. Portable outdoor fireplaces shall be used in accordance with the manufacturer's instructions and shall not be operated within 15 feet (4,572 mm) of a structure or combustible material. In addition the following requirements shall be met:

1. Portable outdoor fireplaces shall be placed on a non-combustible surface and shall not be used on balconies or wood decks.

   **a. EXCEPTION**: Portable outdoor fireplaces used at one- and two-family dwellings.

2. Portable outdoor fireplace use shall be discontinued when there is a ban or moratorium on burning issued by federal, state or local agencies.
3. Portable outdoor fireplaces shall not be used when the wind speed is in excess of 15 mph.
4. Portable outdoor fireplaces shall not be used within 500 feet (152,400 mm) of any shake shingle roof, unless provided with spark arrestor with a minimum ½ inch (12.7 mm) metal screen secured by metal wire, located on the vent/chimney.
5. Only firewood, limbs, leaves, and wood chips may be burned within the portable outdoor fireplace. Products such as paper, plastic and rubbish are not allowed.

~~**EXCEPTION**: Portable outdoor fireplaces used at one- and two-family dwellings~~."

Section 24. Section 15.01.240 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 5, Section 508.5.1 amended – Where required, Exception.** Chapter 5, Section 508.5.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 508.5.1 Where required.** Where a potion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet (122m) from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

**Exceptions:**

1. For Group R-3 and Group U occupancies, the distance requirement shall be ~~600 feet (183 m)~~ 500 feet (152,400 mm).

2. For buildings equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the distance requirement shall be ~~600 feet (183 m)~~500 feet (152,400 mm)."

Section 25. Section 15.01.250 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 9, Section 901.4 amended - Installation.** Chapter 9, Section 901.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 901.4 Installation.** Fire protection systems shall be maintained in accordance with the original installation standards for that system. Required systems shall be extended, altered, or augmented as necessary to maintain and continue protection whenever the building is altered, remodeled or added to. Installation and alterations to fire protection systems shall be done in accordance with applicable standards and shall be performed by a NICET II Wichita Licensed Fire Protection Contractor"

Section 26. Section 15.01.260 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 9, Section 901.6 amended – Inspection, testing and maintenance.** Chapter 9, Section 901.6 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 901.6 Inspection, testing and maintenance.** Fire detection, alarm and extinguishing systems shall be maintained in an operative condition at all times, and shall be replaced or repaired where defective. Non-required fire protection systems and equipment shall be inspected, tested and maintained or removed. Installation and alterations to fire detection, alarm and extinguishing systems shall be done in accordance with applicable standards and shall be performed by a NICET II Wichita Licensed Fire Protection Contractor"

Section 27. Section 15.01.270 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Section 903.2.1.2 amended - Group A-2.** Chapter 9, Section 903.2.1.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 903.2.1.2 Group A-2**. An *automatic sprinkler system* shall be provided for Group A-2 occupancies where one of the following conditions exists:

1. The *fire area* exceeds 5,000 square feet (465 $m^2$);
2. The *fire area* has an occupant load of ~~100~~ 300 or more; or
3. The *fire area* is located on a floor other than the *level of exit discharge* serving such occupancies."

Section 28. Section 15.01.280 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 903.2.1.3 amended - Group A-3.** Chapter 9, Section 903.2.1.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 903.2.1.3 Group A-3.** An *automatic sprinkler system* shall be provided for Group A-3 occupancies where one of the following conditions exists:

1. The fire area exceeds 12,000 square feet (1115 $m^2$)

~~2. The fire area has occupant load of 300 or more: or~~

~~3.~~ 2. The fire area is located on a floor other than the *level of exit discharge* serving such occupancies."

Section 29. Section 15.01.290 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 903.2.3.1 amended - Woodworking operations.** Chapter 9, Section 903.2.3.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 903.2.3.1 Woodworking operations.** An *automatic sprinkler system* shall be provided throughout all Group F-1 occupancy *fire areas* that contain woodworking operations in excess of 2,500 square feet (232 $m^2$) in area which generate finely divided combustible waste or use finely divided combustible materials.

**EXCEPTION:** A room or the aggregate area of rooms containing woodworking operations within a fire area where the area is 2,500 square foot (232 $m^2$) or less. Walls that define the rooms that contain the wood working operations shall be of non-combustible construction."

Section 30. Section 15.01.300 of the Code of the City of Wichita, is hereby deleted to read as follows:

"**Section 903.2.3 deleted – Group F-1 Occupancies.** Chapter 9, Section 903.2.3 of the International Fire Code, 2006 Edition, is deleted."

Section 31. Section 15.01.310 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 903.2.8 amended - Group R.** Chapter 9, Section 903.2.8 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 903.2.8 Group R.** An *automatic sprinkler system* installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R *fire area*.

**Exceptions:**

1. Apartment buildings of four units or less.

2. Group R-3 occupancies as regulated by this code."

Section 32. Section 15.01.320 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 903.2.9 amended - Group S2.** Chapter 9, Section 903.2.9 of the International Fire Code, 2006 Edition, is amended."

**[B] Section 903.2.9 Group S2** An automatic sprinkler system shall be provided throughout buildings having a fire area that exceeds 12,000 square feet (1115m2) and classified as enclosed parking garages in accordance with Section 406.4 of the International Building Code or where located beneath other groups.

Exception: Enclosed parking garages located beneath Group R-3 occupancies."

Section 33. Section 15.01.330 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 903.2.9.1 amended - Commercial parking garages.** Chapter 9, Section 903.2.9.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 903.2.9.1 Commercial parking garages.** An *automatic sprinkler system* shall be provided throughout buildings used for storage of commercial trucks or buses where the *fire area* exceeds ~~5,000 (464 m2)~~ 12,000 square feet (1115 $m^2$)."

Section 34. Section 15.01.340 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 903.2.11.1.1 amended - Opening dimensions and access.** Chapter 9, Section 903.2.11.1.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 903.2.11.1.1 Opening dimensions and access.** Openings shall have a minimum dimension of not less than 30 inches (762 mm) in width and 48 inches (1219 mm) in height. Such openings shall be accessible to the fire department from the exterior and shall not be obstructed in a manner that fire fighting or rescue cannot be accomplished from the exterior."

Section 35. Section 15.01.350 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 9, Section 903.3.1.2.1 amended – Balconies and decks.** Chapter 9, Section 903.3.1.2.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 903.3.1.2.1 Balconies and decks.** Sprinkler protection shall be provided for exterior balconies, decks and ground floor patios of dwelling units where the building is of Type V construction, provided there is a roof or deck above. Sidewall sprinklers that are used to protect such areas shall be permitted to be located such that their deflectors are within 1 inch (25 mm) to 6 inches (152 mm) below the structural members and a maximum distance of 14 inches (356 mm) below the deck of the exterior balconies and decks that are constructed of open wood construction."

Section 36. Section 15.01.360 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 9, Section 903.3.6 amended – Hose thread.** Chapter 9, Section 903.3.6 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 903.3.6 Hose threads.** Fire hose threads and fittings used in connection with automatic sprinkler systems shall ~~be as prescribed by the fire code official~~ comply with NFPA 1963 or as otherwise approved, and shall be compatible with fire department hose threads. Fire hose thread used in connection with fire-extinguishing systems shall be national standard hose thread or as approved by the fire code official."

Section 37. Section 15.01.370 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 9, Section 903.3.7 amended – Fire department connections.** Chapter 9, Section 903.3.7 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 903.3.7 Fire department connections.** The location of fire department hose connections shall be approved by the fire code official. The maximum distance shall be 150 feet (45 720 mm) from a fire hydrant. The required hydrant shall be no closer than 40 feet (12 192 mm) to the structure."

Section 38. Section 15.01.380 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 9, Section 907.2 amended – Where required – new buildings and structures.** Chapter 9, Section 907.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 907.2 Where required—new buildings and structures.** An approved ~~manual, automatic or manual and automatic~~ fire alarm system installed in accordance with the provisions of this code and NFPA 72 shall be provided in new buildings and structures in accordance with Sections 907.2.1 through 907.2.23 and provide occupant notification in accordance with section 907.9 unless other requirements are provided by another section of this code. ~~Where automatic sprinkler protection installed in accordance with Section 903.3.1.1 or 903.3.1.2 is provided and connected to the building fire alarm system, automatic heat detection required by this section shall not be required.~~

~~The automatic fire detectors shall be smoke detectors. Where ambient conditions prohibit installation of automatic smoke detection, other automatic fire detection shall be allowed.~~ A minimum of one manual fire alarm box shall be provided in an approved location to initiate a fire alarm signal for fire alarm systems employing automatic fire detectors or water flow detection

devices. Where other sections of this code allow elimination of fire alarm boxes due to sprinklers, a single fire alarm box shall be installed.

**Exceptions:**

1. The manual fire alarm box is not required for fire alarm systems dedicated to elevator recall control and supervisory service.
2. The manual fire alarm box is not required for Group R-2 occupancies unless required by the fire code official to provide a means for fire watch personnel to initiate an alarm during a sprinkler system impairment event. Where provided, the manual fire alarm box shall not be located in an area that is accessible to the public."

Section 39. Section 15.01.390 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"**Chapter 9, Section 907.2.1 amended - Group A.** Chapter 9, Section 907.2.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 907.2.1 Group A.** A manual fire alarm system shall be installed in rooms containing Group A occupancies having an *occupant load* of 300 or more. Portions of Group E occupancies occupied for assembly purposes shall be provided with a fire alarm system as required for the Group E occupancy.

**Exception:** Manual fire alarm boxes are not required where the building is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1 and the occupant notification appliances will activate throughout the notification zones upon sprinkler water flow."

Section 40. Section 15.01.400 of the Code of the City of Wichita, is hereby amended to read as follows:

**"Section 907.2.1.1 amended - System initiation in Group A occupancies with an occupant load of 1,000 or more.** Chapter 9, Section 907.2.1.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 907.2.1.1 System initiation in rooms containing Group A occupancies with an occupant load of 1,000 or more.** Activation of the fire alarm in rooms containing Group A occupancies with an occupant load of 1,000 or more shall initiate a signal using an emergency voice/alarm communications system in accordance with NFPA 72.

**Exception**: Where approved, the prerecorded announcement is allowed to be manually deactivated for a period of time, not to exceed 3 minutes, for the sole purpose of allowing a live voice announcement from an approved, constantly attended location."

Section 41. Section 15.01.410 of the Code of the City of Wichita, is hereby created to read as follows:

**"Chapter 9, Section 907.2.6.4 created - Group I-4.** Chapter 9, Section 907.2.6.4 of the International Fire Code, 2006 Edition, is created to read as follows:

**[B] Section 907.2.6.4 Group I-4.** Group I-4 occupancies shall be equipped with an automatic fire alarm system with smoke detection in accordance with provisions set forth in K.A.R. 22-1-3, NFPA 101 Life Safety Code Section 16.3.4 and Section 907.2.6.3.3 of this code."

Section 42. Section 15.01.420 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 910.2.1 amended - Group F-1 or S-1**. Chapter 9, Section 910.2.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 910.2.1 Group F-1 or S-1.** Buildings and portions thereof used as Group F-1 or S-1 occupancy having more than 50,000 square feet (4645 $m^2$) in undivided area.

**Exception:**

1. Group S-1 aircraft repair hangars.
2. Areas completely separated by non-combustible partitions so that no one area exceeds 50,000 square feet (4645 $m^2$). Openings shall be provided with approved automatic or self-closing devices to ensure closure of the opening."

Section 43. Section 15.01.430 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Section 910.3.5 amended - Draft curtains.** Chapter 9, Section 910.3.5 of the International Fire Code, 2006 Edition is amended to read as follows:

**[B] Section 910.3.5 Draft curtains.** Where required by Table 910.3, draft curtains shall be provided in accordance with this section. The requirement for curtain boards in buildings designed to accommodate high-piled stock, as defined by the International Fire Code, shall be in accordance with Title 15 of the City Code.

**Exception:** Where areas of buildings are equipped with ESFR sprinklers, draft curtains shall not be provided within these areas. Draft curtains shall only be provided at the separation between the ESFR sprinklers and the conventional sprinklers."

Section 44. Section 15.01.440 of the Code of the City of Wichita, is hereby amended to read as follows:

**"Chapter 10, Section 1004.1 amended - Design occupant load.** Chapter 10, Section 1004.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1004.1 Design occupant load.** In determining means of egress requirements, the number of occupants for whom means of egress facilities shall be provided shall be determined in accordance with this section. Where occupants from accessory areas egress through a primary space, the calculated occupant load for the primary space shall include the total occupant load of the primary space plus the number of occupants aggressing though it from the accessory area. See Chapter 1, Section 107.6 – Overcrowding for exceeding the designed occupant load.

Section 45. Section 15.01.450 of the Code of the City of Wichita, is hereby amended to read as follows:

**"Chapter 10, Section 1006.3 amended - Illumination emergency power.** Chapter 10, Section 1006.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1006.3 Illumination emergency power.** The power supply for *means of egress* illumination shall normally be provided by the premises' electrical supply.

In event of power supply failure, an emergency electrical system shall automatically illuminate the following areas:

1. Aisles and enclosed egress s*tairways* in rooms and spaces that require two or more means of egress.

2. *Corridors, exit enclosures* and *exit passageways* in buildings required to have two or more *exits*.

3. Exterior egress components at other than their *levels of exit discharge* until *exit discharge* is accomplished for buildings required to have two or more exits.

4. Interior *exit discharge* elements, as permitted in Section 1024.1, in buildings required to have two or more *exits*.

~~5. Exterior landings, as required by Section 1008.1.5, for *exit discharge* doorways in buildings required to have two or more *exits*.~~

The emergency power system shall provide power for duration of not less than 90 minutes and shall consist of storage batteries, unit equipment or an on-site generator. The installation of the emergency power system shall be in accordance with Chapter 27 of the International Building Code."

Section 46. Section 15.01.460 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1007.1 amended – Accessible means of egress required.** Chapter 10, Section 1007.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1007.1 Accessible means of egress required.** Accessible means of egress shall comply with this section. Accessible spaces shall be provided with not less than one accessible means of egress. Where more than one means of egress is required by Section 1015.1 or 1019.1 from any accessible space, each accessible portion of the space shall be served by not less than two accessible means of egress. <u>Accessible means of egress for alterations shall comply with the American's with Disabilities Act.</u>

~~Exceptions:~~

~~1. Accessible means of egress are not required in alterations to existing buildings.~~

~~2. One accessible means of egress is required from an accessible mezzanine level in accordance with Section 1007.3, 1007.4 or 1007.5~~

~~3. In assembly spaces with sloped floors, one accessible means of egress is required from a space where the common path of travel of the accessible route for access to the wheelchair spaces meets the requirements in Section 1025.8.”~~

Section 47. Section 15.01.470 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Chapter 10, Section 1007.3 amended – Exit stairways.** Chapter 10, Section 1007.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1007.3. Exit Stairways.** In order to be considered part of an accessible means of egress, an exit stairway shall have a clear width of 48 inches (1,219.2 mm) minimum between handrails and shall either incorporate an area of refuge within an enlarged floor-level landing or shall be accessed from either an area of refuge complying with Section 1007.6 or a horizontal exit.

**Exceptions:**

1. Unenclosed exit stairways as permitted by Section 1020.1 are permitted to be considered part of an accessible means of egress.
2. The area of refuge is not required at unenclosed exit stairways as permitted by Section 1020.1 in buildings or facilities equipped throughout with an

automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

3. The clear width of 48 inches between handrails is not required at exit stairways in buildings or facilities equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.
4. The clear width of 48 inches (1,219.2 mm) between handrails is not required for exit stairways accessed from a horizontal exit.
5. Areas of refuge are not required at exit stairways serving open parking garages.
6. Areas of refuge are not required at exit stairways in buildings equipped throughout by an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.
7. Areas of refuge are not required for smoke-protected seating areas complying with Section 1025.6.2.
8. The areas of refuge are not required in Group R-2 occupancies."

Section 48. Section 15.01.480 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1007.4 amended – Elevators.** Chapter 10, Section 1007.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1007.4 Elevators.** In order to be considered part of an accessible means of egress, an elevator shall comply with the emergency operation and signaling device requirements of Section 2.27 of ASME A17.1. Standby power shall be provided in

accordance with Sections 2702 and 3003. The elevator shall be accessed from either an area of refuge complying with Section 1007.6 or a horizontal exit.

**Exceptions:**

1. Elevators are not required to be accessed from an area of refuge or horizontal exit in open parking garages.
2. Elevators are not required to be accessed from an area of refuge or horizontal exit in buildings and facilities equipped throughout by an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.
3. Elevators not required to be located in a shaft in accordance with Section 707.2 are not required to be accessed from an area of refuge or horizontal exit.
4. Elevators are not required to be accessed from an area of refuge or horizontal exit for smoke protected seating areas complying with Section 1025.6.2."

Section 49. Section 15.01.490 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1008.1.2 amended – Door swing.** Chapter 10, Section 1008.1.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1008.1.2 Door swing.** Egress doors shall be side-hinged or pivot hinged swinging.

**Exceptions:**

1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.

2. Group I-3 occupancies used as a place of detention.
3. Critical or intensive care patient rooms within suites of health care facilities.
4. Doors within or serving a single dwelling unit in groups R-2 and R-3.
5. In other than group H occupancies, revolving doors complying with Section 1008.1.3.1.
6. In other than Group H occupancies, horizontal sliding doors complying with Section 1008.1.3.3 are permitted in a means of egress.
7. Power-operated doors in accordance with Section 1008.1.3.2.
8. Doors serving a bathroom within an individual sleeping unit in Group R-1.
9. <u>In other than Group H occupancies, manually operated horizontal sliding doors are permitted in a means of egress from spaces with an occupant load of 10 or less.”</u>

Section 50. Section 15.01.500 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**“Chapter 10, Section 1008.1.4 amended – Floor Elevation.** Chapter 10, Section 1008.1.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1008.1.4 Floor Elevation.** There shall be a floor or landing on each side of a door. Such floor or landing shall be at the same elevation on each side of the door. Landings shall be level except for exterior landings, which are permitted to have a slope not to exceed 1 vertical to 50 horizontal (2-percent slope).

**Exceptions:**

1. Doors serving individual dwelling units Groups R-2 and R-3 where the following apply:

1.1 A door is permitted to open at the top step of an interior flight of stairs, provided the door does not swing over the top step.

1.2 Screen doors and storm doors are permitted to swing over stairs or landings.

1.3 A door is permitted to open at the top step of a flight of interior stairs in an attached garage, provided the door does not swing over the top step.

1.4 A door is permitted to open at the top step of a flight of exterior stairs from a patio, provided there are no more than four risers.

2 Exterior doors as provided for in Section 1003.5, Exception 1, and Section 1018.2, which are not on an accessible route.

3 In Group R-3 occupancies not required to be Accessible units, Type A units or Type B units, the landing at an exterior doorway shall not be more than 7.75 inches (197 mm) below the top of the threshold, provided the door, other than an exterior storm or screen door, does not swing over the landing.

4 Variations in elevation due to differences in finish materials, but not more than 0.5 inch (12.7 mm).

5 Exterior decks, patios or balconies that are part of Type B dwelling units, have impervious surfaces and that are not more than 4 inches (102 mm) below the finished floor level of the adjacent interior space of the dwelling unit.

6. Doors, gates and panels that serve as access points to ~~serving~~ building equipment rooms that are not normally occupied, except where serving the following:

a. Electrical rooms with equipment rated 1,200 amperes or more and over 6 feet (1829 mm) wide that contain overcurrent devices, switching devices or control devices (See IBC Section 1008.1.10).

b. Rooms or spaces having a floor area larger than 1,000 square feet (93 $m^2$), containing a refrigerant evaporator and maintained at a temperature below $68^0$ F ($20^0$ C) (see IBC Section 1015.5)."

Section 51. Section 15.01.510 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1008.1.8.4 amended – Bolt locks.** Chapter 10, Section 1008.1.8.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1008.1.8.4 Bolt locks.** Manually operated flush bolts or surface bolts are not permitted.

**Exceptions:**

1. On doors not required for egress in individual dwelling units or sleeping units.
2. Where a pair of doors serves a storage or equipment room, manually operated edge- or surface- mounted bolts are permitted on the inactive leaf.
3. Where a pair of doors serves an occupant load of less than 50 persons in a Group B, F, or S occupancy, manually operated edge- or surface-mounted bolts are permitted on the inactive leaf. The inactive leaf shall contain no doorknobs, panic bars, or similar operating hardware.
4. Where a pair of doors serves a Group B, F, or S occupancy, manually operated edge- or surface-mounted bolts are permitted on the inactive leaf provided such inactive leaf is not needed to meet egress width requirements and the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1. The inactive leaf shall contain no doorknobs, panic bars or similar operating hardware.
5. Where a pair of doors serves patient care rooms in Group I-2 occupancies, self-latching edge- or surface-mounted bolts are permitted on the inactive leaf provided that the inactive leaf is not needed to meet egress width requirements and the inactive leaf contains no doorknobs, panic bars, or similar operating hardware."

Section 52. Section 15.01.520 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1008.1.8.8 amended – Special locking arrangements in Group I-2.** Chapter 10, Section 1008.1.8.8 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B[ Section 1008.1.8.8 Special Locking Arrangements in Group I-2.** Approved delayed egress locks shall be permitted in a Group I-2 occupancy where the clinical needs of persons receiving care require such locking. Delayed egress locks shall be permitted in such occupancies where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors unlock in accordance with items 1 thru 6 below. A building occupant shall not be required to pass through more than one door equipped with a delayed egress lock before entering an exit.

**1.** The doors unlock upon activation of the automatic sprinkler system or automatic fire detection system.

**2.** The doors unlock upon the loss of power controlling the lock or lock mechanism.

**3.** The door locks shall have the capability of being unlocked by a signal from the fire command center, a nursing station or other approved location.

**4.** The procedures for the operation(s) of the unlocking system shall be described and approved as part of the emergency planning and preparedness required by the International Fire Code.

**5.** All clinical staff shall have the keys, codes, or other means necessary to operate the locking devices.

**6.** Emergency lighting shall be provided at the door.

**Exception:** Items 1 through 3 shall not apply to doors to areas where persons, because of clinical needs, require restraint or containment as part of the function of a mental hospital."

Section 53. Section 15.01.530 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1008.1.8.9 amended – Electromagnetically locked egress doors.** Chapter 10, Section 1008.1.8.9 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1008.1.8.9 Electromagnetically Locked Egress Doors.** Doors in the means of egress that are not otherwise required to have panic doors in buildings within an occupancy in Group A, B, E, M, R-1, or R-2 and doors to tenant spaces in Group A, B, E, M, R-1 or R-2 shall be permitted to be electromagnetically locked if equipped with listed hardware that incorporates a built-in switch and meets the requirements listed below:

1. The listed hardware that is affixed to the door leaf has an obvious method of operation that is readily operated under all lighting conditions.

2. The listed hardware is capable of being operated with one hand.

3. Operation of the listed hardware releases to the electromagnetic lock and unlocks the door immediately.

4. Loss of power to the listed hardware automatically unlocks the door."

Section 54. Section 15.01.540 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1009.12 amended – Access to equipment rooms and areas.** Chapter 10, Section 1009.12 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1009.12 Access to equipment rooms and areas.** Room and areas containing equipment that must be accessed for maintenance are not required to be accessed by a stairway. Access compliance to equipment rooms and areas is subject to provisions of other adopted standards of the City of Wichita and that of OSHA."

Section 55. Section 15.01.550 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1014.3 amended – Common path of egress travel.** Chapter 10, Section 1014.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1014.3 Common path of egress travel.** In occupancies other than Group H-1, H-2 and H-3, the common path of egress travel shall not exceed 75 feet (22,806 mm). In Groups H-1, H-2 and H-3 occupancies, the common path of egress travel shall not exceed 25 feet (7620 mm). For common path of egress travel in Group A occupancies and assembly occupancies in Group E occupancies having fixed seating, see Section 1025.8.

**Exceptions:**

1. The length of a common path of egress travel in Group B, F and S occupancies shall not be more than 100 feet (30,480 mm), provided that the building is equipped

throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1.

2. Where a tenant space in Group B, S and U occupancies has an occupant load of not more than 30, the length of a common path of egress travel shall not be more than 100 feet (30,480 mm).
3. The length of a common path of egress travel in a Group I-3 occupancy shall not be more than 100 feet (30,480 mm).
4. The length of a common path of egress travel in a Group R-2 occupancy shall not be more than 125 feet (38,100 mm), provided that the building is protected throughout with an approved automatic system in accordance with Section 903.3.1.1 <u>or 903.3.1.2.</u>"

Section 56. Section 15.01.560 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1017.3 amended – Dead ends.** Chapter 10, Section 1017.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1017.3 Dead ends.** Where more than one exit or exit access doorway is required, the exit access shall be arranged such that there are no dead ends in corridors more than 20 feet (6096 mm) in length.

**Exceptions:**

1. In occupancies in Group I-3 of Occupancy Condition 2, 3 or 4 (see section 308.4), the dead end in a corridor shall not exceed 50 feet (15,240 mm).

2. In occupancies in Groups B, ~~and~~ E, F, I-1, M, R-1, R-2, R-4, S, and U, where the building is equipped throughout with an automatic sprinkler system in accordance with 903.3.1.1, the length of the dead-end corridors shall not exceed 50 feet (15,240 mm).
3. A dead-end corridor shall not be limited in length where the length of the dead-end corridor is less than 2.5 times the least width of the dead-end corridor."

Section 57. Section 15.01.570 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1019.1 amended – Minimum number of exits.** Chapter 10, Section 1019.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**[B] Section 1019.1 Minimum number of exits.** All rooms and spaces within each story shall be provided with and have access to the minimum number of approved independent exits required by Table 1019.1 based on the occupant load of the story, except as modified in Section 1015.1 or 1019.2. For the purpose of this chapter, occupied roofs shall be provided with exits as required for stories. The required number of exits from any story, basement or individual space shall be maintained until arrival at grade or grade or the public way.

**Exception:** Floors and basements used exclusively for the service of the building or equipment and not normally occupied, may have access to only one exit, unless classified as an H occupancy or required due to the type or size of equipment utilized. For purpose of this exception, storage

rooms, maintenance offices and similar uses shall not be considered as providing service to the building."

**TABLE 1019.1**
**MINIMUM NUMBER OF EXITS FOR OCCUPANT LOAD**

| OCCUPANT LOAD (persons per story) | MINIMUM NUMBER OF EXITS (per story) |
|---|---|
| 1-500 | 2 |
| 501-1,000 | 3 |
| More than 1,000 | 4 |

Section 58. Section 15.01.580 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 10, Section 1019.2 amended – Buildings with one exit.** Chapter 10, Section 1019.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

~~**[B] Section 1019.2 Buildings with one exit.** Only one exit shall be required in buildings as described below:~~

~~1. (a) Buildings described in Table 1019.2, which have not more than one level below the first story above grade plane.~~

~~(b) Same as above, except that the number of exits from the first story above grade plane may exceed the maximum occupant load specified in Table 1019.2, where exits are provided in accordance with Section 1015.1.~~

~~2. Buildings described in Table 1019.2, provided that the building has not more than one level below the first story above grade plane.~~

~~2.3. Buildings of Group R-3 occupancy.~~

~~3.4. Single-level buildings with the occupied space at the level of exit discharge provided that the story or space complies with Section 1015.1 as a space with one means of egress.~~

**~~TABLE 1019.2~~**
**~~BUILDINGS WITH ONE EXIT~~**

| ~~OCCUPANCY~~ | ~~MAXIMUM HEIGHT OF BUILDING ABOVE GRADE PLANE~~ | ~~MAXIMUM OCCUPANTS (OR DWELLING UNITS) PER FLOOR AND TRAVEL DISTANCE~~ |
|---|---|---|
| ~~A, B[d], E[e], F, M, U~~ | ~~1 Story~~ | ~~49 occupants and 75 feet travel distance~~ |
| ~~H-2, H-3~~ | ~~1 Story~~ | ~~3 occupants and 25 feet travel distance~~ |
| ~~H-4, H-5, I, R~~ | ~~1 Story~~ | ~~10 occupants and 75 feet travel distance~~ |
| ~~S[a]~~ | ~~1 Story~~ | ~~29 occupants and 100 feet travel distance~~ |
| ~~B[b], F, M, S[a]~~ | ~~2 Stories~~ | ~~30 occupants and 75 feet travel distance~~ |
| ~~R-2~~ | ~~2 Stories[c]~~ | ~~4 dwelling units and 50 feet travel distance~~ |

~~For SI: 1 foot = 304.8 mm.~~

~~a. For the required number of exits for open parking structures, see Section 1019.1.1.~~
~~b. For the required number of exits for air traffic control towers, see Section 412.1.~~
~~c. Buildings classified in accordance with Section 903.3.1.1 or 903.1.2 and provided with emergency escape and rescue openings in accordance with Section 1026 shall have a maximum height of three stories above grade plane.~~

~~d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 with an occupancy in Group B shall have a maximum travel distance of 100 feet.~~

~~e. Day care maximum occupant load is 6.~~

**[B] Section 1019.2 Single exits.** Only one exit shall be required from Group R-3 occupancy buildings or from stories of other buildings as indicated in Table 1019.2. Occupancies shall be permitted to have a single exit in buildings otherwise required to have more than one exit if the areas served by the single exit do not exceed the limitations of Table 1019.2. Mixed occupancies shall be permitted to be served by single exits provided each individual occupancy complies with the applicable requirements of Table 1019.2 for that occupancy. Where applicable, cumulative occupant loads from adjacent occupancies shall be considered in accordance with the provisions of Section 1004.1. Basements with a single exit shall not be located more than one story below grade plane.

**TABLE 1019.2**
**STORIES WITH ONE EXIT**

| STORY | OCCUPANCY | MAXIMUM OCCUPANTS (OR DWELLING UNITS) PER FLOOR AND TRAVEL DISTANCE |
|---|---|---|
| First Story or Basement | A, B[d], E[e], F[d], M, U, S[d] | 49 occupants and 75 feet (22,860 mm) travel distance |
| | H-2, H-3 | 3 occupants and 25 feet (7,620 mm) travel distance |
| | H-4, H-5, I, R | 10 occupants and 75 feet (22,860 mm) travel distance |
| | S[a] | 29 occupants and 100 feet (30,480 mm) travel distance |
| | | |

| | | |
|---|---|---|
| Second Story | B[b], F, M, S[a] | 29 occupants and 75 feet (22,860 mm) travel distance |
| | R-2 | 4 dwelling units and 50 feet (15,240 mm) travel distance |
| Third Story | R-2[c] | 4 dwelling units and 50 feet (15,240 mm) travel distance |

For SI: 1 foot = 304.8 mm.

a. For the required number of exits for parking structures, see Section 1019.1.1.
b. For the required number of exits for air traffic control towers, see Section 412.1.
c. Buildings classified as Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.1.2 and provided with emergency escape and rescue openings in accordance with Section 1026.
d. Group B, F and S occupancies in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 shall have a maximum travel distance of 100 feet (30,480 mm).
e. Day care maximum occupant load is 10.

Section 59. Section 15.01.590 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Chapter 10, Section 1030.9 created – Standby personnel.** Chapter 10, Section 1030.9 of the International Fire Code, 2006 Edition, is created to read as follows:

**Section 1030.9 Standby personnel**. When, in the opinion of the fire code official, it is essential for public safety in a place of assembly or any other place where people congregate, due to the number of persons, or the nature of the performance, exhibition, display, contest or activity, the owner, agent or lessee shall employ one or more qualified persons, as required and approved, to be on duty at such place. All costs associated with event standby are the responsibility of the owner, agent or lessee. Such individuals shall be subject to the fire code official's orders at all times when so employed and shall be in uniform and remain on duty during the times such

places are open to the public, or when such activity is being conducted. Before each performance or the start of such activity, such individuals shall inspect the required fire appliances provided to see that they are in proper place and in good working order and shall keep diligent watch for fires during the time such place is open to the public or such activity is being conducted and take prompt measures for extinguishment of fires that may occur. Such individuals shall not be required or permitted, while on duty, to perform any other duties than those herein specified. See Section 105.6.7.1 for stand-by fees."

Section 60. Section 15.01.600 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 19, Section 1904.3 amended – Automatic Sprinkler Systems.** Chapter 19, Section 1904.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 1904 .3 Automatic sprinkler systems.** Automatic sprinkler systems shall be installed in accordance with Section ~~903.3.1.1~~ 903.2.3.1

Section 61. Section 15.01.610 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 24, Section 2403.2 amended – Approval required.** Chapter 24, Section 2403.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 2403.2 Approval required.** Tents and membrane structures having an area in excess of 200 square feet (37 m2) and canopies in excess of 400 square feet (37m2) shall not be erected, operated or maintained for any purpose without first obtaining a permit and approval from the fire code official.

Section 62. Section 15.01.620 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 24, Section 2403.4 amended – Permits.** Chapter 24, Section 2403.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 2403.4 Permits**. Permits shall be required as set forth in Section 105.5 and 105.7. Permit fee for tents and air supported structures 1,000 square feet (92.90304 m2) or less in floor area is $85.00. A $10.00 charge will be added for each additional 1,000 square feet (92.90304 m2) or fraction thereof.

Section 63. Section 15.01.630 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 25, Section 2505.1 amended – Individual piles.** Chapter 25, Section 2505.1 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 2505.1 Individual piles.** Tire storage shall be restricted to individual piles not exceeding ~~5,000 square feet (464.5 m2)~~ 3,750 square feet (114,300 m2) of continuous area. Piles shall not exceed 50,000 cubic feet (1416 m 3) in volume or 10 feet (3048 mm) in height."

Section 64. Section 15.01.640 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 33, Section 3301.1.3 amended – Fireworks.** Chapter 33, Section 3301.1.3 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 3301.1.3 Fireworks.** The possession, manufacture, storage, sale, handling and use of fireworks are prohibited.

**Exception:**

1. Storage and handling of fireworks are allowed as permitted in Section 3304.
2. Manufacture, assembly and testing of fireworks is permitted in Section 3305.
3. The use of fireworks for display as permitted in Section 3308.
4. The possession , storage, sale, handling and use of specific types of Division 1.4G fireworks ~~where allowed by applicable laws, ordinances and regulations, provided such fireworks comply with CPSC 16 CFR, Parts 1500 and 1507, and DOTn 49 CFR, Parts 100-185, for consumer fireworks.~~ which have been tested and approved by the Wichita Fire Department for use and sale within the city limits are allowed during legalized time periods prescribed by the City of Wichita. Such fireworks shall comply with the following guidelines:

   4.1 the fireworks comply with CPSC 16 CFR, Parts 1500-1507, and DOTn 49 CFR, Parts 100-185, for consumer fireworks

   4.2 the fireworks shall be classified as Class C and/or 1.4G; and

   4.3 shall emit a shower of sparks no more than 6 feet (1,828.8 mm) in any direction; and

   4.4 shall not be labeled as emitting flaming balls

   4.5 shall be discharged from 6:00 a.m. June 27th to 12:00 p.m. July 5th, or by permission from the fire code official. The Fire Chief, or their designate, can ban the use of fireworks if conditions exist that pose a hazard to life or property

   4.6 no firework shall be discharged before 6:00 a.m. or after 12:00 p.m. on any date without permission from the fire code official

4.7 members of the Wichita Police Department are authorized to enforce this provision and all applicable provisions of Title 15 pertaining to the storage, use, handling and possession of fireworks within the City of Wichita

5. A list of approved fireworks shall be published annually in the official city newspaper and a copy shall be in the offices of the City Clerk and the Wichita Fire Department.
6. The sale of fireworks shall comply with requirements as determined by the Kansas State Fire Marshal's Office."

Section 65. Section 15.01.650 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 33, Section 3301.2 amended – Permit required.** Chapter 33, Section 3301.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 3301.2 Permit required.** Permits shall be required as set forth in Section 105.6 and regulated in accordance with this section. Permit application shall be made not less than 14 days prior to the scheduled date of the display. No permit shall be submitted more than 60 days prior to the scheduled date of display unless a signed contract for such display is in the applicant's possession and presented at the time of application. The permit application shall include a diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged; the location of buildings, highways, and other lines of communication; the lines behind which the audience will be restrained; and the location of nearby trees, telegraph or telephone lines and other overhead obstructions. At the time of permit application, the fire code official shall be consulted regarding the requirements for standby fire apparatus. After the permit is issued, sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose only. No permit shall be transferable. Permits shall be

issued by the City License Collector after a recommendation from the fire code official. The license fee to engage in a public display of fireworks shall be $150.00 per event. ~~Any baseball association having a contract for use of Lawrence-Dumont Stadium may, as a part of their program, fire aerial salutes and the fee for such license shall be $50.00 per year.~~"

Section 66. Section 15.01.660 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 33, Section 3301.2.4 amended – Financial responsibility.** Chapter 33, Section 3301.2.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 3301.2.4 Financial responsibility.** Before a permit is issued, as required by Section 3301.2, the applicant shall file with the ~~jurisdiction~~ City Clerk a corporate surety bond in the principal sum of ~~$100,000~~ not less than $500,000 or a public liability insurance policy for the same amount, for injury or death to persons or injury to property for the purpose of the payment of all damages to persons or property which arise from, or are caused by, the conduct of any act authorized by the permit upon which any judicial judgment results. The fire code official is authorized to specify a greater or lesser amount when, in his or her opinion, conditions at the location of use indicate a greater or lesser amount is required. Government entities shall be exempt from this bond or insurance requirement."

Section 67. Section 15.01.670 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**"Chapter 33, Section 3308.2.3 created – permit for indoor pyrotechnic special effects material.** Chapter 33, Section 3308.2.3 of the International Fire Code, 2006 Edition, is created to read as follows:

**Section 3308.2.3 Permit for Indoor Pyrotechnic Special Effects Material.** A permit is required to manufacture, compound, store, or use pyrotechnic special effect material. A permit for the use of pyrotechnic special effect material, or to conduct an indoor pyrotechnic display, shall be granted only to a pyrotechnic operator. Permit applications shall be made not less than 14 days prior to the scheduled use or date of the display. No permit shall be submitted more than 60 days prior to the scheduled date of a use or display unless a signed contract for such use of display is in the applicant's possession and presented at the time of application. The permit application shall include a diagram of the location and a plan or the use of the pyrotechnic material. At the time of the permit application, the fire code official shall be consulted regarding requirements for standby fire apparatus. After the permit has been issued, possession, storage and use of pyrotechnic material of the purpose indicated in the plan at the location shown shall be lawful for that purpose only. No permit shall be transferable. Permits shall be issued by the City Treasurer's Office after a recommendation from the fire code official. The license fee to engage in the use of pyrotechnic material or to conduct an indoor pyrotechnic display shall be $150.00 per event."

Section 68. Section 15.01.680 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 33, Section 3308.4 amended – Clearance.** Chapter 33, Section 3308.4 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 3308.4 Clearance.** Spectators, spectator parking areas, fire and emergency response personnel and their vehicles, and dwellings, buildings, or structures shall not be located within the display site.

**Exceptions:**

1. This provision shall not apply to pyrotechnic special effects and displays using Division 1.4G materials before a proximate audience in accordance with NFPA 1126.

2. This provision shall not apply to unoccupied dwellings, buildings and structures with the approval of the building owner and the fire code official.

3. Where the fire code official requires additional distance to dwellings, buildings, structures or areas with special hazards. The fire code official shall determine the approved minimum distance to outdoor display sites and sites shall be in accordance with NFPA 1123, table 3.1.3."

Section 69. Section 15.01.690 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

**"Chapter 38, Section 3804.2 amended – Maximum capacity within established limits.** Chapter 38, Section 3804.2 of the International Fire Code, 2006 Edition, is amended to read as follows:

**Section 3804.2 Maximum capacity within established limits.** Within the limits established by law restricting the storage of liquefied petroleum gas for the protection of heavily populated or congested areas, the aggregate capacity of any one installation shall not exceed a water capacity of ~~2,000~~ 100 gallons (378.5412 L). Containers greater than 100 gallons (378.5412 L) are prohibited within the city limits where public gas utilities are provided.

**Exceptions:** 1. In particular installations, this capacity limit shall be determined by the fire code official, after consideration of special features, such as topographical conditions, nature of occupancy, proximity to buildings,

capacity of proposed LP-gas containers, degree of fire protection to be provided and capabilities of the local fire department.

2. Pre existing installations until said property changes ownership

3. Storage of portable LP-gas containers awaiting use or resale. See section 3809"

Section 70. The original of section 15.01 of the Code of the City of Wichita, Kansas, is hereby amended.

Section 71. The ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon publication once in the official paper.

ADOPTED at Wichita, Kansas, this _____ day of _____, 2010.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law

## APPENDIX H

# HAZARDOUS MATERIALS MANAGEMENT PLAN (HMMP) AND HAZARDOUS MATERIALS INVENTORY STATEMENT (HMIS) INSTRUCTIONS

*The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.*

### SECTION H101
### HMMP

**H101.1 Part A** (See Example Format in Figure 1).

1. Fill out items and sign the declaration.
2. Part A of this section is required to be updated and submitted annually, or within 30 days of a process or management change.

**H101.2 Part B—General Facility Description/Site Plan** (See Example Format in Figure 2).

1. Provide a site plan on 8½- by 11-inch (215 mm by 279 mm) paper, showing the locations of all buildings, structures, outdoor chemical control or storage and use areas, parking lots, internal roads, storm and sanitary sewers, wells and adjacent property uses. Indicate the approximate scale, northern direction and date the drawing was completed.

**H101.3 Part C—Facility Storage Map—Confidential Information** (See Example Format in Figure 3).

1. Provide a floor plan of each building identified on the site plan as containing hazardous materials on 8½- by 11-inch (215 mm by 279 mm) paper, identifying the northern direction, and showing the location of each storage and use area.
2. Identify storage and use areas, including hazard waste storage areas.
3. Show the following:
   - 3.1. Accesses to each storage and use area.
   - 3.2. Location of emergency equipment.
   - 3.3. Location where liaison will meet emergency responders.
   - 3.4. Facility evacuation meeting point locations.
   - 3.5. The general purpose of other areas within the building.
   - 3.6. Location of all aboveground and underground tanks to include sumps, vaults, below-grade treatment systems, piping, etc.
   - 3.7. Show hazard classes in each area.
   - 3.8. Show locations of all H occupancies, control areas, and exterior storage and use areas.
   - 3.9. Show emergency exits.

**H101.4 HMMP short form.** Facilities with the *maximum allowable quantities or less per control area* in Tables 2703.3.2(1) through 2703.1.1(4) of the *International Fire Code* and where the threshold planning quantities at EPA 40 CFR Part 355, Sections 302 and 304 are not exceeded, shall be allowed to file a short-form HMMP which shall include all of the following components:

1. General facility information.
2. A simple line drawing of the facility showing the location of storage facilities and indicating the hazard class or classes and physical state of the hazardous materials being stored.
3. Information that the hazardous materials will be stored and handled in a safe manner and will be appropriately contained, separated and monitored.
4. Assurance that security precautions have been taken, employees have been appropriately trained to handle the hazardous materials and react to emergency situations, adequate labeling and warning signs are posted, adequate emergency equipment is maintained and the disposal of hazardous materials will be in an appropriate manner.

Facilities which have prepared, filed and submitted a Tier II Inventory Report required by the U.S. Environmental Protection Agency (USEPA) or required by a state which has secured USEPA approval for a similar form shall be deemed to have complied with this section.

### SECTION H102
### HMIS

**H102.1 Inventory statement contents.**

1. HMIS Summary Report (see Example Format in Figure 4).
   - 1.1. Complete a summary report for each control area and H occupancy.
   - 1.2. The storage summary report includes the HMIS Inventory Report amounts in storage, use-closed and use-open conditions.
   - 1.3. Provide separate summary reports for storage, use-closed and use-open conditions.
   - 1.4. IBC/IFC Hazard Class.
   - 1.5. Inventory Amount [Solid (lb) / Liquid (gal), Gas (cu ft, gal or lbs)].
   - 1.6. IBC/IFC Maximum Allowable Quantity per control area (MAQ). (If applicable, double MAQ for sprinkler protection and/or storage in cabinets. For wholesale and retail sales occupancies, go to Tables

## APPENDIX H

# HAZARDOUS MATERIALS MANAGEMENT PLAN (HMMP) AND HAZARDOUS MATERIALS INVENTORY STATEMENT (HMIS) INSTRUCTIONS

***The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.***

### SECTION H101
### HMMP

**H101.1 Part A** (See Example Format in Figure 1).

1. Fill out items and sign the declaration.
2. Part A of this section is required to be updated and submitted annually, or within 30 days of a process or management change.

**H101.2 Part B–General Facility Description/Site Plan** (See Example Format in Figure 2).

1. Provide a site plan on 8½- by 11-inch (215 mm by 279 mm) paper showing the locations of all buildings, structures, outdoor chemical control or storage and use areas, parking lots, internal roads, storm and sanitary sewers, wells and adjacent property uses. Indicate the approximate scale, northern direction and date the drawing was completed.

**H101.3 Part C–Facility Storage Map–Confidential Information** (See Example Format in Figure 3).

1. Provide a floor plan of each building identified on the site plan as containing hazardous materials on 8½- by 11-inch (215 mm by 279 mm) paper, identifying the northern direction, and showing the location of each storage and use area.
2. Identify storage and use areas, including hazard waste storage areas.
3. Show the following:
   - 3.1. Accesses to each storage and use area.
   - 3.2. Location of emergency equipment.
   - 3.3. Location where liaison will meet emergency responders.
   - 3.4. Facility evacuation meeting point locations.
   - 3.5. The general purpose of other areas within the building.
   - 3.6. Location of all aboveground and underground tanks to include sumps, vaults, below-grade treatment systems, piping, etc.
   - 3.7. Show hazard classes in each area.
   - 3.8. Show locations of all H occupancies, control areas, and exterior storage and use areas.
   - 3.9. Show emergency exits.

**H101.4 HMMP short form.** Facilities with the *maximum allowable quantities or less per control area* in Tables 27(b)3.3(10) through 27(b)1.1(4) of the *International Fire Code* and where the threshold planning quantities at EPA 40 CFR Part 355, Sections 302 and 304 are not exceeded, shall be allowed to file a short-form HMMP which shall include all of the following components:

1. General facility information.
2. A simple line drawing of the facility showing the location of storage facilities and indicating the hazard class or classes and physical state of the hazardous materials being stored.
3. Information that the hazardous materials will be stored and handled in a safe manner and will be appropriately contained, separated and monitored.
4. Assurance that security precautions have been taken, employees have been appropriately trained to handle the hazardous materials and react to emergency situations, adequate labeling and warning signs are posted, adequate emergency equipment is maintained and the disposal of hazardous materials will be in an appropriate manner.

Facilities which have prepared, filed and submitted a Tier II Inventory Report required by the U.S. Environmental Protection Agency (USEPA) or required by a state which has secured USEPA approval for a similar form shall be deemed to have complied with this section.

### SECTION H102
### HMIS

**H102.1 Inventory statement contents.**

1. HMIS Summary Report (see Example Format in Figure 4).
   - 1.1. Complete a summary report for each control area and H occupancy.
   - 1.2. The storage summary report includes the HMIS Inventory Report amounts in storage, use-closed and use-open conditions.
   - 1.3. Provide separate summary reports for storage, use closed and use-open conditions.
   - 1.4. IBC/IFC Hazard Class.
   - 1.5. Inventory Amount. [Solid (lb), Liquid (gal), Gas (cu ft, gal or lbs)].
   - 1.6. IBC/IFC Maximum Allowable Quantity per control area (MAQ), (if applicable, double MAQ for sprinkler protection and/or storage in cabinets. For wholesale and retail sales occupancies, go to Tables

FIGURE 1
HAZARDOUS MATERIALS MANAGEMENT PLAN
SECTION I: FACILITY DESCRIPTION

1. Business Name: _____ Phone: _____
   Address: _____

2. Person Responsible for the Business
   Name _____ Title _____ Phone _____

3. Emergency Contacts:

| Name | Title | Home Number | Work Number |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

4. Person Responsible for the Application/Principal Contact:
   Name _____ Title _____ Phone _____

5. Principal Business Activity:
   _____
   _____
   _____

6. Number of Employees: _____

7. Number of Shifts: _____
   a. Number of Employees per Shift
   _____
   _____
   _____

8. Hours of Operation: _____

2703.2.2.1 and 3701.3.4.1 of the *International Fire Code* for MAQs.)

2. HMIS Inventory Report (see Example Format in Figure 5).

   2.1. Complete an inventory report by listing products by location.

   2.2. Product Name.

   2.3. Components. (For mixtures specify percentages of major components if available.)

   2.4. Chemical Abstract Service (CAS) Number. (For mixtures list CAS Numbers of major components if available.)

   2.5. Location. (Identify the control area, if it is in Group H occupancy, provide the classification, such as H-2, H-3, etc.)

   2.6. Container with a capacity of greater than 55 gallons (208 L). (If product container, vessel or tank could exceed 55 gallons, indicate yes in column.)

   2.7. Hazard Classification. (List applicable classifications for each product.)

   2.8. Stored. (Amount of product in storage conditions.)

   2.9. Closed. (Amount of product in use-closed systems.)

   2.10. Open. (Amount of product in use-open systems.)

## SECTION H103
## EMERGENCY PLAN

1. Emergency Notification. (See Example Format in Figure 6.)

2. Where OSHA or state regulations require a facility to have either an Emergency Action Plan (EAP) or an Emergency Response Plan (ERP), the EAP or ERP shall be included as part of the HMMP.

## SECTION H104
## REFERENCED STANDARDS

| | | |
|---|---|---|
| EPA 40 CFR Part 355—2008 | Emergency Planning and Notification | H101.2 |
| ICC IBC-09 | International Building Code | H102.1 |
| ICC IFC-09 | International Fire Code | H101.2, H102.1 |

2703.2.2.1 and 3701.3.4.1 of the *International Fire Code* for MAQs.)

2. HMIS Inventory Report (see Example Format in Figure 5).

   2.1. Complete an inventory report by listing products by location.

   2.2. Product Name.

   2.3. Components. (For mixtures specify percentages of major components if available.)

   2.4. Chemical Abstract Service (CAS) Number. (For mixtures list CAS Numbers of major components if available.)

   2.5. Location. (Identify the control area, if it is in Group H occupancy, provide the classification, such as H-2, H-3, etc.)

   2.6. Container with a capacity of greater than 55 gallons (208 L). (If product container, vessel or tank could exceed 55 gallons, indicate yes in column.)

   2.7. Hazard Classification. (List applicable classifications for each product.)

   2.8. Stored. (Amount of product in storage conditions.)

   2.9. Closed. (Amount of product in use-closed systems.)

   2.10. Open. (Amount of product in use-open systems.)

## SECTION H103
## EMERGENCY PLAN

1. Emergency Notification. (See Example Format in Figure 6.)

2. Where OSHA or state regulations require a facility to have either an Emergency Action Plan (EAP) or an Emergency Response Plan (ERP), the EAP or ERP shall be included as part of the HMMP.

## SECTION H104
## REFERENCED STANDARDS

| | | |
|---|---|---|
| EPA 40 CFR Part 355—2008 | Emergency Planning and Notification | H101.2 |
| ICC IBC-09 | International Building Code | H102.1 |
| ICC IFC-08 | International Fire Code | H101.2, H102.1 |

2703.2.2.1 and 3701.3.4.1 of the *International Fire Code* for MAQs.)

2. HMIS Inventory Report (see Example Format in Figure 5).

   2.1. Complete an inventory report by listing products by location.

   2.2. Product Name.

   2.3. Components. (For mixtures specify percentages of major components if available.)

   2.4. Chemical Abstract Service (CAS) Number. (For mixtures list CAS Numbers of major components if available.)

   2.5. Location. (Identify the control area, if it is in Group H occupancy, provide the classification, such as H-2, H-3, etc.)

   2.6. Container with a capacity of greater than 55 gallons (208 L). (If product container, vessel or tank could exceed 55 gallons, indicate yes in column.)

   2.7. Hazard Classification. (List applicable classifications for each product.)

   2.8. Stored. (Amount of product in storage conditions.)

   2.9. Closed. (Amount of product in use-closed systems.)

   2.10. Open. (Amount of product in use-open systems.)

## SECTION H103
## EMERGENCY PLAN

1. Emergency Notification. (See Example Format in Figure 6.)

2. Where OSHA or state regulations require a facility to have either an Emergency Action Plan (EAP) or an Emergency Response Plan (ERP), the EAP or ERP shall be included as part of the HMMP.

## SECTION H104
## REFERENCED STANDARDS

| | | |
|---|---|---|
| EPA 40 CFR Part 355—2008 | Emergency Planning and Notification | H101.2 |
| ICC IBC-09 | International Building Code | H102.1 |
| ICC IFC-09 | International Fire Code | H101.2, H102.1 |

FIGURE 1
HAZARDOUS MATERIALS MANAGEMENT PLAN
SECTION I: FACILITY DESCRIPTION

1. Business Name: _____ Phone: _____
   Address: _____

2. Person Responsible for the Business
   Name _____ Title _____ Phone _____

3. Emergency Contacts:

| Name | Title | Home Number | Work Number |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

4. Person Responsible for the Application/Principal Contact:
   Name _____ Title _____ Phone _____

5. Principal Business Activity:
   _____
   _____
   _____

6. Number of Employees: _____

7. Number of Shifts: _____
   a. Number of Employees per Shift
   _____
   _____
   _____

8. Hours of Operation: _____

FIGURE 2
HAZARDOUS MATERIALS MANAGEMENT PLAN SECTION I: FACILITY DESCRIPTION

FIGURE 2
HAZARDOUS MATERIALS MANAGEMENT PLAN

## SECTION I: FACILITY DESCRIPTION
## PART C—FACILITY MAP

| | |
|---|---|
| Business Name | Date |
| Address | Page of |

**FIGURE 4**
**SECTION II — HAZARDOUS MATERIALS INVENTORY STATEMENT (HMIS) HMIS SUMMARY REPORT[a]**
**(Storage[b] Conditions)[c]**

| IBC/IFC HAZARD CLASS | HAZARD CLASS (Abbrev) | INVENTORY AMOUNT Solid (lb) | Liquid (gal) | Gas (cu ft. gal, lb) | IBC/IFC MAXIMUM ALLOWABLE QUANT Solid (lb) | Liquid (gal) | Gas (cu |
|---|---|---|---|---|---|---|---|
| Combustible Liquid | C2 | | 5 | | | 120 | |
| | C3A | | | | | 330 | |
| | C3B | | 6 | | | 13200 | |
| Combustible Fiber | Loose Baled | | | | | | |
| Cryogenics, Flammable | CryO-Flam | | | | | 45 | |
| Cryogenic, Oxidizing | CryO-OX | | | | | 45 | |
| Flammable Gas | FLG | | | | | | |
| (Gaseous) | | | | 150 | | | 10 |
| (Liquefied) | | | | | | 30 | |
| Flammable Liquid | F1A | | | | | 30 | |
| | F1B & F1C | | 5 | | | 120 | |
| Combination (1A, 1B, 1C) | | | 5 | | | 120 | |
| Flammable Solid | FLS | | | | 125 | | |
| Organic Peroxide | OPU | | | | 0 | | |
| | OP1 | | | | 5 | | |
| | OP2 | | | | 50 | | |
| | OP3 | | | | 125 | | |
| | OP4 | | | | NL | | |
| | OP5 | | | | NL | | |
| Oxidizer | OX4 | | | | 0 | | |
| | OX3 | | | | 10 | | |
| | OX2 | | | | 250 | | |
| | OX1 | | | | 4000 | | |

a. Complete a summary report for each control area and H occupancy.
b. Storage = storage + use-closed + use-open systems
c. Separate reports are required for use-closed and use-open systems

**FIGURE 5**
**SECTION II — HAZARDOUS MATERIALS INVENTORY STATEMENT (HMIS) HMIS INVENTORY REPORT**
*(Sort Products Alphabetically by Location of Product and then Alphabetically by Product Name)*

| Product Name (Components)[c] | CAS Number | Location[a] | Container > 55 gal[b] | Haz Class 1 | Haz Class 2 | Haz Class 3 | Stored (lbs) | Stored (gal) | Stored (gas)[d] | Closed (lbs) | Closed (gal) | Closed gas[d] | Open (lbs) | Open (gal) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| ACETYLENE (Acetylene gas) | 74-86-2 | Control Area 1 | | FLG | UR2 | | | | 150 | | | | | |
| BLACK AEROSOL SPRAY PAINT (Mixture) | Mixture | Control Area 1 | | A-I 3 | | | 24 | | | | | | | |
| GASOLINE, UNLEADED (Gasoline-Mixture) Methyl-t-Butyl-Ether 15% Diisopropyl Ether 7% Ethanol-11% Toluene-17% Xylene 11% | 8006-61-9 1634-04-4 108-20-3 64-17-5 108-88-3 1330-20-7 | Control Area 1 | FUB | | | | | 5 | | | | | | |
| MOTOR OIL 10W40 (Hydrocarbon Heavy Paraffinic Distillates-55%; Additives-20%) | 61742-54-7 Mixture | Control Area 1 | | C3U | | | | 5 | | | | | | |
| DIESEL (Diesel-80-100%; Additives) | 68476-34-6 Proprietary | Control Area 2 | Yes | C2 | | | | 225 | | | | | | |
| TRANSMISSION FLUID (Oil Solvent-Neutral; Performance Additives) | 64742-65-0 | Control Area 2 | | C3B | | | | 5 | | | | | | |
| OXYGEN, GAS (Oxygen) | 7782-44-7 | H-5 | | OXG | | | | | 5000 | | | | | |

a. Identify the control area(s), if it is an H occupancy, provide the classification, such as H-2, H-3, etc.
b. If the product, container, vessel, or tank exceed 55 gallons, indicate yes in the column.
c. Specify percentages of main components if available.
d. In cubic feet, gallons, or pounds.
(This is an example; add additional hazard classes as needed.)

APPENDIX H

**FIGURE 6**
**HAZARDOUS MATERIALS MANAGEMENT PLAN**
**SECTION III: EMERGENCY PLAN**

1. In the event of an emergency, the following shall be notified:

a. Facility Liaison

| Name | Title | Home Phone | Cell Phone |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

b. Agency

| Agency | Contact | Phone Number |
|---|---|---|
| Fire Department | | |
| LEPC | | |
| Other | | |

## APPENDIX I

# FIRE PROTECTION SYSTEMS—NONCOMPLIANT CONDITIONS

*The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.*

### SECTION I101
### NONCOMPLIANT CONDITIONS

**I101.1 General.** This appendix is intended to identify conditions that can occur when fire protection systems are not properly maintained or components have been damaged. This appendix is not intended to provide comprehensive inspection, testing and maintenance requirements, which are found in NFPA 10, 25 and 72. Rather, its intent is to identify problems that are readily observable during fire inspections.

**I101.2 Noncompliant conditions requiring component replacement.** The following conditions shall be deemed noncompliant and shall cause the related component(s) to be replaced to comply with the provisions of this code:

1. Sprinkler heads having any of the following conditions:
   - 1.1. Signs of leakage;
   - 1.2. Paint or other ornamentation that is not factory applied;
   - 1.3. Evidence of corrosion including, but not limited to, discoloration or rust;
   - 1.4. Deformation or damage to any part;
   - 1.5. Improper orientation of sprinkler head;
   - 1.6. Empty glass bulb;
   - 1.7. Sprinkler heads manufactured prior to 1920;
   - 1.8. Replacement sprinkler heads that do not match existing sprinkler heads in orifice size, K-factor temperature rating, coating or deflector type; or
   - 1.9. Sprinkler heads for the protection of cooking equipment that have not been replaced within one year.
2. Water pressure and air pressure gauges that have been installed for more than five years and have not been tested to within 3 percent accuracy.

**I101.3 Noncompliant conditions requiring component repair or replacement.** The following shall be deemed noncompliant conditions and shall cause the related component(s) to be repaired or replaced to comply with the provisions of this code:

1. Sprinkler and standpipe system piping and fittings having any of the following conditions:
   - 1.1. Signs of leakage;
   - 1.2. Evidence of corrosion;
   - 1.3. Misalignment; or
   - 1.4. Mechanical damage.
2. Sprinkler piping support having any of the following conditions:
   - 2.1. Materials resting on or hung from sprinkler piping;
   - 2.2. Damaged or loose hangers or braces.
3. Class II and Class III standpipe systems having any of the following conditions:
   - 3.1. No hose or nozzle, where required;
   - 3.2. Hose threads incompatible with fire department hose threads;
   - 3.3. Hose connection cap missing;
   - 3.4. Mildew, cuts, abrasions and deterioration evident;
   - 3.5. Coupling damaged;
   - 3.6. Gaskets missing or deteriorated; or
   - 3.7. Nozzle missing or obstructed.
4. Hose racks and cabinets having any of the following conditions:
   - 4.1. Difficult to operate or damaged;
   - 4.2. Hose improperly racked or rolled;
   - 4.3. Inability of rack to swing 90 degrees out of the cabinet;
   - 4.4. Cabinet locked, except as permitted by this code;
   - 4.5. Cabinet door will not fully open; or
   - 4.6. Door glazing cracked or broken.
5. Portable fire extinguishers having any of the following conditions:
   - 5.1. Broken seal or tamper indicator;
   - 5.2. Expired maintenance tag;
   - 5.3. Pressure gauge indicator in "red";
   - 5.4. Signs of leakage or corrosion;
   - 5.5. Mechanical damage, denting or abrasion of tank;
   - 5.6. Presence of repairs such as welding, soldering or brazing;
   - 5.7. Damaged threads; or
   - 5.8. Damaged hose assembly, couplings or swivel joints.

6. Fire alarm and detection control equipment, initiating devices and notification appliances having any of the following conditions:
   6.1. Corroded or leaking batteries or terminals;
   6.2. Smoke detectors having paint or other ornamentation that is not factory applied;
   6.3. Mechanical damage to heat or smoke detectors; or
   6.4. Tripped fuses.
7. Fire department connections having any of the following conditions:
   7.1. Fire department connections are not visible or accessible from the fire apparatus access road;
   7.2. Couplings or swivels are damaged;
   7.3. Plugs and caps are missing or damaged;
   7.4. Gaskets are deteriorated;
   7.5. Check valve is leaking; or
   7.6. Identification signs are missing.
8. Fire pumps having any of the following conditions:
   8.1. Pump room temperature is less than 40°F;
   8.2. Ventilating louvers are not freely operable;
   8.3. Corroded or leaking system piping;
   8.4. Diesel fuel tank is less than two-thirds full; or
   8.5. Battery readings, lubrication oil or cooling water levels are abnormal.

## SECTION 102
## REFERENCED STANDARDS

| | | |
|---|---|---|
| NFPA 10—07 | Portable Fire Extinguishers | 102.1 |
| NFPA 25—08 | Inspection, Testing and Maintenance of Water-based Fire Protection Systems | 102.1 |
| NFPA 72—07 | National Fire Alarm Code | 102.1 |

## APPENDIX J

# EMERGENCY RESPONDER RADIO COVERAGE

*The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.*

### SECTION J101
### GENERAL

**J101.1 Scope.** Systems, components and equipment required to provide emergency responder radio coverage shall be in accordance with this appendix.

**J101.2 Permit.** A construction permit is required for installation of or modification to emergency responder radio coverage systems and related equipment. Maintenance performed in accordance with this code is not considered a modification and does not require a permit.

### SECTION J102
### DEFINITIONS

**J102.1 Definitions.** For the purpose of this appendix, certain terms are defined as follows:

**AGENCY.** Any emergency responder department within the jurisdiction that utilizes radio frequencies for communication. This could include, but not be limited to, various public safety agencies such as fire department, emergency medical services and law enforcement.

### SECTION J103
### TECHNICAL REQUIREMENTS

**J103.1 System design.** The emergency responder radio coverage system shall be designed in accordance with Sections J103.1.1 through J103.1.5.

**J103.1.1 Amplification systems allowed.** Buildings and structures that cannot support the required level of radio coverage shall be equipped with a radiating cable system, a distributed antenna system with Federal Communications Commission (FCC)-certified signal boosters or other system approved by the *fire code official* in order to achieve the required adequate radio coverage.

**J103.1.2 Technical criteria.** The *fire code official* shall maintain a document providing the specific technical information and requirements for the emergency responder radio coverage system. This document shall contain, but not be limited to, the various frequencies required, the location of radio sites, the effective radiated power of radio sites and other supporting technical information.

**J103.1.3 Secondary power.** The emergency responder radio coverage system shall be equipped with a secondary source of power. The secondary source of power shall be either a battery system or an emergency generator. The secondary power supply shall supply power automatically when the primary power source is lost. The secondary source of power shall be capable of operating the emergency responder radio coverage system for a period of at least 12 hours.

**J103.1.3.1 Battery systems.** The active components of the installed system or systems shall be capable of operating on an independent battery system for a period of at least 12 hours without external power input. The battery system shall automatically charge in the presence of external power input.

**J103.1.4 Signal booster requirements.** If used, signal boosters shall meet the following requirements:

1. All signal booster components shall be contained in a NEMA4 type waterproof cabinet.
2. The battery system shall be contained in a NEMA4-type waterproof cabinet.
3. The system shall include automatic alarming of malfunctions of the signal booster and battery system. Any resulting trouble alarm shall be automatically transmitted to an approved central station or proprietary supervising station as defined in NFPA 72 or, when approved by the *fire code official*, shall sound an audible signal in a constantly attended location.
4. Equipment shall have FCC certification prior to installation.

**J103.1.5 Additional frequencies and change of frequencies.** The emergency responder radio coverage system shall be capable of modification or expansion in the event frequency changes are required by the FCC or additional frequencies are made available by the FCC.

**J103.2 Installation requirements.** The installation of the public safety radio coverage system shall be in accordance with Sections J103.2.1 through J103.2.5.

**J103.2.1 Approval prior to installation.** No amplification system capable of operating on frequencies licensed to any public safety agency by the FCC shall be installed without prior coordination and approval of the *fire code official*.

**J103.2.2 Permit required.** A construction permit, as required by Section 105.7.5 of the *International Fire Code*, shall be obtained prior to the installation of the emergency responder radio coverage system.

**J103.2.3 Minimum qualifications of personnel.** The minimum qualifications of the system designer and lead installation personnel shall include:

1. A valid FCC-issued General Radio Operators License, and
2. Certification of in-building system training issued by a nationally recognized organization or school or a

certificate issued by the manufacturer of the equipment being installed.

The agency may waive these requirements upon a successful demonstration of telephone skills and experience satisfactory to the *fire code official*.

**J103.2.4 Acceptance test procedure.** When an emergency responder radio coverage system is required, and upon completion of installation, the building *owner* shall have the radio system tested to ensure that two-way coverage on each floor of the building is a minimum of 90 percent. The test procedure shall be conducted as follows:

1. Each floor of the building shall be divided into a grid of 20 approximately equal areas.
2. The test shall be conducted using a calibrated portable radio of the latest brand and model used by the agency talking through the agency's radio communications system.
3. A maximum of two nonadjacent areas shall be allowed to fail the test.
4. In the event that three of the areas fail the test, in order to be more statistically accurate, the floor may be divided into 40 equal areas. A maximum of four nonadjacent areas shall be allowed to fail the test. If the system fails the 40-area test, the system shall be altered to meet the 90-percent coverage requirement.
5. A test location approximately in the center of each grid area shall be selected for the test, then the radio shall be enabled to verify two-way communications to and from the outside of the building through the public agency's radio communications system. Once the test location has been selected, that location shall represent the entire area. If the test fails in the selected test location, that grid area shall fail, and prospecting for a better spot within the grid area shall not be allowed.
6. The gain values of all amplifiers shall be measured and the test measurement results shall be kept on file with the building owner so that the measurements can be verified during annual tests. In the event that the measurement results become lost, the building owner shall be required to repeat the acceptance test to reestablish the gain values.
7. As part of the installation a spectrum analyzer or other suitable test equipment shall be utilized to insure spurious oscillations are not being generated by the subject signal booster. This test shall be conducted at time of installation and subsequent annual inspections.

**J103.2.5 FCC compliance.** The emergency responder radio coverage system installation and components shall also comply with all applicable federal regulations, including but not limited to, FCC 47 CFR 90.219.

**J103.3 Maintenance.** The emergency responder radio coverage system shall be maintained in accordance with Sections J103.3.1 through J103.3.5.

**J103.3.1 Maintenance.** The public radio coverage system shall be maintained operational at all times.

**J103.3.2 Permit required.** A construction permit, as required by Section 105.7.5 of the *International Fire Code*, shall be obtained prior to the modification or alteration of the emergency responder radio coverage system.

**J103.3.3 Testing and proof of compliance.** The emergency responder radio coverage system shall be inspected and tested annually or whenever structural changes occur including additions or remodels that could materially change the original field performance tests. Testing shall consist of the following:

1. In-building coverage test as described in Section J103.2.4.
2. Signal boosters shall be tested to ensure that the gain is the same as it was upon initial installation and acceptance.
3. Backup batteries and power supplies shall be tested under load for a period of one hour to verify that they will properly operate during an actual power outage. If within the one hour test period the battery exhibits symptoms of failure, the test shall be extended for additional one hour periods until the integrity of the battery can be determined.
4. All other active components shall be checked to verify operation within the manufacturer's specifications.
5. At the conclusion of the testing a report which shall verify compliance with Section J103.2.4 shall be submitted to the *fire code official*.

**J103.3.4 Additional frequencies.** The building owner shall modify or expand the emergency responder radio coverage system at his or her expense in the event frequency changes are required by the FCC or additional frequencies are made available by the FCC. Prior approval of a public safety radio coverage system on previous frequencies does not exempt this section.

**J103.3.5 Field testing.** Agency personnel shall have the right to enter onto the property at any reasonable time to conduct field testing to verify the required level of radio coverage.

## SECTION J104
## REFERENCED STANDARDS

| | | |
|---|---|---|
| FCC 47 CFR 90.219—2007 | Private Land Mobile Radio Services—Use of Signal Boosters | J103.2.5 |
| ICC IFC—09 | International Fire Code | J103.2.2, J103.3.2 |
| NFPA 72—07 | National Fire Alarm Code | J103.1.4 |

First Published in the Wichita Eagle on November 12, 2010

Clean 11/02/2010

ORDINANCE NO.48-893

AN ORDINANCE AMENDING SECTIONS 15.02.010, 15.02.020, 15.02.030, 15.02,040, 15.02.050, 15.02.060, 15.02.060, 15.02.070 AND 15.02.080 OF THE CODEOFTHE CITY OF WICHITA, KANSAS, PERTAINING TO SMOKE ALARMS AND REPEALING THE ORIGINALS OF SAID SECTIONS.

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

Section 1. Section 15.02.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Definitions. As used in this chapter:

'Alarm' means any audible or visible signal indicating existence of a fire or emergency requiring response and emergency action on the part of the firefighting service.

'Approved' means accepted or approved for its intended use by a nationally recognized testing laboratory. Acceptable to the authority having jurisdiction.

'Alteration' means any change, addition or modification in construction or occupancy.

'Apartment' means a room or suite of rooms occupied, or which is intended or designed to be occupied as the home or residence of one individual, family, or household for housekeeping purposes, including sleeping areas.

'Apartment house' means any building or portion thereof which contains three or more dwelling units and for the purpose of this code, includes residential condominiums. (Apartment House--see Apartment Building)

'Audible signal' means a device capable of producing a noise or sound, either coded or non-coded, or reproducing or conveying the sound of the human voice, for the purpose of warning building occupants of an event of fire. An audible signal may be incorporated into devices used for other purposes (i.e., smoke alarm, visible signal, public address speaker).

'Authority having jurisdiction' means the city fire marshal or his agents.

'Automatic detecting device' means a device or system providing an emergency function without the necessity of human intervention and activated as a result of a predetermined temperature, rate of rise of temperature or increase in the level of combustion products.

'Basement' means any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement unless such floor level qualifies as a first story, as defined in the Building Code.

'Bedroom' means any room which is designed with the intent that it is to be used for sleeping purposes.

'Building' means any structure used or intended for supporting or

sheltering any use or occupancy.

'Cellar' means a portion of a building located partly or wholly underground having an inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.

'Corridor means a passage which connects parts of the dwelling unit.

'Congregate residence' means any building or portion thereof which contains facilities for living, sleeping and sanitation, as required by this code, and may include facilities for eating and cooking, for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house, but does not include jails, hospitals, nursing homes, hotels or lodging house.

'Dwelling' means any building or portion thereof which contains not more than two dwelling units.

'Dwelling unit' means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by this code, for not more than one family, or a congregate residence for ten or less persons.

'Governing body' means the city council.

'Habitable room' means a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas, are not considered habitable space.

'Hotel' means any building containing six or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests.

'Householder' means the occupant of multifamily dwellings, one- and two- family dwellings and mobile homes.

'Landlord' means the owner, lessor, or sub-lessor of a dwelling unit. A managing agent or leasing agent, whether residing or officing on-site or off-site, shall be considered the agent of the owner for purposes of notice and communications required or allowed under this chapter.

'Lodging house' means any building or portion thereof, containing not more than five guest rooms used for sleeping purposes where rent is paid. This definition shall include boarding and rooming houses.

'Maintenance' means the act or acts of following the manufacturer's recommended procedures for assuring proper operation of the smoke alarm.

'Manufactured home' means a dwelling structure not constructed on site.

'Mobile home' means a dwelling structure not having a fixed foundation.

'Motel' (See definition for hotel).

'Multi-family dwellings' shall include apartment buildings, dormitories, condominiums, lodging, rooming, or boarding houses with more than five dwellings.

'Occupancy' means the purpose for which a building or part thereof is used or intended to be used.

'One/two family dwellings' shall include those buildings containing not more than two dwelling units in which each living unit is occupied by members of a single family.

'Owner' means any person, corporation, or other legal entity who has legal title or control in whole or part, of any real property. Also, any duly authorized agent of the owner. Any such agent thus representing the owner shall be bound to comply with the provisions of this chapter.

'Residential occupancies' includes congregate residences, one- and two- family dwellings, apartment buildings, all hotel and motels having guest rooms for lease or rent, lodging, rooming, or boarding houses, manufactured homes, mobile homes, mixed occupancy buildings having one or more units in use as a dwelling, and any occupancy used for sleeping purposes. Smoke alarms shall be installed in accordance with the approved manufacturer's instructions.

'Separate sleeping area' means where bedrooms or rooms ordinarily used for sleeping purposes are separated by other use areas, such as kitchens or living rooms but not bathrooms or closets, they shall be considered separate sleeping areas.

'Sleeping area' means an area of a dwelling containing bedrooms which are separated from each other by no use area other than a bathroom or closet.

'Smoke alarm' means any approved device that senses visible or invisible particles of combustion.

'Split level' means adjacent levels with less than one full story separation between levels.

‘Story’ means that portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above.

'Tenant' means any person who is entitled to occupy a dwelling to the exclusion of others and who is obligated to pay rent for the dwelling under a written or oral rental agreement.

'Test of smoke alarm' means the performance of the act or acts which the manufacturer of a smoke alarm recommends for that particular model of smoke alarm as a simple test of whether or not the smoke alarm is in good working order.

'Unit' means one or more rooms leased or rented to be used as a single dwelling. Also as in a suite.

'Visible signal' means a device capable of warning building occupants of an event of fire by direct viewing of an illuminated element. Such a device shall produce an intermittent or flashing signal (i.e., a strobe, flashlight or rotating beacon)."

SECTION 2. Section 15.02.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Smoke alarms required in residential occupancies.

All residential occupancies, new and existing, shall be provided with approved smoke alarms".

SECTION 3. Section 15.02.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Required alarm location.

A. In dwellings, smoke alarms shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to each separate sleeping area. Where bedrooms are on an upper level, the alarm shall be placed directly above the stairway. In dwellings with split levels, an alarm need only be installed on the upper level provided the lower level is less than one full story below the upper level, except that if there is a door between levels an alarm is required to be installed on each level. Dwellings having a stairway which opens from the basement shall have an alarm installed in the basement. Such alarm shall be connected to a sounding device or other alarm to provide an alarm which will be audible in all sleeping areas.

B. In hotels, motels, or lodging houses, alarms shall be located on the ceiling or wall of each guest room. When guest rooms are on an upper level, the alarm shall be placed on the ceiling of the upper level in close proximity to the stairway.

C. When activated, required alarms shall provide an alarm which shall be clearly audible in all sleeping areas over background noise levels with all intervening doors closed.

D. A smoke alarm mounted on a wall shall not be mounted more than twelve inches below the ceiling or closer than four inches to the ceiling. A smoke alarm mounted on the ceiling shall not be closer than four inches from the wall.

E. Smoke alarms located in rooms with ceiling slopes greater than one foot rise per eight feet horizontally shall be located at the high side of the room.

F. Smoke alarms installed at the head of the stairway shall be so located as to assure that smoke rising in the stairwell cannot be prevented from reaching the alarm by an intervening door or obstruction.

G. In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by twenty-four inches or more, smoke alarms shall be installed in the hallway and in the adjacent room.

SECTION 4. Section 15.02.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Smoke alarm requirements for the deaf or hearing impaired.

A. Where an occupancy is occupied by a person who is deaf or hearing impaired, an approved smoke alarm shall be provided.

(1) When activated, the approved smoke alarm shall provide a

light signal sufficient to warn the deaf or hearing impaired individual(s).

(2) The owner must provide approved smoke alarms for the deaf or hearing impaired upon written request from the occupant.

(3) The owner or his authorized agent, may require a refundable deposit for smoke alarms for the deaf or hearing impaired, not to exceed the value of the smoke alarm.

B. All hotels and motels, regardless of the number of units, shall have available at least one smoke alarm for the deaf or hearing impaired for each fifty units or less.

(1) The owner or his authorized agent may require a refundable deposit for a portable smoke alarm not to exceed the value of the smoke alarm."

SECTION 5. Section 15.02.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Power supply for smoke alarms. Smoke alarms shall receive their primary power source from the building wiring when such wiring is served from a commercial source. Wiring shall be permanent and without a disconnecting switch other than those required for over-current protection. All smoke alarms within individual dwelling units shall be interconnected, so when one alarm is actuated, all alarms within that unit will sound an alarm.

A. No smoke alarm shall be directly connected (permanently wired) to the electrical system of the structure unless an electrical permit shall have first been obtained.

B. In all new one- and two- family dwellings, one hundred ten volt smoke alarms with a battery backup shall be required to be installed after January 1, 1994.

C. In existing one- and two- family dwellings constructed prior to 1976 battery-powered smoke alarms may be installed, and shall be deemed to be in compliance with this section provided that such alarms are maintained and in operable condition.

D. Any smoke alarm found to be defective or inoperable shall be replaced by a one hundred ten volt smoke alarm with battery backup. (Exception: one- and two- family owner occupied dwellings)"

SECTION 6. Section 15.02.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Owner responsibility.

A. It shall be the responsibility of the owner or his authorized agent to provide and install approved smoke alarms, in full operating condition, in every new and existing residential occupancy.

B. The owner or his authorized agent shall be responsible for repair or replacement of smoke alarms in seven days upon written notification from the tenant, of alarm malfunction or defective operation.

C. Upon tenant's possession of a dwelling, the owner or his authorized agent shall test the smoke alarm to verify that it is in good working order.

(1) If battery-powered smoke alarms are in use, the battery must be of full charge and smoke alarm fully operable.

D. The owner or his/her authorized agent shall provide to the tenant written instructions on proper use, maintenance, and testing of smoke alarm(s) installed in the occupancy, in accordance with approved manufacturer's instructions."

SECTION 7. Section 15.02.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Tenant responsibility.

A. Tenants of residential occupancies, except hotels and motels, shall be responsible for regular maintenance and testing of smoke alarms, following the written instructions provided by the owner.

(1) If battery-powered smoke alarms are in use, maintenance shall include replacement of batteries.

B. In the event a tenant finds a smoke alarm to be malfunctioning or inoperable, he/she shall notify in writing the owner or his/her authorized agent of such malfunction or non-operation.

C. Neither tenant or owner shall remove or render a required smoke alarm inoperable.

(1) A tenant shall make entry to the residence available to the owner or his/her authorized agent upon notification for repair or replacement of smoke alarms."

SECTION 8. Section 15.02.080 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Violation. Any person, firm, partnership, corporation or association failing to install or maintain in operating condition, as required by this ordinance, a required smoke alarm, shall be in violation of this chapter. Anyone violating this chapter shall be issued a violation warning and allowed fourteen days to comply. Failure to comply will result in issuance of a citation.

A. Failure to install or maintain in operation condition, smoke alarms shall deem the structure or non-complying portion of said structure uninhabitable.

B. Tampering with, removing, destroying, disconnecting, or removing the batteries from any required smoke alarm, except in the course of inspection, maintenance, or replacement of the alarm, shall be a violation of this chapter and punishable by the penalties provided herein.

(1) A citation may be issued without any violation warning for these violations."

SECTION 9. The originals of Sections 15.02.010, 15.02.020, 15.02.030, 15.02,040, 15.02.050, 15.02.060, 15.02.060, 15.,02.070 and 15.02.080 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 10. 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 9th day of November, 2010.

_____
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 10/02/2010

ORDINANCE NO._____

AN ORDINANCE AMENDING SECTIONS 15.02.010, 15.02.020, 15.02.030, 15.02,040, 15.02.050, 15.02.060, 15.02.060, 15., 02.070 AND 15.02.080 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO SMOKE ALARMS AND REPEALING THE ORIGINALS OF SAID SECTIONS.

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

Section 1. Section 15.02.010 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Definitions. As used in this chapter:

'Alarm' means any audible or visible signal indicating existence of a fire or emergency requiring response and emergency action on the part of the firefighting service.

'Approved' means accepted or approved for its intended use by a nationally recognized testing laboratory. Acceptable to the authority having jurisdiction.

'Alteration' means any change, addition or modification in construction or occupancy.

'Apartment' means a room or suite of rooms occupied, or which is intended or designed to be occupied as the home or residence of one individual, family, or household for housekeeping purposes, including sleeping areas.

'Apartment house' means any building or portion thereof which contains three or more dwelling units and for the purpose of this code, includes residential condominiums. (Apartment House--see Apartment Building)

'Audible signal' means a device capable of producing a noise or sound, either coded or non-coded, or reproducing or conveying the sound of the human voice, for the purpose of warning building occupants of an event of fire. An audible signal may be incorporated into devices used for other purposes (i.e., smoke ~~detector~~ alarm, visible signal, public address speaker).

'Authority having jurisdiction' means the city fire marshal or his agents.

'Automatic detecting device' means a device or system providing an emergency function without the necessity of human intervention and activated as a result of a predetermined temperature, rate of rise of temperature or increase in the level of combustion products.

'Basement' means any floor level below the first story in a building, except that a floor level in a building having only one floor level shall be classified as a basement unless such floor level qualifies as a first story, as defined in the Building Code.

'Bedroom' means any room which is designed with the intent that it is to be used for sleeping purposes.

'Building' means any structure used or intended for supporting or

sheltering any use or occupancy.

'Cellar' means a portion of a building located partly or wholly underground having an inadequate access to light and air from windows located partly or wholly below the level of the adjoining ground.

'Corridor means a passage which connects parts of the dwelling unit.

'Congregate residence' means any building or portion thereof which contains facilities for living, sleeping and sanitation, as required by this code, and may include facilities for eating and cooking, for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house, but does not include jails, hospitals, nursing homes, hotels or lodging house.

'Dwelling' means any building or portion thereof which contains not more than two dwelling units.

'Dwelling unit' means any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking and sanitation, as required by this code, for not more than one family, or a congregate residence for ten or less persons.

'Governing body' means the city council.

'Habitable room' means a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas, are not considered habitable space.

'Hotel' means any building containing six or more guest rooms intended or designed to be used, or which are used, rented or hired out to be occupied, or which are occupied for sleeping purposes by guests.

'Householder' means the occupant of multifamily dwellings, one- and two- family dwellings and mobile homes.

'Landlord' means the owner, lessor, or sub-lessor of a dwelling unit. A managing agent or leasing agent, whether residing or officing on-site or off-site, shall be considered the agent of the owner for purposes of notice and communications required or allowed under this chapter.

'Lodging house' means any building or portion thereof, containing not more than five guest rooms used for sleeping purposes where rent is paid. This definition shall include boarding and rooming houses.

'Maintenance' means the act or acts of following the manufacturer's recommended procedures for assuring proper operation of the smoke ~~detector~~ alarm.

'Manufactured home' means a dwelling structure not constructed on site.

'Mobile home' means a dwelling structure not having a fixed foundation.

'Motel' (See definition for hotel).

'Multi-family dwellings' shall include apartment buildings, dormitories, condominiums, lodging, rooming, or boarding houses with more than five dwellings.

'Occupancy' means the purpose for which a building or part thereof is used or intended to be used.

'One/two family dwellings' shall include those buildings containing not more than two dwelling units in which each living unit is occupied by members of a single family.

'Owner' means any person, corporation, or other legal entity who has legal title or control in whole or part, of any real property. Also, any duly authorized agent of the owner. Any such agent thus representing the owner shall be bound to comply with the provisions of this chapter.

'Residential occupancies' includes congregate residences, one- and two- family dwellings, apartment buildings, all hotel and motels having guest rooms for lease or rent, lodging, rooming, or boarding houses, manufactured homes, mobile homes, mixed occupancy buildings having one or more units in use as a dwelling, and any occupancy used for sleeping purposes. ~~Detectors~~ Smoke alarms shall be installed in accordance with the approved manufacturer's instructions.

'Separate sleeping area' means where bedrooms or rooms ordinarily used for sleeping purposes are separated by other use areas, such as kitchens or living rooms but not bathrooms or closets, they shall be considered separate sleeping areas.

'Sleeping area' means an area of a dwelling containing bedrooms which are separated from each other by no use area other than a bathroom or closet.

'Smoke ~~detector~~ alarm' means any approved device that senses visible or invisible particles of combustion.

'Split level' means adjacent levels with less than one full story separation between levels.

‘Story’ means that portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above.

'Tenant' means any person who is entitled to occupy a dwelling to the exclusion of others and who is obligated to pay rent for the dwelling under a written or oral rental agreement.

'Test of smoke ~~detector~~ alarm' means the performance of the act or acts which the manufacturer of a smoke ~~detector~~ alarm recommends for that particular model of smoke ~~detector~~ alarm as a simple test of whether or not the smoke ~~detector~~ alarm is in good working order.

'Unit' means one or more rooms leased or rented to be used as a single dwelling. Also as in a suite.

'Visible signal' means a device capable of warning building occupants of an event of fire by direct viewing of an illuminated element. Such a device shall produce an intermittent or flashing signal (i.e., a strobe, flashlight or rotating beacon)."

SECTION 2. Section 15.02.020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Smoke ~~detectors~~ alarms required in residential occupancies.

All residential occupancies, new and existing, shall be provided with approved smoke ~~detectors~~ alarms".

SECTION 3. Section 15.02.030 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Required ~~detector~~ alarm location.

A. In dwellings, smoke ~~detectors~~ alarms shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to each separate sleeping area. Where bedrooms are on an upper level, the ~~detector~~ alarm shall be placed directly above the stairway. In dwellings with split levels, an ~~detector~~ alarm need only be installed on the upper level provided the lower level is less than one full story below the upper level, except that if there is a door between levels a ~~detector~~ alarm is required to be installed on each level. Dwellings having a stairway which opens from the basement shall have a ~~detector~~ alarm installed in the basement. Such ~~detector~~ alarm shall be connected to a sounding device or other ~~detector~~ alarm to provide an alarm which will be audible in all sleeping areas.

B. In hotels, motels, or lodging houses, ~~detectors~~ alarms shall be located on the ceiling or wall of each guest room. When guest rooms are on an upper level, the ~~detector~~ alarm shall be placed on the ceiling of the upper level in close proximity to the stairway.

C. When activated, required ~~detectors~~ alarms shall provide an alarm which shall be clearly audible in all sleeping areas over background noise levels with all intervening doors closed.

D. A smoke ~~detector~~ alarm mounted on a wall shall not be mounted more than twelve inches below the ceiling or closer than four inches to the ceiling. A smoke ~~detector~~ alarm mounted on the ceiling shall not be closer than four inches from the wall.

E. Smoke ~~detectors~~ alarms located in rooms with ceiling slopes greater than one foot rise per eight feet horizontally shall be located at the high side of the room.

F. Smoke ~~detectors~~ alarms installed at the head of the stairway shall be so located as to assure that smoke rising in the stairwell cannot be prevented from reaching the detector alarm by an intervening door or obstruction.

G. In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by twenty-four inches or more, smoke ~~detectors~~ alarms shall be installed in the hallway and in the adjacent room.

SECTION 4. Section 15.02.040 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Smoke ~~detector~~ alarm requirements for the deaf or hearing impaired.

A. Where an occupancy is occupied by a person who is deaf or hearing impaired, an approved smoke ~~detector~~ alarm shall be provided.

(1) When activated, the approved smoke ~~detector~~ alarm shall provide a

light signal sufficient to warn the deaf or hearing impaired individual(s).

(2) The owner must provide approved smoke ~~detection~~ alarms for the deaf or hearing impaired upon written request from the occupant.

(3) The owner or his authorized agent, may require a refundable deposit for smoke ~~detection~~ alarms for the deaf or hearing impaired, not to exceed the value of the smoke ~~detector~~ ~~alarm~~.

B. All hotels and motels, regardless of the number of units, shall have available at least one smoke ~~detector~~ alarm for the deaf or hearing impaired for each fifty units or less.

(1) The owner or his authorized agent may require a refundable deposit for a portable smoke ~~detector~~ alarm not to exceed the value of the smoke ~~detector~~ alarm."

SECTION 5. Section 15.02.050 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Power supply for smoke ~~detectors~~ alarms. Smoke ~~detectors~~ alarms shall receive their primary power source from the building wiring when such wiring is served from a commercial source. Wiring shall be permanent and without a disconnecting switch other than those required for over-current protection. All smoke ~~detectors~~ alarms within individual dwelling units shall be interconnected, so when one ~~detector~~ alarm is actuated, all ~~detectors~~ alarms within that unit will sound an alarm.

A. No smoke ~~detector~~ alarm shall be directly connected (permanently wired) to the electrical system of the structure unless an electrical permit shall have first been obtained.

B. In all new one- and two- family dwellings, one hundred ten volt smoke ~~detectors~~ alarms with a battery backup shall be required to be installed after January 1, 1994.

C. In existing one- and two- family dwellings constructed prior to 1976 battery-powered smoke ~~detectors~~ alarms may be installed, and shall be deemed to be in compliance with this section provided that such ~~detectors~~ alarms are maintained and in operable condition.

D. Any smoke ~~detector~~ alarm found to be defective or inoperable shall be replaced by a one hundred ten volt smoke ~~detector~~ alarm with battery backup. (Exception: one- and two- family owner occupied dwellings)"

SECTION 6. Section 15.02.060 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Owner responsibility.

A. It shall be the responsibility of the owner or his authorized agent to provide and install approved smoke ~~detectors~~ alarms, in full operating condition, in every new and existing residential occupancy.

B. The owner or his authorized agent shall be responsible for repair or replacement of smoke ~~detectors~~ alarms in seven days upon written notification from the tenant, of ~~detector~~ alarm malfunction or defective operation.

C. Upon tenant's possession of a dwelling, the owner or his authorized agent shall test the smoke ~~detector~~ alarm to verify that it is in good working order.

(1) If battery-powered smoke ~~detectors~~ alarms are in use, the battery must be of full charge and smoke ~~detector~~ alarm fully operable.

D. The owner or his/her authorized agent shall provide to the tenant written instructions on proper use, maintenance, and testing of smoke ~~detector(s)~~ alarm(s) installed in the occupancy, in accordance with approved manufacturer's instructions."

SECTION 7. Section 15.02.070 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Tenant responsibility.

A. Tenants of residential occupancies, except hotels and motels, shall be responsible for regular maintenance and testing of smoke ~~detectors~~ alarms, following the written instructions provided by the owner.

(1) If battery-powered smoke ~~detectors~~ alarms are in use, maintenance shall include replacement of batteries.

B. In the event a tenant finds a smoke ~~detector~~ alarm to be malfunctioning or inoperable, he/she shall notify in writing the owner or his/her authorized agent of such malfunction or non-operation.

C. Neither tenant or owner shall remove or render a required smoke ~~detector~~ alarm inoperable.

(1) A tenant shall make entry to the residence available to the owner or his/her authorized agent upon notification for repair or replacement of smoke ~~detectors~~ alarms."

SECTION 8. Section 15.02.080 of the Code of the City of Wichita, Kansas, is herebyamended to read as follows:

"Violation. Any person, firm, partnership, corporation or association failing to install or maintain in operating condition, as required by this ordinance, a required smoke ~~detector~~ alarm, shall be in violation of this chapter. Anyone violating this chapter shall be issued a violation warning and allowed fourteen days to comply. Failure to comply will result in issuance of a citation.

A. Failure to install or maintain in operation condition, smoke ~~detectors~~ alarms shall deem the structure or non-complying portion of said structure uninhabitable.

B. Tampering with, removing, destroying, disconnecting, or removing the batteries from any required smoke ~~detector~~ alarm, except in the course of inspection, maintenance, or replacement of the ~~detector~~ alarm, shall be a violation of this chapter and punishable by the penalties provided herein.

(1) A citation may be issued without any violation warning for these violations."

SECTION 9. The originals of Sections 15.02.010, 15.02.020, 15.02.030, 15.02,040, 15.02.050, 15.02.060, 15.02.060, 15.,02.070 and 15.02.080 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 10. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

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

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk
Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

**REVISED** **Agenda Item No. III-7**

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Performance ~~and Operational Agreement~~ Contracts for Cultural Funding 2011 (All Districts)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** New business

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**Recommendation:** It is recommended that City Council approve 21 Performance Contracts for Fiscal Year (FY) 2011 Cultural Funding ~~and Operational Agreements for Group One organizations~~.

**Background:** In 2005, the City Council approved the formation of the Cultural Funding Committee consisting of 11 members. Members of City Council appointed seven members. The Arts Council appointed four members. The committee consists of representatives from government, education, business, philanthropy, arts organizations and the public at large. The committee is assigned the responsibility to make recommendations to members of City Council on allocation of funding for operational grants for arts and cultural organizations. This year, the committee made total recommendations in the amount of $3,083,633.

In 2010, the City entered into five-year operational agreements with the Group One organizations to protect the City's investment in these organizations. Group One organizations are defined and identified in the Cultural Arts Plan. This plan was approved by City Council in November 2008. The definition of a Group One organization is a not-for-profit organization in which "public-owned facilities or land, public-owned collections (artifacts, exhibits, displays, etc.), public employees and/or significant public support of the organization's operating budget are provided by the City." These Group One organizations include the Wichita Art Museum, Wichita-Sedgwick County Historical Museum, Botanica, and Mid-America All-Indian Center. Old Cowtown Museum came under the management of the Division of Arts & Cultural Services in August of 2007 and receives the majority of their funding from the City's General Fund. As a result of this change, a legal Operating Agreement is not feasible.

The purpose of the Operating Agreements is to define the City's expectations for Group One organizations and to indentify anticipated funding amounts for five years which allows organizations the ability to create long-term strategic plans. Working with a committee of private citizens as well as the Cultural Funding committee, a list of Performance Criteria was developed with the intent of encouraging Group One organizations to perform at a high level of excellence and to determine the organization's over-all health. ~~For FY2011, this criterion for review has been added to the Group One Operating Agreements as an addendum and outlines performance criteria by which the organization shall be reviewed.~~ *This criterion for review will be included as part of the organization's Operating Agreement and will be added as an addendum to be brought back to Council for approval at a future date.*

~~Included in the Operating Agreements and as part of the organization's Annual Report, organizations will be asked to provide and the Cultural Funding Committee members will review:~~ *This addendum of criteria will be added to define the organization's Annual Report. Organizations will be asked to provide for the cultural Funding Committee members to review:*

- Demonstrated average annual growth over a three-year time period in earned income and/or private contributions.
- Assurance of financial security by maintenance of a three to six month operating reserve.

- Funding amounts identified in the Operating Agreement for FY2012.
- Development of Improvement Plans for organizations who do not meet excellence criteria established as a result of the annual review of these agreements.
- Demonstration of how City funding expenditures were used.
- Inclusion of City representation on all boards.
- Quality of Organization
- Community Impact
- Financial Stability

In addition to the Operating Agreements, the Cultural Funding Committee reviewed 26 FY2011 applications from arts and cultural organizations during the approved Cultural Funding review process from April 6 – April 20, 2010. *The Cultural Funding Committee recommended funding for 21 of the applying organizations.* City Council approved the recommendations for funding in August 2010 as part of the FY2011 City of Wichita budget.

**Analysis:** ~~Approval of Operating Agreements for Group One organizations will provide the City of Wichita with fair, equitable contracts in which to measure performance-based outcomes of all organizations. Outcomes to be measured include demonstrated average annual growth over a three-year time period in earned income and/or private contributions, maintenance of a three to six month operating reserve and annual reports which detail the stability and health of the organizations and their boards. Operating Agreements with the Group One organizations allow the Cultural Funding committee to make recommendations for a performance improvement plan if organizations do not fulfill their obligations.~~

~~The 21 Performance Contracts ensure accountability of performance and audits for usage of City funding.~~ *The 21 Performance contracts provide the City with a fair and equitable method of allocating funds to the arts organizations and ensure accountability of performance measures. These contracts allow for audits of the usage of City funding and demonstration of meeting the excellence criteria developed.* Funding recommendations approved as part of the FY2011 budget are below:

~~**Group One - Operating Agreement Amounts**~~

| ~~Organization Name~~ | ~~Final Score~~ | ~~2011 Amount Recommended~~ |
|---|---|---|
| ~~Group 1 with Operating Agreement~~ | - | - |
| ~~Historical Museum~~ | - | ~~$138,040~~ |
| ~~The Wichita Art Museum, Inc.~~ | - | ~~$1,557,663~~ |
| ~~Mid-America All-Indian Center~~ | - | ~~$160,269~~ |
| ~~Botanica, The Wichita Gardens~~ | - | ~~$292,560~~ |
| ~~Cowtown~~ | - | ~~$245,475~~ |
| ~~Total Amount Recommended~~ | - | ~~$2,394,007~~ |

**Group One - Cultural Funding:**

| Organization Name | Final Score | 2011 Amount Recommended |
|---|---|---|
| Botanica | 88 | $28,070 |
| Mid-America All-Indian Museum | 84 | $3,816 |
| Historical Museum | 83 | $8,980 |
| Wichita Art Museum | 82 | $8,491 |
| Old Cowtown Museum | 82 | $18,188 |
| **Total ~~Group 1~~ Supplemental Recommended** | | **$67,545** |

**All Other Organizations - Cultural Funding:**

| Organization Name | Final Score | 2011 Amount Recommended |
|---|---|---|
| Wichita Public Library Foundation | 95 | $70,000 |
| Wichita Symphony | 93 | $110,000 |
| WSU Foundation (Ulrich Museum) | 90 | $35,000 |
| Arts Partners | 89 | $42,541 |
| Orpheum Performing Arts Center, Ltd | 88 | $35,000 |
| Music Theatre of Wichita | 86 | $85,000 |
| Wichita Children's Theatre | 85 | $40,000 |
| Tallgrass Film Festival | 85 | $18,000 |
| Sedgwick County Zoological Society | 83 | $58,000 |
| Chamber Music at the Barn | 83 | $16,000 |
| Opera Kansas | 81 | $4,000 |
| Kansas Aviation Museum | 80 | $45,000 |
| Music Theatre for Young People | 78 | $6,000 |
| Heart of America Men's Chorus Inc. | 75 | $6,000 |
| Museum of World Treasures | 73 | $45,000 |
| ~~American Guild of Organists~~ | ~~67~~ | ~~$0~~ |
| ~~Ballet Wichita~~ | ~~65~~ | ~~$0~~ |
| ~~The Kansas African American Museum~~ | ~~57~~ | ~~$0~~ |
| Arts Council | | $6,540 |
| ~~Newman University Fine Arts~~ | - | ~~$0~~ |
| ~~Wichita Festivals Inc~~ | - | ~~$0~~ |
| **~~Total supplemental recommended for all other organizations (16 organizations)~~** | - | **~~$622,081~~** |
| ***Total Supplemental Group One*** | | ***$67,545*** |
| **Total ~~Supplemental Recommended for all other organizations and Group One~~** | | **$689,626** |
| | | |
| **Total ~~amount recommended for~~ Allocation *(Base and Supplemental)* after 3% reduction** | | **$3,083,633** |

**Financial Consideration:** The recommended funding amounts are included in the 2011 Adopted Budget.

**Goal Impact:** To Enhance the Quality of Life for citizens of Wichita by protecting the City's investment in arts and cultural organizations.

**Legal Consideration:** Law department has prepared and approved the form of the proposed contract as well as prepared the Operating Agreement Addendum.

**Recommendations/Actions:** It is recommended that City Council approve 21 Performance Contracts for Cultural Funding ~~and Operational Agreements for Group One organizations~~ for Fiscal Year (FY) 2011.

**Attachments:** 21 Performance Contracts
~~Operating Agreements for Group One organizations~~
~~Operating Agreement Report Criteria~~

# Annual Operating Agreement Report Criteria

The City of Wichita provides the following criteria for the Organization's benefit in preparing for the annual review process. These criteria will give the Organization guidance in preparing the annual State of the Organization report, and notice of the basis the City will use to evaluate the Organization's performance for purposes of continuing funding consideration.

Quality of Organization

- Demonstrates diversity of board members and rotation of members
- Identifies staffing levels and demonstrates staff stability.
- Stewardship of collection (Identifies acquisitions, loans and deaccessions).
- Demonstrated record of producing/presenting arts of the highest quality over the past 2 or 3 years.
- Appropriateness of the program/projects to the organization's core values; mission, audience, community, and/or constituency.
- Organizations commitment to programs and activities reflected through attendance data.
- Demonstrates a commitment to youth programming.
- Identity program and percentage of cost-recovery.

Community Impact

- Demonstrates an effort to reach wide audiences including underserved populations.
- Demonstrates ability to collaborate and create program partnerships with other organizations, local businesses, and schools.
- Demonstrates ability to contribute to the quality of life for the citizens of Wichita.
- Rotates offerings/exhibits to enhance the experience of visitors or audience.

Financial Stability

- Identified different forms of financial support including grants, fundraisers and foundation.
- Explained how operating funds from the City of Wichita were used.
- Balanced operating budget.
- Public commitment to programs and activities reflected through earned income data. (Including total attendance, total paid admissions, total paid memberships, and total attendance of school groups/tours.)
- Executed a strategic plan.
- Demonstrated 3 year growth in earned income.
- Maintains a 3 to 6 month operating reserve.

Please note that the City of Wichita will provide an Annual Operating Agreement Report Form for the completion of the annual report and the City of Wichita retains the right to request additional information.

**CONTRACT**

**for**

**ADMINISTRATION OF ADDITIONAL GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd of November, 2010**, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Wichita Art Museum, Inc.,** a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services, and in addition to the current base annual allocation from the City of Wichita of $1,557,663.00, (hereafter known as "Operational Agreement") which is not subject to the terms of this particular document, **CITY** agrees to pay to **PROVIDER** the sum of **eight thousand four hundred ninety one dollars ($8,491)**, payable in two, equal installments and due the first business day of the month January 2011 and June 2011 upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews with adequate prior notice to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports, in the **PROVIDER**'s format, describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12$^{th}$ of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011**. This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

7. **Independent Contractor.** The relationship of **PROVIDER** to the **CITY** will be that of an independent contractor. The parties understand that **PROVIDER** has on its staff 26 (twenty-six) official employees of the City of Wichita whose remuneration/benefits are paid by the City of Wichita.

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination.** **PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Wichita Art Museum, Inc.**

_____
Charles Steiner, Director
*Wichita Art Museum, Inc.*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Wichita Art Museum, Inc. PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City'sRequest for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments. Reasonable modification of goals throughout the year, as mutually agreed upon by both parties, will take precedence over others stated in this document or original proposal.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
During 2011, maintain overall annual attendance of at least 48,000 by providing and marketing focused exhibitions, symposia, and educational programs that will interest the community and region.

**Goal 2**
Increase audience served by the Education Department from 2009 levels of 33,314 by at least three percent (1,000), to 34,314 by December 2011. This will be achieved by providing enjoyable experiences to students, families and groups to encourage return visits and by increasing print advertising, social media marketing and outreach through schools. If significant cuts are made to art education programs in USD 259, the Museum is considering ways to assist.

**Goal 3**
Complete a strategic plan by December 2011 by working with the WSU Center for Community Support & Research and community stakeholders to review the Museum's history, its current strengths and weaknesses, and to determine new opportunities. The strategic planning process, and the completed plan, will help the Museum balance limited resources to provide exhibitions and programs within the mission, which will enhance the quality of life in the community, develop new audiences, and protect the City's excellent collection for future generations.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on all printed material as approriate, the City of Wichita logo (where possible) and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts & Cultural Services, at 316/303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the final FY2010 report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2010 Final Report shall bar the organization from contracting with the City for FY2012.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-Annual and Final Reports**

Prepare one (1) semi-annual **PROVIDER** reports and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011** with the completed calendar year report due to the CITY by the weekday on or closest to **January 31, 2012**. Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

**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/Affirmati**ve Acti**[on] **Program** [Re]**quirements:**

A. **During the performan**ce of this contract, the contractor, subcontractor, vendor or supplier of the City, or a**ny of its** [age]**ncies, shall comply wi**th all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders **1**1246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

part by the contracting agency;

D. Exempted from these requirements are:

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

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

**AGREEMENT FOR SUPPLEMENTAL FUNDING OF ARTISTIC DEVELOPMENT**

This agreement is entered this **2nd day of November, 2010,** between the City of Wichita, KS, a municipal corporation, (hereinafter referred to the "CITY" and **The Arts Council**, a not-for-profit organization, (hereinafter referred to as "Provider").

**WITNESSETH**:

**WHEREAS**, the CITY is interested in providing funding for non-profit and governmental partners to aid the development of programs providing for the general artistic and cultural enhancement of the community, and

**WHEREAS**, Provider, has the facilities, expertise and ability to provide services and programs to that end, and has presented a favorable proposal to accomplish that purpose to the benefit of the community's general welfare;

**NOW, THEREFORE**, the parties agree as follows:

I. ***Term***. The services of Provider are to begin **January 1, 2011 through December 31, 2011** and shall be undertaken and completed in such sequence as to assure their expeditious, satisfactory completion in light of the purposes of this agreement. This agreement shall remain in force through the completion of all requirements found within the attached Scope of Services, which requirements shall in any event be completed later than one year from the date of execution.

II. ***Services to be performed***. Provider shall perform the services described in the attached Scope of Services (Attachment A), which is made a part of this agreement by reference. The CITY shall be responsible for meeting any obligations set out for it in Attachment A according to the terms stated in that document.

III. ***Billing and Payment.*** The services rendered by Provider pursuant to this agreement shall be compensated in a total amount not to exceed **Six thousand five hundred forty dollars ($6,540)** payable in four, equal, quarterly installments and due the first business day of the month upon presentation of a detailed invoice by PROVIDER beginning January 1, 2011. The Scope of Services shall establish require that the performance objectives will be specific, measurable, observable, and relevant and timed.

IV. ***Independent Contractor Status.*** Provider's status for conduct of tasks described herein shall be as an independent contractor, and not as an agent or employee of the CITY. Any and all employees or agents of Provider while engaged in the performance of any work or service required by Provider under this agreement shall be considered employees of Provider only and not of the CITY. Any and all claims that may arise under the Kansas Workers' Compensation Act on behalf of

said employees while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of Provider's employees or agents while so engaged in any of the work or service anticipated herein shall be the sole obligation and responsibility of Provider.

V. ***Acceptance Procedure.*** Provider shall render the deliverables described in Attachment A, under the terms and conditions thereof. If the CITY believes the completed work does not conform to the requirements of the agreement, it shall notify Provider in writing thereof, within the above-mentioned twenty (20) days and shall indicate with particularity in what manner the project fails to conform. In the absence of such notice of non-conformance, acceptance of the work will be presumed.

VI. ***Nondiscrimination in Employment.*** During the performance of this agreement, Provider agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, ancestry or national origin. The CITY's anti-discrimination requirements, attached as Attachment B, are made a part of this agreement by reference.

VII. ***Termination by the CITY.*** If, for any cause, Provider shall fail to fulfill its obligations under this agreement in a timely and proper manner as required by this agreement, or if Provider shall violate any of the covenants, agreements, or stipulations of this agreement, the CITY shall thereupon have the right to terminate this Agreement by giving written notice to Provider of such termination, effective thirty (30) days following receipt of same, provided, however, that Provider shall be provided a reasonable time within which to remedy such deficiencies. Provider shall be entitled to receive just and equitable compensation for any satisfactory services completed prior to the effective date of such termination.

VIII. ***Termination by Provider.*** Provider may terminate this agreement at any time for failure of the City to comply with any material terms or conditions of this agreement, effective thirty (30) days following receipt, provided, however, that the City shall be provided a reasonable time within which to remedy such deficiencies.

IX. ***Governing Law.*** The laws of the State of Kansas shall govern the validity, construction, interpretation, and effect of this agreement.

X. ***Waivers.*** The failure of the parties to enforce, at any time, the provisions of this agreement or to exercise any option which may be provided herein shall not be construed as a waiver of such provisions or to affect the validity of this agreement or any part thereof or the right of the parties to enforce thereafter each and every provision and to exercise any such option. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach. All remedies available under this agreement shall be taken and construed as

cumulative, that is, as being in addition to every other remedy provided by operation of law.

XI. ***Representatives of Contracting Parties.*** The following designated parties shall represent the parties to this Agreement for notification and communication as may be required:

(a) Representing the City:

John D'Angelo, Manager
Division of Arts & Cultural Services
225 W. Douglas
Wichita, Kansas 67202
316-303-8600

(b) Representing the Provider:

Judy Goodpasture, Chairman of the Board
*The Arts Council*
*334 N. Mead*
*Wichita KS 67202*
*316-462-2787*

XII. ***Insurance and Indemnification.***
Provider 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 Provider, its officers, agents, servants, or employees, occurring in the performance of its services under this agreement. Provider will carry insurance of the type and in the amounts, if any, as required in the Scope of Services. Use of such coverage to policy limits shall not extinguish any remaining liability to the CITY to the extent that the claim against the CITY remains unresolved.

XIII. ***Prohibition against Assignment and delegation.*** Notwithstanding any other provision of this agreement, Provider warrants that none of Provider's duties under this agreement may be delegated to or sub-contracted to any persons other than those described in Attachment A without the express written permission of the CITY.

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

XV. ***Compliance with Laws.*** Provider shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this agreement.

XVI. ***Authorization***. By signing this agreement, the Provider's representative represents that he or she is duly authorized by Provider to execute this agreement, and that Provider has agreed to be bound by all of its terms.

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

CITY OF WICHITA, KANSAS

By _____
Carl Brewer, Mayor

Arts Council

By _____
*Judy Goodpasture, Chairwoman of the Board, Arts Council*

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by the City of Wichita, Kansas and The Arts Council that it is the intent of this contract for the **Arts Council** to provide certain documentation to the City of Wichita for operational arts funding.

FIRST, The Arts Council understands and agrees that the City will evaluate outcome-based performance under this contract.

SECOND, The Arts Council understands and agrees to provide documentation as specified in The Arts Council and the City's mutual agreement. Any specifications or provisions in said mutual agreement that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of The Arts Council and the City's mutual agreement are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The Scope of Services of The Arts Council under this contract includes the following:

**Goal 1**
Continue operation of The Arts Council and adherence to their mission, goals, and strategic plan.

**Goal 2**
Raise the level of awareness of the arts and arts education by increasing student attendance by 3% for free programming classes.

**Goal 3**
Develop long-term funding for the arts by increasing the current granting amount by 10%.

**The Arts Council is required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on all printed material, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts & Cultural Services, at 316/303-8663.

## FINANCIAL MANAGEMENT

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. Budget expenditures to ensure that the sums available to The Arts Council are not over expended and that agencies will have funding to carry out operational activities over their entire contract period. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

## SEMI-ANNUAL AND FINAL REPORTS

Prepare one (1) semi-annual report and one (1) yearend Final Report which include: accomplishments and adherence to and satisfaction of the original contract purposes based upon outcomes, measurements and issues/needs identified in the process of pursuing the Scope of Services. The two reports will be due to the CITY, Division of Arts and Cultural Services by the weekday on or closest to **June 30, 2011** with the Final Report due to the CITY by the weekday on or closest to **January 31, 2012.** Final Reports will be provided to the Wichita Mayor/City Council Office and to the City Manager's Office.

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

D. Exempted from these requirements are:

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

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

**CONTRACT**

**For**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Arts Partners, Inc.**, a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **forty two thousand five hundred forty one dollars ($42,541),** payable in four installments and due the first business day of the months January, February, March, April 2011 upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER** semi-annual reports describing the actions taken and results obtained toward

fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof

any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Arts Partners, Inc.**

_____
Katie S. Lynn, Executive Director
*Arts Partners, Inc.*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Arts Partners, Inc., PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City'sRequest for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they ae not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
Increase the number of science/math related programs by 10% over those currently offered by developing new programs (workshops, residencies and performances) by December 2011.

**Goal 2**
Increase the number of preschool children participating in Wolf Trap residencies by 5% over 2010 participation by working with more early childhood centers by December 2011.

**Goal 3**
Increase the number of individual donor multi-year pledges by 5% over those received in 2010 by increasing the number of new participants in fundraising efforts by December 2011.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on all printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316/303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-Annual and Final Reports**

Prepare one (1) semi-annual **PROVIDER** reports and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011** with the complete calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2012.** . Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

B. Requirements of the State of Kansas:

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

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

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

4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such

subcontractor or vendor.

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

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

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

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

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

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

D. Exempted from these requirements are:

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

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

# Annual Operating Agreement Report Criteria for Botanica

The City of Wichita provides the following criteria for the Organization's benefit in preparing for the annual review process. These criteria will give the Organization guidance in preparing the annual State of the Organization report, and notice of the basis the City will use to evaluate the Organization's performance for purposes of continuing funding consideration.

Quality of Organizations

- Demonstrates diversity of board members and rotation of members
- Identifies staffing levels and demonstrates staff stability.
- Stewardship of collection (Identifies acquisitions, loans and deaccessions).
- Demonstrated record of producing/presenting arts of the highest quality over the past 2 or 3 years through attendance at events and participation in programs.
- Appropriateness of the program/projects to the organization's core values; mission, audience, community, and/or constituency.
- Organizations commitment to programs and activities reflected through attendance data.
- Demonstrates a commitment to youth programming.
- Identity program and percentage of cost-recovery.

Community Impact

- Demonstrates an effort to reach wide audiences including underserved populations.
- Demonstrates ability to collaborate and create program partnerships with other organizations, local businesses, and schools.
- Demonstrates ability to contribute to the quality of life for the citizens of Wichita through diversity and attendance of audience and participation in programs.
- Rotates offerings/exhibits to enhance the experience of visitors or audience.

Financial Stability

- Identified different forms of financial support including grants, fundraisers and foundation.
- Explained how operating funds from the City of Wichita were used.
- Balanced operating budget.
- Public commitment to programs and activities reflected through earned income data. (Including total attendance, total paid admissions, total paid memberships, and total attendance of school groups/tours.)
- Executed a strategic plan.
- Demonstrated 3 year growth in earned income.
- Maintains a 3 to 6 month operating reserve.

Please note that the City of Wichita will provide an Annual Operating Agreement Report Form for the completion of the annual report and the City of Wichita retains the right to request additional information.

The parties agree that this criteria amends the existing Operating Agreement previously approved by City Council on November 2, 2010.

**Botanica, Inc.**

_____

Peter Salmeron, President
Botanica, Inc.

**City of Wichita**

_____

CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

**CONTRACT**

**for**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Botanica, Inc.,** a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services, and in addition to the current "Operational Agreement" allocation from the City of Wichita of $292,560, (hereafter known as "Operating Agreement") which is not subject to the terms of this particular document, **CITY** agrees to pay to **PROVIDER** the sum of **Twenty eight thousand and seventy dollars ($28,070)**, payable in four equal, quarterly installments and due the first business day of January, April, July, and October 2011 upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual reports** describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12$^{th}$ of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011**. This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Botanica, Inc.**

_____

Marty Miller, Executive Director
*Botanica, Inc.*

_____

Date

**CITY OF WICHITA, KANSAS**

_____

Carl Brewer, Mayor

_____

Date

**ATTEST:**

_____

Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____

Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Botanica, Inc.** **PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City'sRequest for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they ae not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
By the end of 2011, increase gate revenues by 2% over 2010, by increasing ticket price by 7% or .50 to generate additional funds to maintain and build relevant horticultural displays.

**Goal 2**
By the end of 2011, increase rental revenues by 2% over 2010 by incorporating new marketing strategies to attract additional corporate and private events to the Gardens.

**Goal 3**
By the end of 2011, increase special event revenues by 2% over 2010 by producing relevant, garden-centered events that appeal to and are marketed to a wider section of the community.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on all printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316/303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the final FY2010 report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-Annual and Final Reports**

Prepare one (1) semi-annual **PROVIDER** reports and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011**, with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2012.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

part by the contracting agency;

D. Exempted from these requirements are:

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

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

**BOTANICA, INC. OPERATING AGREEMENT**

**THIS OPERATING AGREEMENT** entered into this 20th day of October 2009 by and between the City of Wichita, Kansas (hereinafter referred to as the City) and Botanica, Inc., a Kansas Not-For-Profit corporation duly organized under the laws of the State of Kansas, (hereinafter referred to as Botanica).

**WITNESSETH:**

**WHEREAS,** Botanica is duly incorporated and empowered among other things to establish, maintain and operate Botanica, The Wichita Gardens, a significant horticulture display garden for enjoyment and education of the citizens of Wichita, the region, and area tourists; and

**WHEREAS,** on June 29, 1917, Coler Sim and his wife Nellie H. Sim deeded land to the City, to be known as Arthur B. Sim Park. Condition Number 6, of the Warranty Deed states the land shall not to be used other than as a recreational park. In 1985 the Sim Family approved the establishment of Botanica, The Wichita Gardens. The City and Botanica formed a public/private partnership on the 10th day of April, 1987 to operate on land, donated to the City by Coler Sim and now owned by the City, and to develop and improve facilities on that land with public funds supplied by the City and private funds and support provided by Botanica. In June of 2008, Greg Hissem, the great grandson of Coler Sim and heir of the Sim family estate, approved the expansion of Botanica, The Wichita Gardens, to build on land west of the current facility south of the Sim Golf Course and northwest of Cowtown Museum; and

**WHEREAS,** Botanica has contributed substantial sums of money, time and effort in connection with the establishment and development of Botanica, The Wichita Gardens, and has assured the City that it will continue to contribute and use its resources for various garden exhibits, structures and improvements as well as dedicating time and effort in the establishment, operation, maintenance, and development of Botanica, The Wichita Gardens; and

**WHEREAS,** it is in the best interest of the City, Botanica, and the general public that a new agreement which supersedes all prior operating agreements be entered into between the parties, redefining certain rights and obligations, establishing a clear understanding of ownership, policy considerations, facility commitments and financial commitments to ensure the operation of Botanica, The Wichita Gardens;

**NOW, THEREFORE,** in consideration of the promises and mutual agreements hereinafter contained, the City and Botanica hereby agree as follows:

**1. Purpose:** Botanica accepts and assumes the exclusive obligation to occupy and operate Botanica, The Wichita Gardens, including lands designated for future expansion, during the term of this Agreement, and shall be responsible for the custody, care, maintenance and development of the land and garden improvements. The City's Department of Parks and Recreation shall provide management oversight to ensure that development and all improvements meet the deed covenants of the land. The City will also provide financial and in- kind services and support as needed to maintain a park

environment. Botanica will operate and manage Botanica, The Wichita Gardens in the public interest and for the uses and purposes outlined in its express mission - to maintain a significant horticulture display garden for enjoyment and education of the community and region that sets the standard of excellence for botanical gardens in the Midwest.

**2. Name:** Botanica agrees to continue the name of the gardens and facility as "Botanica, The Wichita Gardens" throughout the life of this Agreement.

**3. Term:** The term of this Agreement shall be for a period of fifty (50) years commencing _____ 2010, but is subject to periodic five-year reviews in June of said years affected by this provision. Either party may terminate this Agreement by giving written notice by June 1 of any year, which termination shall be affective the following January 1. Notwithstanding the foregoing, Botanica may, in its sole discretion, terminate this Agreement if City substantially reduces its funding.

**4. Management:**

**A. Board of Trustees.** Botanica warrants that it will maintain a Board of Trustees to govern the Botanica Inc. organization according to its Bylaws (Attachment A). The following representatives shall be permanent members of the Botanica Board:

Mayor or Designee, City of Wichita
City Manager or Designee, City of Wichita
Director of Park and Recreation, City of Wichita
Representative, Wichita Board of Park Commissioners, City of Wichita

**B. Employment of Director.** The City will select, with the recommendation of Botanica, a Director of Botanica, The Wichita Gardens, who shall be an employee of the City and who will supervise the overall operation of Botanica, The Wichita Gardens. The City shall establish the Director's compensation and other terms and conditions of employment as required by the City personnel policies. The Director shall also serve as the Executive Director of Botanica.

Botanica agrees that the Director, as a City employee, has specific reporting obligations to the City Council, the City Manager, and the Director of Parks and Recreation. In addition, Botanica agrees that the Director shall participate, in all activities required by the City and will be subject to the City Ordinances and the City of Wichita Administrative Regulations.

**C. Employees.** Under the supervision of the Botanica Board of Trustees, Botanica shall have the entire direction, control and management of all persons employed by Botanica Inc., including the authority to hire and to terminate them, and to fix their compensation, wages, benefits, sick leave, health insurance, and annual leave. No employee or agent of Botanica shall, in any way, be deemed to be an employee or agent of the City. The City shall not direct, act on the behalf of, nor be liable for the actions of any Botanica employee. The Director shall have the authority to hire, terminate, and otherwise deal with Botanica employees in accordance with the policies and procedures adopted by the Botanica Board of Trustees.

The Director shall manage the City of Wichita employees employed at Botanica, The Wichita Gardens, to perform the tasks that promote the mission of Botanica in compliance with City Personnel Policies and Procedures and subject to City Administrative Regulations. City employees will be classified and receive compensation according to the positions described in the City Personnel Policies. Botanica shall not be liable for any claims made by employees of the City arising from and out of their employment relationships.

**5. Operations:**

**A. Rules of Operation.** Botanica agrees to adopt, publish and enforce reasonable rules and regulations governing the conduct of visitors to Botanica, The Wichita Gardens, consistent with the provisions of this agreement, which rules and regulations may be revised by Botanica from time to time. Such rules and regulations must comply with legal requirements.

**B. Admission Fees.** Botanica shall have the right to establish, collect and retain all fees for admission including memberships to Botanica, The Wichita Gardens and for all activities held therein. The parties agree that reasonable operating and depreciation reserves, endowments, and future plans for growth may be considered in establishing the amount of such fees.

**C. Concessions.** Botanica shall have the exclusive authority to operate, or to cause to be operated, all concessions on Botanica property and to establish, collect and retain all charges derived from such concessions for Botanica.

**D. Rentals.** Botanica shall have the exclusive authority to establish, collect and retain all rent and other charges and fees for the use of the property and or facilities that are possessed by Botanica, subject to the obligation to indemnify City against losses and damage suffered to the real estate, including its improvements comprising Botanica, The Wichita Gardens, resulting from rental use.

**6. Financial Considerations:**

**A. Gifts and Endowments.** Botanica agrees to exert its reasonable efforts to secure gifts of cash, property, in kind goods and services for exhibits, bequests, and endowments for structures and other capital improvements. Botanica agrees to endeavor to show continual positive growth in private financial support measured on a rolling average of the three past accounting years.

**B. Funding.** Funding provided by the City through the Cultural Arts program or from the City's general fund will be administered under the established accounting and fiscal policies of the City of Wichita. Botanica shall remain one the major cultural arts organizations classified as a group I organization until such time as the City Council's Cultural Arts plan is amended or rescinded. In return for performance of duties as provided in this Agreement, and to provide financial stability for planning purposes, the City agrees to provide annual Cultural Arts funding for the operations of Botanica, The Wichita Gardens in the following calendar years and

projected amounts. The projected amounts shall be approved annually by current City Council through the budget process:

| | |
|---|---|
| 2010 | $288,700 |
| 2011 | $292,560 |
| 2012 | $301,336 |
| 2013 | $310,376 |
| 2014 | $319,687 |

Botanica shall have equitable opportunity for additional funding under the competitive Cultural Arts Funding process and will limit expenditures and follow conditions described in the contract provided by the City.

**C. Use of Funds.** Botanica agrees that the assets and resources of Botanica and any funds provided by the City will be used solely and exclusively for the benefit of Botanica, The Wichita Gardens. Botanica may contract directly for capital development or improvement work, provided plans therefore have been approved by the Botanica Board of Trustees and funds are solely from Botanica resources. Any improvements to the real estate and related fixtures will become and remain the property of the City. Botanica may directly contract for and purchase plant materials, horticulture supplies and such other items related to Botanica's function so long as funds therefore are provided solely from Botanica resources.

It is agreed and understood by the parties that all endowment and/or restricted funds held by Botanica or any related entity shall be spent in accordance with any laws, rules, policies, and/or restrictions applicable to such funds.

**D. Budget.** Botanica shall develop an annual budget and the Board of Trustees shall approve it. The City shall inform Botanica of annual funding levels in a timely manner for preparation of the Botanica budget. It will be a goal for the Board to maintain an operating reserve to ensure financial security of Botanica, The Wichita Gardens operations in an amount equal to that necessary to satisfy between three (3) and six (6) months of operating expenses.

**E. Indebtedness or Liability.** Botanica shall have no authority to bind the City or its Board of Trustees in any way nor to incur any indebtedness or liability or to place or permit the placing of liens on City property.

**F. Audits.** Botanica shall arrange an annual independent audit that will be overseen by the Audit Committee appointed by the Botanica Board of Trustees. Inspections of financial documents related to applicable contracts, grants, gifts and trusts shall be provided upon a reasonable notification of inspection.

**G. Documentation of Costs.** Botanica shall document all costs with respect to the services provided to Botanica, The Wichita Gardens, under contracts, grants, gifts, trusts and City will provide documentation of in-kind services, parts and equipment provided, and such records shall be supported by properly executed payrolls, time records, invoices or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, orders or other accounting documents shall be clearly identified and readily accessible.

**H. Maintenance of Records.** Botanica shall maintain records according to the prescribed requirements within contracts, grants, gifts, trusts, City in-kind services and City Finance Department policies and shall retain such financial records for a period of three years, unless otherwise specified.

**7. Capital Improvements:**

**A. Improvements.** Botanica shall have the authority to recommend for approval the future design and development of Botanica, The Wichita Gardens. Projects may be funded by private funds donated to Botanica and public funds provided by the City.

**B. Public Funds.** All improvement projects funded with public funds shall be approved by the City Council.

**C. Private Funds.** Projects funded by private funds may be contracted directly between Botanica and private contractors or Botanica may pass funds through the City and the services will be acquired through the City's Purchasing Department.

**D. Ownership.** Botanica understands and agrees that all buildings, structural and garden improvements provided by Botanica become the property of the City. Irrespective of its ownership status, the City shall not be obligated to maintain any improvement to the real estate erected after the date of execution of this agreement without express City Council approval.

**E. Contractual Right.** Botanica reserves the right to contract with other individuals, agencies, institutions, organizations or firms for services deemed necessary to the operation of Botanica, The Wichita Gardens, or in the public interest with the use of private funds.

**8. Utilities:** Botanica shall pay all deposits and charges for electricity, water, gas, telephone, garbage and trash collection and other utilities and charges for services used by or furnished to Botanica, The Wichita Gardens. Botanica shall acquire and maintain all meters, permits, approvals, and licenses necessary to effectuate this provision. City, as owner of the land underlying Botanica, The Wichita Gardens, will cooperate with Botanica's reasonable requests in connection with establishing or maintaining such utilities.

**9. Care and Maintenance.** Botanica agrees to provide for the custodial upkeep of the buildings. The City's Department of Public Works will continue to provide repairs and replacement of major items including plumbing, electrical, structural and HVAC that are required to maintain the functionality of the

buildings currently existing and all Council-approved newly constructed buildings. Insurance for City owned buildings shall be maintained by the City. Botanica shall be responsible for the upkeep and maintenance of the garden exhibits and the City's Department of Parks and Recreation will continue to provide consultation and in-kind services to that end.

**10. Parking lot Maintenance.** The City shall, at its sole expense, maintain the existing parking lot constructed for use at Botanica, The Wichita Gardens.

**11. DISCRIMINATION PROHIBITED.** No recipient or proposed recipient of any funds, 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 subject 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, sex, age or disability. Botanica further agrees to implement and comply with the "Revised Non-Discrimination and Equal Employment Opportunity/Affirmative Action Program Requirements Statement for Contracts or Agreements" as provided in Attachment B attached hereto.

**12. COMPLIANCE WITH LOCAL LAWS.** All parties shall comply with all applicable laws, ordinances, codes and regulations of the State of Kansas and local governments in the performance of this contract.

**13. ASSIGNABILITY.** Neither party shall assign or delegate any interest or duty related to this agreement without the consent of both parties.

**14. TERMINATION CLAUSE.** In the event of a breach of this agreement either by Botanica or the City, both parties shall as soon as possible negotiate a work-out plan to ensure that Botanica, The Wichita Gardens, continues to function to preserve the assets and improvements made by the City and Botanica supporters and donors.

**15. AMENDMENTS.** To provide necessary flexibility for the most effective execution of this agreement, whenever both the City and Botanica mutually agree, changes in this agreement may be effected by placing them in written form and incorporating them into this agreement.

**16. RENEGOTIATION.** This agreement may be renegotiated in the event alternate sources of funding become available during the term of this agreement.

**17. APPENDICES.** All attachments referenced in this agreement are hereby incorporated as though fully set forth herein.

**Attachment A** – Botanica Inc. Bylaws of the Board of Trustees

**Attachment B** – Nondiscrimination and Equal Employment Opportunity Statement

**IN WITNESS WHEREOF**, the parties have executed this contract on the 20th day of October, 2009.

**Botanica Inc.**

Peter Salmeron, President
*Botanica Inc.*

June 24th, 2009
Date

**CITY OF WICHITA, KANSAS**

Carl Brewer, Mayor

10-20-09
Date

**ATTEST:**

Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

Gary E. Rebenstorf, Director of Law

**Attachment A**
**BOTANICA, INC.**
**BYLAWS OF THE BOARD OF TRUSTEES**

| | | |
|---|---|---|
| **Adopted August 21, 1985** | **Amended August 21, 1991** | **Revised January 17, 2001** |
| **Amended October 14, 1985** | **Amended October 20, 1993** | **Revised September 21, 2005** |
| **Amended December 13, 1989** | **Amended October 15, 1997** | **Revised January 16, 2008** |
| **Amended December 12, 1990** | **Revised December 22, 1998** | |

## ARTICLE I
OFFICE AND REGISTERED AGENT

Section 1. Principal Office. The principal office of the corporation shall be located at the headquarters in Sim Park, 701 Amidon, in Wichita, Kansas, or at such other place as may be determined by the Board of Trustees.

Section 2. Registered Office and Agent. The corporation shall have and continuously maintain a registered office and a registered agent in the State of Kansas as required by the Kansas Corporation Code. The registered agent shall be either an individual resident of the State or a member of the Board of Trustees authorized to transact business in the State.

## ARTICLE II
PURPOSES AND GOVERNMENT

The corporation is a nonprofit, scientific and educational organization founded to foster, promote, develop and operate the Wichita Botanical Gardens known as Botanica, The Wichita Gardens. The corporation shall be governed by a Board of Trustees.

## ARTICLE III
BOARD OF TRUSTEES

Section 1. Powers. There shall be a Board of Trustees which shall supervise and control the business, property, and affairs of the corporation except as otherwise expressly provided by law, the Articles of Incorporation, or these Bylaws. The Board of Trustees shall abide by all Botanica, Inc's Bylaws and Policies.

Section 2. Number and Qualifications. The Board of Trustees of the corporation shall be composed of no more than 24 members including representation from each of the following, all of whom have voting privileges except those noted:

***City of Wichita Representation – Non-Voting***

1) Mayor or Designee, City of Wichita, non-voting
2) City Manager or Designee, City of Wichita, non-voting
3) Director of Park and Recreation, City of Wichita, non-voting
4) Representative, Wichita Board of Park Commissioners, City of Wichita, non-voting

***Organizational Representation – Voting***

5) Representative, Friends of Botanica
6) Representative, Wichita Area Garden Council
7) Representative, Project Beauty
8) Immediate past president, Botanica, Inc., Board of Trustees
9) Emeriti Trustee, nominated by the Governance Committee as noted in Article X, Section

Section 3. Election and Term of Office. The members of the Board of Trustees shall be elected by the Board of Trustees at the annual meeting. The Governance Committee will prepare the slate to present at the annual board meeting. Each member of the Board of Trustees, with the exception of the City representatives and the Past President, shall hold office for a term of three years, with a maximum of 2 consecutive terms. The three-year term and maximum of 2 consecutive terms shall apply to the organizational representation and Emeritus Trustee position. The Past President serves a 1-year term. The City representatives serve as long as they serve in their designated position with the City of Wichita.

1) Voting. Voting shall be by written ballot. If there is but one nominee for each available vacancy and no further nominations from the floor, by general consent, the written ballot may be dispensed with and a voice vote taken on the entire slate. If there are more candidates nominated than vacancies available, written ballots for that (those) position(s) shall be taken. The number of candidates who receive the highest number of votes corresponding to the number of vacancies available shall be declared elected. In the event of a tie a subsequent ballot on those candidates shall determine the election.

Section 4. Resignation. Any Trustee may resign at any time by giving written notice to the President of the Board of Trustees. Such resignation shall take effect at the time specified therein, or, if no time is specified, at the time of acceptance thereof as determined by the President of the Board of Trustees.

Section 5. Failure to Attend Regular Meetings and Fulfilling Responsibilities. Failure of a Trustee, with the exception of the City representatives, to attend at least three-quarters of the Board of Trustees' regular meetings in a year will be considered resignation by the Trustee unless a majority of the voting Trustees then in office vote to retain such Trustee. The attendance requirement shall apply to the organizational representation and Emeritus Trustee position.

Section 5a. Removal. Any Trustee, with the exception of the City representatives, may be removed from such office, by a majority vote of the voting Trustees then in office at any regular or special meeting of the Board of Trustees called expressly for that purpose. Removal process shall apply to the organizational representation and Emeritus Trustee position.

Section 6. Vacancies. Vacancies may be filled by majority vote of the remaining voting members of the Board of Trustees then in office for the unexpired term.

Section 7. Regular Meetings. A regular meeting schedule of the Board of Trustees shall be specified by the Board of Trustees. An annual meeting of the Board of Trustees shall be held each year, at such time, day and place as shall be designated by the Board of Trustees.

Section 8. Special Meetings. Special meetings of the Board of Trustees may be called at the direction of the President or by a majority of the voting members of the Board of Trustees then in office; to be held at such time, day, and place as shall be designated in the notice of the meeting.

Section 9. Notice. Notice of the time, day, and place of any meeting, except a special meeting of the Board of Trustees shall be given at least 5 days prior to the meeting. Notice of the time, day, place and purpose of a special meeting of the Board of Trustees shall be given at least 48 hours prior to the meeting.

Section 10. Quorum. A majority of the voting Trustees then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Trustees.

Section 11. Manner of Acting. Except as otherwise expressly required by law, the Articles of Incorporation of Botanica, Inc., or these Bylaws, the affirmative vote of a majority of the voting Trustees present at any meeting at which a quorum is present shall be the act of the Board of Trustees. Each voting Trustee shall have one vote. Voting by proxy shall not be permitted.

Section 12. Written Consent In Lieu of a Meeting. The Board of Trustees may take action without a meeting if written consent to the action is signed by a majority of the voting Trustees then in office.

Section 13. Telephone Meeting. Any one or more Trustees may participate in a meeting of the Board of Trustees by means of a conference telephone or similar telecommunications device, which allows all persons participating in the meeting to hear each other. Participation by telephone shall be equivalent to presence in person at the meeting for purposes of determining if a quorum is present.

Section 14. Conflicts of Interest.

1) In the event any Trustee has a conflict of interest that might properly limit such Trustee's fair and impartial participation in Board deliberations or decisions, such Trustee shall inform the Board of Trustees as to the circumstances of such conflict. If those circumstances require the

nonparticipation of the affected Trustee, the Board of Trustees may nonetheless request from the Trustee any appropriate non-confidential information which might inform its decisions. "Conflict of interest," as referred to herein, shall include but shall not be limited to, any transaction by or with the Board of Trustees in which a Trustee has a direct or indirect personal interest, or any transaction in which a Trustee is unable to exercise impartial judgment or otherwise act in the best interests of the corporation or the Board of Trustees.2) No Trustee shall cast a vote, nor take part in the final deliberation in any matter in which he or she, members of his or her immediate family, or any organization to which such Trustee has allegiance, has a personal interest that may be seen as competing with the interest of the Board of Trustees. Any Trustee who believes he or she may have such a conflict of interest shall so notify the Board of Trustees prior to deliberation on the matter in question, and the Board shall make the final determination as to whether any Trustee has a conflict of interest in any matter. The minutes of the Board of Trustees meeting shall reflect disclosure of any conflict of interest and the recusal of the interested Trustee.

Section 15. Legal Responsibilities.

1) Duty of Care
   a) Members of the Board of Trustees must exercise due care in all dealings with the corporation. Trustees should be reasonably informed about the corporation's activities, participate in collective decisions, and do so in good faith and with the care of an ordinary prudent person in similar circumstances. This includes careful oversight of financial matters and reading of minutes, attention to issues that are of concern to the corporation, and raising questions whenever there is something that seems unclear or questionable
   b) The duty of care is carried out by the following acts:
      i) Attendance at meetings of the Board of Trustees and appropriate committees;
      ii) Advance preparation for Board of Trustees meetings, such as reviewing reports and the agenda prior to meetings of the board;
      iii) Obtaining information (in the context of the Board meeting), before voting to make good decisions;
      iv) Use of independent judgment;
      v) Periodic examination of the credentials and performance of those who serve the corporation;
      vi) Frequent review of the corporation's finances and financial policies; and
      vii) Compliance with the filing requirements, particularly annual information returns.

2) Duty of Loyalty
   a) The duty of loyalty requires members of the Board of Trustees to exercise their power in the interest of the corporation and not in their own interest or interest of another entity, particularly one in which they have a formal relationship. When acting on behalf of the corporation, members of the Board of Trustees must put the interests of the corporation before their personal and professional interests. Conflicts of interest, including the appearance of conflicts of interest, must be avoided. This includes personal conflicts of interest or conflicts with other organizations with which a member

of the Board of Trustees is connected.

b) In practice, the duty of loyalty is carried out by the following acts:
   i) Disclosure of any conflicts of interest;
   ii) i. Adherence to the corporation's conflict-of-interest policy;
   iii) Avoidance of the use of corporate opportunities for the individual's personal gain or benefit; and
   iv) Nondisclosure of confidential information about the corporation.

3) Duty of Obedience
   a) Obedience to the corporation's central purposes must guide all decisions. The Board of Trustees must also ensure that the corporation function within the law, both the "law of the land" and these Bylaws and other policies. The Board of Trustees must remain the guardians of the mission.
   b) The duty of obedience is carried out by the following acts:
      i) Compliance with all regulatory and reporting requirements, such as filing annual information return (usually, IRS Form 990) and paying employment taxes;
      ii) Examination of all documents governing the corporation and its operation, such as these Bylaws and policies; and
      iii) Making decisions that fall within the scope of the corporation's mission and governing documents.

## ARTICLE IV
## OFFICERS

Section 1. Officers. The officers of the Board of Trustees shall at minimum consist of a President, Vice-President and a Treasurer. The Board of Trustees shall have such other assistant officers as the Board of Trustees may deem necessary and such officers shall have the authority prescribed by the Board. A candidate for each office shall be nominated by the Governance Committee.

Section 2. Election of Officers. The officers of the Board of Trustees shall be elected by the Trustees at the annual meeting of the Board of Trustees.

1) Voting shall be by written ballot. If there is but one nominee for each position and no further nominations from the floor, by general consent, the written ballot may be dispensed with and a voice vote taken on the entire slate. If there are nominations from the floor, written ballots for that office shall be taken. The candidate receiving a majority vote on the written ballot shall be declared elected. In the event of a tie a subsequent ballot on those candidates shall determine the election.
2) Any member of the Board of Trustees, with the exception of the City representatives, may be elected to an officer position.

Section 3. Term of Office. The officers of the Board of Trustees shall be installed at the January meeting, following their election, and shall hold office for one year or until their respective successors

shall have been duly elected. No Trustee shall serve as an officer for more than (2) consecutive terms; provided, however, any time used to fill an unexpired term of a person previously holding such office shall not be included as one such term.

Section 4. Resignation. Any officer may resign at any time by giving written notice to the President of the Board of Trustees. Such resignation shall take effect at the time specified in the notice, or if no time is specified, then immediately.

Section 5. Removal. Any officer may be removed from such office, by a majority vote of the voting members of the Board of Trustees then in office at any regular or special meeting of the Board called expressly for that purpose.

Section 6. Vacancies. A vacancy in any office may be filled by the Board of Trustees for the unexpired term.

Section 7. President. The President shall give active direction and exercise oversight pertaining to all affairs of the Board of Trustees. He or she may sign contracts or other instruments, which the Board of Trustees has authorized to be executed, and shall perform all duties incident to the office of President as may be prescribed by the Board of Trustees.

Section 8. Vice President. In the absence of the President, the Vice President shall perform the duties of the President. The Vice President shall attend all Board of Trustees meetings and carry out special assignments as requested by the President.

Section 9. Treasurer. The Treasurer shall be responsible for and oversee all financial matters of the corporation, with the exception of the Audit Committee. The Treasurer, jointly with the board President, ensures that current records are maintained, reflecting the financial condition of Botanica, Inc.

Section 10. Bonding. If requested by the Board of Trustees, any person entrusted with the handling of funds or valuable property of the Board of Trustees shall furnish, at the expense of the corporation, a fidelity bond approved by the Board of Trustees.

## ARTICLE V
## COMMITTEES

Section 1. Committees of Trustees. No committee shall have the authority to amend or repeal these Bylaws, elect or remove any officer or Trustee, adopt a plan of merger, or authorize the voluntary dissolution of the Board of Trustees. The following shall be standing committees of the Board of Trustees:

1) Executive Committee:
   a) Members of the committee are the President, Vice President, Treasurer, Chair of Development Committee, and Chair of Governance Committee.
   b) The President chairs the Executive Committee.
   c) The Executive Committee prepares agendas for the meetings of the Board of Trustees, acts on behalf of the Board between meetings, with responsibility to report actions to the Board for ratification or further Board action at the next meeting, carries out specific directions of the Board, and formulates and recommends actions by the full Board prior to implementation. Additionally, the Executive Committee initiates the Board's participation in developing a strategic framework for long-range planning. The Executive Committee also participates, in concert with the City of Wichita, the selection and termination of the Executive Director. The President, who chairs the Executive Committee, is responsible to report to the Board all plans, activities, and accomplishments of the Executive Committee.

2) Finance Committee
   a) Chair of the committee is the Treasurer
   b) Members of the committee will be appointed by the Chair of Finance Committee
   c) Minimum of 3 trustee members and 1 Emeritus Trustee, serving 1 year terms. Non-trustees may be invited to serve as members of the Finance Committee.
   d) The committee shall be responsible for the planning, monitoring, and evaluation of the organization's funding, financial management, facilities, assets, risks, and insurance programs. The committee shall work with the chief executive and the director of finance in developing long-range financial and capital plans; reviewing annual budgets and financial reports; and recommending internal controls and other financial policies to the board. The committee shall perform such other duties as may from time to time be required by the board.

3) Development Committee
   a) Chair of the committee will be a trustee appointed by the President.
   b) Members of the committee will be appointed by the Chair of Development Committee
   c) Minimum of 3 trustee members and 1 Emeritus Trustee, serving 1 year terms. Non-trustees may be invited to serve on the Development Committee.
   d) The role of the Development Committee is to ensure that the organization's total development program is in concert with the organization's strategic direction and needs. The committee serves as the mechanism by which board members and other volunteers are involved in the fundraising process. The Development Committee is charged with focusing the organization and its board on fundraising. This includes constant attention to the mission and case for support, the organization's accountability, the involvement of organization's constituencies, the resources required to carry out the mission, plans for cultivating and soliciting the needed private funds, fundraising involvement, and demonstration of good stewardship.

4) Governance Committee
   a) Chair of the committee will be a trustee appointed by the President
   b) Members of the committee will be appointed by the Chair of Governance Committee.

c) Minimum of 3 trustee members and 1 Emeritus Trustee, serving 1 year terms. Non-trustees may be invited to serve on the Governance Committee.
d) Members of the committee wishing to be elected as officers in any given annual election shall not participate in the officer nominating process in that year.
e) The Governance Committee ensures board effectiveness, maximum participation and performance; recommends new board members for election to the Board and ensures board policies are being observed; implements board development and growth opportunities throughout the year; ensures all board members receive orientation; and annually recommends a slate of officers to the board for approval.

5) Audit Committee:
   a) Chair of the committee will be a trustee appointed by the President.
   b) Members of the committee will be appointed by the Chair of the Audit Committee.
   c) Minimum of 2 trustee members and 1 Emeritus Trustee, serving 1 year terms, plus at least 1 non-trustee member
   d) The Audit Committee ensures that an annual is conducted, serves as liaison with the audit firm, and debriefs the board on its reports. The committee meets annually, in private, with the auditor. The committee reviews and recommends approval of the annual audit and reviews a copy of the annual IRS Form 990. The Treasurer may *not* chair this committee.

Section 2. Other Committees and Task Forces. The Board of Trustees may create and appoint members to such other committees and task forces as they shall deem appropriate. Such committees and task forces shall have the power and duties designated by the Board of Trustees, and shall give advice and make non-binding recommendations to the Board.

Section 3. Term of Office. Each member of a committee shall serve until the next annual meeting of the Board of Trustees and until a successor is appointed, unless the committee is sooner dissolved.

Section 4. Vacancies. Vacancies in the membership of committees may be filled by the President of the Board of Trustees.

Section 5. Rules. Each committee and task force may adopt rules for its meetings not inconsistent with these Bylaws or with any rules adopted by the Board of Trustees.

## ARTICLE VI
## NOTICE

Section 1. Notice. Whenever under the provisions of these Bylaws notice is required to be given to a Trustee, officer, or committee member, such notice shall be given in writing by first-class mail or overnight delivery service with postage prepaid to such person at his or her address as it appears on the records of the corporation. Such notice shall be deemed to have been given when deposited in the mail

or the delivery service. Notice may also be given by facsimile, electronic mail, or hand delivery, and will be deemed given when sent.

## ARTICLE VII
INTERNAL AFFAIRS

Section 1. Indemnification of Trustees and Officers.

a. This corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the corporation), by reason of the fact that such person is or was a trustee, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit, or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

b. This corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person is or was a trustee, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable in the performance of his duty to the corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

1) To the extent that a trustee, officer, employee, or agent of this corporation has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in subsections (a) and (b), or in defense of any claim, issue, or matter therein, such trustee, officer, employee, or agent shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

2) Any indemnification under subsections (a) and (b), unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the trustee, officer, employee, or agent is proper in the circumstances because such trustee, officer, employee, or agent has met the applicable standard of conduct set forth in subsections (a) and (b). Such determination shall be made (i) by the Board of Trustees by a majority vote of a quorum consisting of trustees who were not parties to such action, suit, or proceeding, or (ii) if such a quorum is not obtainable or, even if obtainable, a quorum of disinterested trustees so directs, by independent legal counsel in a written opinion.

3) Expenses incurred by a trustee or officer in defending a civil or criminal action, suit, or proceeding may be paid by the corporation in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the trustee or officer to repay such amount if it is ultimately determined that the trustee or officer is not entitled to be indemnified by the corporation as authorized in this section. Such expenses incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board of Trustees deems appropriate.

4) The indemnification and advancement of expenses provided by, or granted pursuant to, this bylaw shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any other bylaw, agreement, vote of the members or disinterested trustees or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding such office.

5) The Board of Trustees shall have power to purchase and maintain insurance on behalf of any person who is or was a trustee, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a trustee, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability under the provisions of this bylaw.

6) For purposes of this bylaw, references to "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its

trustees, officers and employees or agents, so that any person who is or was a trustee, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a trustee, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this bylaw with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

7) For purposes of this bylaw, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a trustee, officer, employee or agent of the corporation which imposes duties on, or involves services by, such trustee, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this bylaw.

8) The indemnification and advancement of expenses provided by, or granted pursuant to, this bylaw shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a trustee, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 2. Distributions of Assets. Upon the dissolution of this corporation, the Board of Trustees shall, after paying or making provisions for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United states Internal Revenue law), as the Board of Trustees shall determine. Any such assets not so disposed of shall be disposed of by the district court in the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

Section 3. No Private Benefit. No part of the net earnings of the corporation shall inure to the benefit of any member, Trustee, or officer of the corporation, or to any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting its purpose), and no member, Trustee, or officer of the corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the corporation.

Section 4. Legislative and Political Activity. No substantial part of the activities of the corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation and the

corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office.

## ARTICLE VIII
AMENDMENTS TO BYLAWS

These Bylaws may be amended or new Bylaws adopted upon the affirmative vote of two-thirds all the voting Trustees then in office at any regular or special meeting of the Board of Trustees. The notice of the meeting shall set forth a summary of the proposed amendments. Only voting Trusteeships occupied at the time of a meeting shall be counted in determining whether a two-thirds vote of the Trustees has acted.

## ARTICLE IX
FINANCES

Section 1. Fiscal year. The Fiscal Year of the corporation shall begin on the first day of January and end on the thirty-first day of December of each year.

Section 2. Deposits. All monies, securities, drafts or other monetary instruments received by the corporation shall be deposited to the account of the corporation as prescribed by the Board of Trustees.

Section 3. Authorized Signatures. All checks and drafts drawn on corporation's depositories shall require two (2) authorized signatures. Authorized signatures include the President, Vice President, Treasurer and Executive Director, and others that may be approved by the Board of Trustees. In no event shall both signatures be spouses or family members.

Section 4. Emergency Expenditures. The officers of the Board of Trustees shall have the authority to make expenditures up to $10,000 in the event of an emergency confirmed by the Audit Committee.

Section 5. Budget. The annual budget shall be prepared by the Finance Committee, the Executive Director and the staff. Final approval will be by the Board of Trustees prior to the end of the fiscal year.

Section 6. Audit. Annual independent audit will be overseen by the Audit Committee.

## ARTICLE X
STAFF AND OTHER ORGANIZATIONS

Section 1. Executive Director. The Executive Director shall be employed by the City of Wichita with recommendation of the Board of Trustees. The Executive Director shall be responsible for the daily operation of the corporation subject to the authority of the Board of Trustees. It shall be the duty of the

Executive Director to keep the Board of Trustees informed at all times of the functioning of the corporation. The Executive Director shall make regular reports at meetings of the Board of Trustees, shall meet with the committees of the Board of Trustees when appropriate, and shall implement policies adopted by the Board of Trustees.

Section 2. Other Staff. The Executive Director is responsible for the hiring, promoting and evaluation of the corporation's staff. Staff positions are established or eliminated on the recommendation of the Executive Director and approval of the Board of Trustees.

Section 3. Friends of Botanica. Friends of Botanica is a group established in 1986 to support and promote the interests and growth of Botanica. Friends of Botanica's Board of Directors and committees shall work in concert with the Board of Trustees and staff of Botanica to ensure that the efforts of Friends of Botanica are consistent with the mission, goals and strategic plan of the Botanica Board of Trustees. One member of Friends of Botanica shall be appointed by the group to serve as a voting member of the Board of Trustees and attend its meetings.

Section 4. Emeriti Trustees. The designation Emeritus Trustee was created to recognize past board members' service and contributions to Botanica, Inc. There may be elected such number of Emeriti Trustees, as the Board of Trustees shall determine appropriate. A nominee proposed as an Emeritus Trustee must:

1) Be a former Trustee.
2) Maintain membership in Botanica.
3) Exhibit an ongoing active interest in Botanica
4) Be retired from the Board of Trustees.

Emeriti Trustees shall serve until their death, resignation, or refusal to serve. Emeriti Trustees are encouraged to participate in the Board of Trustee's standing committees and other committees and task forces as formed. One Emeritus Trustee will be nominated by the Governance Committee to serve as a voting member of the Board of Trustees and attend its meetings.

ADOPTED BY THE BOARD OF TRUSTEES this ____ day of _____, 2009.

_____

President

**Attachment B**

**REVISED NON-DISCRIMINATION AND**

**EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM**

**REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

D. Exempted from these requirements are:

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

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

**CONTRACT**

**for**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010**, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Chamber Music at the Barn**, a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **sixteen thousand dollars ($16,000),** payable in four, equal, quarterly installments and due the first business day of the month beginning in January 2011 upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall establish require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the services described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from

the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof

any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Chamber Music at the Barn**

_____
Bob Scott, Director
*Chamber Music at the Barn*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Chamber Music at the Barn**, **PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
Increase attendance by 2% or by 55 people below 45 years old at the summer concerts by featuring varied classic and alternative styles of chamber music by August, 2011.

**Goal 2**
With expanded marketing efforts, increase enrollment by 20 students at Young Chamber Players by July, 2011.

**Goal 3**
Increase annual fund donations by adding 5 new "Friends and Lovers" and increase foundation support by $20,000 by October, 2011.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316/303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-Annual and Final Reports**

Prepare one (1) semi-annual **PROVIDER** report and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011**, with the complete calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2012**. Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

**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 Nondiscrimination Equal Employment Opportunity/Affirmative Action Program Requirements:

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

part by the contracting agency;

D. Exempted from these requirements are:

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

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

**CONTRACT**

**for**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Heart of America's Men's Chorus Inc.,** a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **six thousand dollars ($6,000)** payable in two equal installments and due the first business day of January and June 2011 upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12$^{th}$ of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Heart of America's Men's Chorus, Inc.**

_____
David C. Burks, Treasurer
*Heart of America's Men's Chorus, Inc.*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Heart of America's Men's Chorus Inc., PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'S proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'S PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
During the 2010-2011 season, increase overall concert attendance by 10% over the 2009-2010 season.

**Goal 2**
Partner with one other choral performing arts organization in Wichita as guest performers in one of the three concerts in the 2010-2011 season (September 2010 to August 2011).

**Goal 3**
Increase overall singing membership by 10% during the 2010-2011 season as compared to the 2009-2010 season.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316/303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation, and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

The City will prepare budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-annual and Final Reports**

Prepare one (1) semi-annual **PROVIDER** report and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2012.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

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.

# Annual Operating Agreement Report Criteria for Wichita Sedgwick County Historical Museum

The City of Wichita provides the following criteria for the Organization's benefit in preparing for the annual review process. These criteria will give the Organization guidance in preparing the annual State of the Organization report, and notice of the basis the City will use to evaluate the Organization's performance for purposes of continuing funding consideration.

Quality of Organizations

- Demonstrates diversity of board members and rotation of members
- Identifies staffing levels and demonstrates staff stability.
- Stewardship of collection (Identifies acquisitions, loans and deaccessions).
- Demonstrated record of producing/presenting arts of the highest quality over the past 2 or 3 years through attendance at events and participation in programs.
- Appropriateness of the program/projects to the organization's core values; mission, audience, community, and/or constituency.
- Organizations commitment to programs and activities reflected through attendance data.
- Demonstrates a commitment to youth programming.
- Identity program and percentage of cost-recovery.

Community Impact

- Demonstrates an effort to reach wide audiences including underserved populations.
- Demonstrates ability to collaborate and create program partnerships with other organizations, local businesses, and schools.
- Demonstrates ability to contribute to the quality of life for the citizens of Wichita through diversity and attendance of audience and participation in programs.
- Rotates offerings/exhibits to enhance the experience of visitors or audience.

Financial Stability

- Identified different forms of financial support including grants, fundraisers and foundation.
- Explained how operating funds from the City of Wichita were used.
- Balanced operating budget.
- Public commitment to programs and activities reflected through earned income data. (Including total attendance, total paid admissions, total paid memberships, and total attendance of school groups/tours.)
- Executed a strategic plan.
- Demonstrated 3 year growth in earned income.
- Maintains a 3 to 6 month operating reserve.

Please note that the City of Wichita will provide an Annual Operating Agreement Report Form for the completion of the annual report and the City of Wichita retains the right to request additional information.

The parties agree that this criteria amends the existing Operating Agreement previously approved by City Council on November 2, 2010.

**Wichita Sedgwick County Historical Museum Association**

_____

Carolyn Conley, President
Board of Trustees

**City of Wichita**

_____

CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

**CONTRACT**

**For**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Wichita-Sedgwick County Historical Museum**, a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services, and in addition to the current base annual allocation from the City of Wichita of $138,040 (hereafter as known as "Operational Agreement") which is not subject to the terms of this particular document, **CITY** agrees to pay to **PROVIDER** the sum of **eight thousand nine hundred eighty dollars ($8,980)**, payable in four equal quarterly installments due the first business day in January, April, June and October 2011, upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12$^{th}$ of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Wichita-Sedgwick County Historical Museum**

_____

Eric Cale, Director
*Wichita-Sedgwick County Historical Museum Association*

_____

Date

**CITY OF WICHITA, KANSAS**

_____

Carl Brewer, Mayor

_____

Date

**ATTEST:**

_____

Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____

Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Wichita-Sedgwick County Historical Museum**, **PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City'sRequest for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they ae not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
Increase museum attendance by 10% over previous year's attendance by developing and promoting new exhibits and programs.

**Goal 2**
Develop and conduct 3 new visitor surveys to analyze: visitor experience, visitor demographic and effectiveness of promotional media during the calendar year.

**Goal 3**
Increase museum membership by 3% over the previous year's level through board sponsored membership drive.

§ **Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"Wichita-Sedgwick County Historical Museum activities are made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316/303-8663.

**Financial Management**

- Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the final FY2010 report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

- Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-Annual and Final Reports**

Prepare one (1) semi-annual **PROVIDER** reports and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011** with the complete calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2012.** . Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

part by the contracting agency;

D. Exempted from these requirements are:

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

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

## Operating Agreement Wichita Historical Museum

1. **Purpose.** The purpose of this Agreement is to define the City of Wichita's financial, personnel and operational relationship with the Wichita-Sedgwick County Historical Museum Association (Museum). The existing lease between the City and the Museum is not subject to change by this agreement.

2. **Term.** The term of this Agreement shall be for a period of five (5) years commencing upon January 1, 2010.

3. **City Funding.** In return for the Museum's performance of duties specified in this Operating Agreement, the City agrees to provide annual funding (payable to the Museum in accordance with Section 5 below) in the following calendar years and amounts:

| | |
|---|---|
| 2010 | $136,000.00 |
| 2011 | $138,040.00 |
| 2012 | $142,181.20 |
| 2013 | $146,446.64 |
| 2014 | $150,840.04 |

Museum shall maintain its operating reserve to ensure financial security for at least 3 to 6 months of operating expenses.

Museum shall demonstrate average annual growth in earned income and/or private contributions in each rolling three year period covered by this Agreement.

4. **Personnel.** Museum employs no City personnel.

5. **Use of City Funds.** Requested funds in the "Contractual Services Account" will be disbursed by the City to Museum no later than 30 days after submission of approved invoices covering expenses for which said funds are appropriated.

Museum agrees to devote the assets, resources, and funds provided by both the City of Wichita and Museum exclusively for purposes advocating the mission of the Museum. This mission as defined by the Board of Directors is to educate the community and its visitors about local history by collecting, preserving, and interpreting materials reflecting the

heritage of Wichita and Sedgwick County. City funding for the operation of Museum shall be appropriated annually in accordance with the funding agreement in existence between the City and Museum.

6. **Supplemental City funding.** Museum may apply for Operational Grant Cultural Funding through the competitive grant process.

7. **Complete Agreement**. This agreement supersedes all prior agreements between the parties specifically dealing with funding. Unless otherwise noted, it does not apply to prior or existing leases.

8. **Rules of Operation.** Museum agrees to adopt, publish, and enforce reasonable rules and regulations governing the conduct of visitors to Museum consistent with the provisions of this Agreement, which rules and regulations may be revised by Museum from time to time.

9. **Admission Fees.** Museum shall have the right to establish, collect and retain all fees for admission to Museum and for all activities held therein. The amounts of said fees and any changes thereto shall be reported to the City.

10. **Concessions**. Museum shall have the exclusive authority to operate, or to cause to be operated, all concessions on Museum property and to establish, collect and retain all charges derived from such concessions for Museum purposes. Any concessionaire shall comply with all applicable state and local statutes, ordinances and regulations.

11. **Rental.** The Museum staff acting on behalf of the Museum Board shall have the exclusive authority to establish, collect and retain all rent and other charges and fees for use of Museum facilities and property for approved purposes.

12. **Gifts and Endowments**. Museum agrees to exert its reasonable efforts to secure gifts of cash, property, in-kind goods and services and bequests and endowments for structures, capital improvements and the like to be used for advancement of the mission of the Museum.

13. **Budget.** The City agrees to make every good faith effort to properly fund the operation of the Museum for the advancement of the mission of the Museum.

14. **Capital Improvements.** Museum shall have the authority to recommend for approval the future design and development of the facilities used by

the Museum, but no capital or structural improvements to existing buildings or additions or future construction of buildings or additions shall be made without the prior approval of the City.

15. **Utilities.** Museum has paid all deposits for electricity, water, gas, telephone, air conditioning and heating, sewer charges, garbage and trash collection, and all other utilities for services used by or furnished to Museum's facilities, and the City has acquired and maintained all meters, permits, approvals, and licenses necessary to effectuate this provision. Museum has paid, and will continue to pay for all utility charges incurred on the property.

16. **Right to Inspect.** City reserves and shall always have the right to enter Museum's facilities without cost for the purpose of viewing and ascertaining the condition of the same and to protect its interest in the premises or to inspect the operations conducted on said premises.

17. **Ownership of Property.** The original City Hall building, and land, and any and all new facilities constructed or reconstructed on the premises during the term of this Agreement, shall be and remain in the ownership of the City.

18. **Insurance.** Museum agrees to secure and maintain in force throughout the duration of this agreement the following minimum insurance coverage:

A. Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

| | |
|---|---|
| Bodily Injury Liability | $500,000 each occurrence<br>$500,000 each aggregate |
| Property Damage Liability | $500,000 each occurrence<br>$500,000 each aggregate |

Or

| | |
|---|---|
| Bodily Injury and Property Damage Liability (Combined Single Limit) | $500,000 each occurrence<br>$500,000 each aggregate |

B. Automobile Liability - Comprehensive Form including all owned, hired and non-owned vehicles with minimum limits for:

| | |
|---|---|
| Bodily Injury Liability | $500,000 each accident |
| Property Damage Liability | $500,000 each accident |
| Or | |
| Bodily Injury and Property Damage Liability (Combined Single Limit) | $500,000 each accident |

19. **Hold Harmless.** Without regard to the limits of such insurance, but within the requirements of the Kansas Tort Claims Act, Museum and the City agree to save and hold each other 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 its officers, agents, servants, or employees, occurring in the performance of its services under this contract.

20. **Default Cure Period.** Either party's failure to perform any of its obligations under this Agreement after a period of fourteen (14) days (or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure) after receiving written notice from the other party shall constitute a default under this Agreement. Any such written notice shall give reasonable detail in the nature and extent of the failure and identify the Agreement's provision(s) containing the obligations at issue. If the default continues after such notice and cure period, then the offending party shall be in default and the other party may pursue any remedies given in this Agreement or under the law.

21. **Mechanics Liens**. Museum and the City agree to save and hold each other free and harmless and indemnify each other against all claims for labor and materials in connection with improvements, repair or alterations to Museum that were conducted at the specific request and expense of the other, and the cost of defending against such claims, including reasonable attorney's fees.

22. **Compliance with Law.** Museum shall, at its sole cost and expense, materially comply and secure compliance with all requirements of Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the premises covered by this Agreement, or the operations conducted thereon, and shall faithfully

observe, and secure observance with, in the use of the premises, all Municipal ordinances and State and Federal Statutes now in force or which may hereafter be in force, and shall pay before delinquency all taxes, assessments, and fees assessed or levied upon Museum or the premises by reason of any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Museum or by reason of the business or other activities of Museum upon or in connection with said premises. Museum specifically agrees to maintain a tax exempt status per applicable state and federal revenue and taxation codes during the entire term of this agreement. Failure to maintain such tax exempt status shall be considered a material default of this agreement.

23. **Accounting, Record Keeping, Audit.** All accounting for the receipt and disbursement of City funding shall be performed in accordance with generally accepted accounting principles for governments. City shall make all such records available to the Museum or its authorized representative during normal business hours.

    All accounting for the receipt and disbursement of Museum funds shall be performed in accordance with generally accepted accounting principles for nonprofit organizations. Museum shall, within 180 days of the end of each year, make available to the City financial statements for the year together with an independent auditor's report signed by a certified public accountant. Museum shall make all financial records available to the City or its authorized representative for inspection, review, or audit during normal business hours.

24. **Changes in By-Laws.** Any proposed changes in the corporate powers or structure of Museum, or its by-laws which would materially affect its ability to carry out the purposes of this Agreement shall be immediately communicated to the City.

25. **Equal Employment Opportunity.** Museum shall ensure that all services and facilities offered and operated by Museum in connection with Museum are open and available to all members of the public regardless of race, religion, national origin, sex, disability and political belief.

    Museum shall observe the provisions of the Kansas Act against Discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, age or ancestry.

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

26. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provision of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-29350), 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 reasoned opinion of its legal counsel, the Agreement may be deemed to violated the terms of such laws.

27. **Non-Assignability.** Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the written consent of the other party.

28. **Organization's Governing Board.** It is mutually understood and agreed by the parties hereto that under no circumstances shall the City make any claim to any of the assets of the organization's governing board or its successor. The Museum shall have one (1) City Council appointed designee on the Board of Directors of the governing board, but prior to any appointment the City shall consider the recommendations of the Museum's Board of Trustees regarding such appointment.

29. **Annual Reports.** Museum agrees to submit, on an annual basis, a State of the Organization report similar to a Board of Directors' report that addresses financial stability, growth and strategic planning. The annual report should also address paid attendance, programming growth, capital improvements (if any) and the most current IRS 990 form. The organization agrees to undergo an annual review process. Any deficiencies in performance or stability will require the Board of Directors to work with the City to develop an improvement plan.

30. **Collaboration with Other Organizations**. Museum shall strive to create collaborative partnerships to share resources among multiple cultural arts organizations.

31. **Extensions.** The parties acknowledge that the operation of the Museum requires a collaborative effort by the parties and they, therefore, agree to

negotiate any and all extension, revisions, and amendments to this Agreement in good faith.

**THE ~~CITY OF WICHITA~~, KANSAS**

By: _____
Carl ~~Brewer, Mayor~~

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law
And City Attorney

ATTEST:

_____

**WICHITA-SEDGWICK COUNTY HISTORICAL MUSEUM ASSOCIATION**

_____
By: PRESIDENT, BOARD OF TRUSTEES

# Wichita-Sedgwick County Historical Museum

**Mission Statement:** The Wichita - Sedgwick County Historical Museum's mission is to educate the community and its visitors about local history by collecting, preserving, and interpreting materials reflecting the heritage of Wichita and Sedgwick County.

**Expectations of Board Members**

1. **Policy**

   General expectations of Museum Board Members shall be defined in writing and periodically updated for the following purposes:

   **A.** To allow prospective members to make an informed decision regarding their ability to serve the Wichita-Sedgwick County Historical Museum.

   **B.** To ensure that the responsibilities of the Board are equitably distributed among the full membership and that adequate commitment is provided to Board-supported events and services.

   **C.** To provide Board members with a measure of accountability and a means of assessing their own level of performance as a member.

   **D.** To provide criteria for assessment of the commitment of incumbent board members eligible for reelection or reappointment.

2. **Responsibilities**

   **A.** Nominating Committee members are responsible for reviewing the general expectations of Museum Board members with candidates at the time of their invitation to serve.

   **B.** The Executive Director is responsible for including a list of general expectations in each Board member's manual and to acquaint each member with duties of care, loyalty, and obedience.

   **C.** The President of the Board and the Executive Director are responsible for assessing individual Board member's commitment to these general expectation to ensure full participation of members.

3. **Expectations**

   **A.** Board members shall demonstrated sufficient knowledge of the Museum to accurately represent its needs and services to the general public. This knowledge shall be gained through:

- Participation in general orientation within two months of appointment to the Board. Content of orientation shall include but is not limited to:
    - History of the Museum
    - Vision, Mission, Core Values, and Goals
    - Operational Budget
    - Organizational Structure
    - Staff and Volunteer Job Descriptions
- Regular review of written program reports and newsletters.
- Attendance at Museum Events.

**B.** Board members shall actively contribute to planning and business decisions of the Board through:

- Attendance at Board meetings. Minimum attendance expected of each individual Board member is eight meetings.
- Active participation on one or more standing committees annually. Attendance at a minimum of 50% of the meetings is expected.
- Responsiveness to Executive Committee, Committee Chairpersons or staff when asked for information or consultation on matters related to their area of expertise.

**C.** Board members shall support the Museum sponsored functions and events through assistance, attendance, or financial support.

**D.** Board members shall make a meaningful financial gift each year of their service. In addition, Board members shall contribute to the needs of the organization through one or more of the following means:

- Identification of potential gifts-in-kind, services, or financial donors within their circle of influence
- Personal contacts with potential donors
- Identification and/or pursuit of grants or foundation funds
- Personal or business services or gifts-in-kind
- Active involvement with special events planning and implementation

**E.** It is important to our fund development efforts that 100% of our Board members make a financial contribution to the Museum. When we are asking foundations, corporations, and other individuals t make financial contributions in support of our programs, we must be able to say that 100% of our Board members embrace and support the mission and vision of Museum through their commitment of time and resources.

---

I have reviewed the above expectations and I am committed to support the vision and mission of the Wichita-Sedgwick County Historical Museum.

**CONTRACT**

**for**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **The Kansas Aviation Museum, Inc.** a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **forty five thousand dollars ($45,000)** payable in four equal quarterly installments and due January, March, June and October 2011 upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from

the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof

any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Kansas Aviation Museum, Inc.**

_____
Lon Smith, Director
*Kansas Aviation Museum, Inc.*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

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The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
Increase attendance by 30% over 2010 by further developing viral marketing strategies related to website optimization and social networking by December of 2011.

**Goal 2**
Increase memberships by 30% over 2010 by enhancing point of sale marketing and relationships with organizations willing to allow direct marketing to their organization members by December 2011.

**Goal 3**
Develop one educational learning center that can be demonstrated by video no later than December of 2011.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316/303-8663.

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

part by the contracting agency;

D. Exempted from these requirements are:

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

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

# Annual Operating Agreement Report Criteria for Mid-America All-Indian Center

The City of Wichita provides the following criteria for the Organization's benefit in preparing for the annual review process. These criteria will give the Organization guidance in preparing the annual State of the Organization report, and notice of the basis the City will use to evaluate the Organization's performance for purposes of continuing funding consideration.

Quality of Organizations

- Demonstrates diversity of board members and rotation of members
- Identifies staffing levels and demonstrates staff stability.
- Stewardship of collection (Identifies acquisitions, loans and deaccessions).
- Demonstrated record of producing/presenting arts of the highest quality over the past 2 or 3 years through attendance at events and participation in programs.
- Appropriateness of the program/projects to the organization's core values; mission, audience, community, and/or constituency.
- Organizations commitment to programs and activities reflected through attendance data.
- Demonstrates a commitment to youth programming.
- Identity program and percentage of cost-recovery.

Community Impact

- Demonstrates an effort to reach wide audiences including underserved populations.
- Demonstrates ability to collaborate and create program partnerships with other organizations, local businesses, and schools.
- Demonstrates ability to contribute to the quality of life for the citizens of Wichita through diversity and attendance of audience and participation in programs.
- Rotates offerings/exhibits to enhance the experience of visitors or audience.

Financial Stability

- Identified different forms of financial support including grants, fundraisers and foundation.
- Explained how operating funds from the City of Wichita were used.
- Balanced operating budget.
- Public commitment to programs and activities reflected through earned income data. (Including total attendance, total paid admissions, total paid memberships, and total attendance of school groups/tours.)
- Executed a strategic plan.
- Demonstrated 3 year growth in earned income.
- Maintains a 3 to 6 month operating reserve.

Please note that the City of Wichita will provide an Annual Operating Agreement Report Form for the completion of the annual report and the City of Wichita retains the right to request additional information.

The parties agree that this criteria amends the existing Operating Agreement previously approved by City Council on November 2, 2010.

**Mid-America All-Indian Center, Inc.**

_____

Bobbi Meairs, Chairperson of the Board of Trustees
Mid-America All-Indian Center, Inc.

**City of Wichita**

_____

CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

**CONTRACT**

**for**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Mid-America All-Indian Center, Inc.** a not-for-profit corporation, hereinafter called **"PROVIDER."**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services, and in addition to the current base annual allocation from the City of Wichita of $160,269 (hereafter known as "Operational Agreement") which is not subject to the terms of this particular document, **CITY** agrees to pay to **PROVIDER** the sum of **three thousand eight hundred sixteen dollars ($3,816)**, payable in four equal quarterly installments and due the first business day of the month beginning January, April, July, and October 2010 upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12$^{th}$ of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011**. This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Mid-America All-Indian Center, Inc.**

_____
Bobbi Meairs, Interim Chairman of the Board
*Mid-America All-Indian Center, Inc.*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Mid-America All-Indian Center, Inc. PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'S proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'S PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
Develop a series of culture art classes to increase attendance at Community Night by 2% over 2010 attendance by December 2011.

**Goal 2**
Develop an outreach program taking the American Indian experience to area youth groups. By December 2011, four programs will be offered to Wichita area schools, scouting groups and non-profits.

**Goal 3**
Increase paid attendance by 3% in 2011 by using social networking and targeted marketing for a younger audience.

.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316/303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation, and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

The City will prepare budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-annual and Final Reports**
Prepare one (1) semi-annual **PROVIDER** report and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2012**. Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

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.

## Operating Agreement Mid-America All-Indian Center Inc.

1. **Purpose.** The purpose of this Agreement is to define the City of Wichita's financial, personnel and operational relationship with the Mid-America All-Indian Center Inc. Any existing leasehold interest of City property held by the Mid-America All-Indian Center Inc. is not subject to change by this Agreement.

2. **Term.** The term of this Agreement shall be for a period of five (5) years commencing upon the 1st day of January, 2010.

3. **City Funding.** In return for the Mid-America All-Indian Center Inc.'s performance of duties specified in this Operating Agreement, the City agrees to provide annual funding (payable to the Mid-America All-Indian Center Inc. in accordance with Section 6 below) in the following calendar years and amounts:

| | |
|---|---|
| 2010 | ____$157,900.00_____ |
| 2011 | ____$160,268.50_____ |
| 2012 | ____$165,076.55_____ |
| 2013 | ____$170,028.85_____ |
| 2014 | ____$175,129.72_____ |

Mid-America All-Indian Center Inc. shall maintain its current operating reserve to ensure financial security for at least 3 to 6 months of operating expenses.

Mid-America All-Indian Center Inc. shall demonstrate average annual growth in earned income and/or private contributions in each rolling three year period covered by this Agreement.

4. **Personnel.** Mid-America All-Indian Center Inc. employs no City personnel, but City employees under City direction may be employed to work at the Mid-America All-Indian Center Inc. facility. These City employees are provided at the direction and request of the Mid-America All-Indian Center Board of Trustees based upon agreed positions, duties, and staffing levels. The Mid-America All-Indian Center Inc. is obligated to reimburse the City for the full personnel costs of the City employees provided in this manner, except that the Mid-America All-Indian Center Inc. will not be obligated to reimburse the City for the personnel costs of the City

employees for any time spent working for any department or facility of the City unless said time is for the direct benefit of the Mid-America All-Indian Center Inc.

5. **Employment of the Director.** The City is responsible for the hiring and/or termination of all employees of the City working at Mid-America All-Indian Center Inc., including the Director of the Mid-America All-Indian Center Inc., but shall consult with the Board of Trustees of the Mid-America All-Indian Center regarding such hirings and/or terminations. The Director will supervise the overall operation of the Mid-America All-Indian Center Inc. The City shall establish the Director's compensation and other terms and conditions of employment, but shall consult with the Mid America All Indian Center regarding such compensation and conditions.

   The Director shall take guidance and direction from the Board of Trustees of the Mid-America All-Indian Center Inc., but shall conduct all work under the direct supervision from the Director of Arts & Cultural Services. Mid-America All-Indian Center Inc. and the City agree that the City Manager or Director of Arts & Cultural Services shall consult with the Chairperson of the Board of the Mid-America All-Indian Center Inc. to complete personnel evaluations of the Mid-America All-Indian Center Inc.'s Director and will work in cooperation to determine and establish the appropriate levels of staffing for the facility.

6. **Use of City Funds.** Requested funds in the "Contractual Services Account" will be disbursed by the City to Mid-America All-Indian Center Inc. no later than 30 days after submission of approved invoices covering expenses for which said funds are appropriated.

   Mid-America All-Indian Center Inc. agrees to devote the assets, resources, and funds provided by the City of Wichita exclusively for purposes advocating the mission of the Mid-America All-Indian Center Inc. This mission as defined by the Board of Trustees is to serve as a cultural center and museum dedicated to educating people about and preserving the heritage of the American Indian. City funding for the operation of Mid-America All-Indian Center Inc. shall be appropriated annually in accordance with the funding agreement in existence between the City and Mid-America All-Indian Center Inc.

7. **Supplemental City funding.** Mid-America All-Indian Center Inc. may apply for Operational Grant Cultural Funding through the competitive grant process.

8. **Complete Agreement**. This agreement supersedes all prior agreements between the parties specifically dealing with funding. Unless otherwise noted, it does not apply to prior or existing leases.

9. **Rules of Operation.** Mid-America All-Indian Center Inc. agrees to adopt, publish, and enforce reasonable rules and regulations governing the conduct of visitors to Mid-America All-Indian Center Inc. consistent with the provisions of this Agreement, which rules and regulations may be revised by Mid-America All-Indian Center Inc. from time to time.

10. **Admission Fees.** Mid-America All-Indian Center Inc. shall have the right to establish, collect and retain all fees for admission to Mid-America All-Indian Center Inc. and for all activities held therein.

11. **Use of Facility.** Mid-America All-Indian Center Inc. shall have the exclusive right to occupy and use the facility and land pursuant to the existing leasehold interest of City property held by the Mid-America All-Indian Center Inc. for advancement of the mission of the Mid-America All-Indian Center Inc., and to establish, collect, and retain all charges derived from any rentals, charges, fees, concessions, or other uses of the facility and land for the furtherance of that mission.

12. **Gifts and Endowments.** Mid-America All-Indian Center Inc. agrees to exert its reasonable efforts to secure gifts of cash, property, in-kind goods and services and bequests and endowments for structures, capital improvements and the like to be used for advancement of the mission of the Mid-America All-Indian Center Inc.

13. **Budget.** The City agrees to make every good faith effort to aid in the funding of the operation of the Mid-America All-Indian Center Inc. for the advancement of the mission of the Mid-America All-Indian Center Inc.

14. **Capital Improvements.** Mid-America All-Indian Center Inc. shall have the authority to recommend for approval the future design and development of the facilities used by the Mid-America All-Indian Center Inc., but no capital or structural improvements to existing buildings or additions or future construction of buildings or additions shall be made without the prior approval of the City.

15. **Utilities**. Mid-America All-Indian Center Inc. shall pay all deposits and charges for two telephone lines, and the City shall be responsible for the balance of the charges for electricity, water, gas, telephone, air conditioning and heating, sewer charges, garbage and trash collection, and all other utilities and charges for services used by or furnished to Mid-America All-Indian Center Inc.'s facilities

16. **Right to Inspect.** City reserves and shall always have the right to enter Mid-America All-Indian Center Inc.'s facilities without cost for the purpose of viewing and ascertaining the condition of the same and to protect its interest in the premises

17. **Care and Maintenance**. The City agrees to provide for the upkeep of the buildings and grounds of Mid-America All-Indian Center Inc.'s facilities, to make any and all reasonably necessary repairs, replacements, renewals, to all of the property, real and personal, over which Mid-America All-Indian Center Inc. exercises responsibility under this agreement.

18. **Ownership of Property.** All buildings and land, including any and all new facilities constructed or reconstructed on the premises during the term of this Agreement at the request and expense of the City, shall be and remain in the ownership of the City, including the area commonly known as the Keeper of the Plains Plaza. All outdoor exhibits, including, but not limited to, the Village Encampment Exhibit and the Heritage Pole, shall be and remain in the ownership of the Mid-America All-Indian Center Inc.

19. **Insurance.** Mid-America All-Indian Center Inc. agrees to secure and maintain in force throughout the duration of this agreement the following minimum insurance coverage:

Comprehensive General Liability covering premises—operations, Broad Form Property Damage and Contractual Liability with minimum limits as follows:

| | |
|---|---|
| Bodily Injury Liability | $500,000 each occurrence<br>$500,000 each aggregate |
| Property Damage Liability | $500,000 each occurrence<br>$500,000 each aggregate |
| Or | |
| Bodily Injury and Property Damage Liability (Combined Single Limit) | $500,000 each occurrence<br>$500,000 each aggregate |

20. **Hold Harmless.** Without regard to the limits of such insurance set out in section 20, but within the requirements of the Kansas Tort Claims Act, Mid-America All-Indian Center, Inc. and the City agree to save and hold each other 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 its officers, agents, servants, or employees, occurring in the performance of its services under this contract.

21. **Default Cure Period.** Either party's failure to perform any of its obligations under this Agreement after a period of fourteen (14) days (or the additional time, if any, that is reasonably necessary to promptly and diligently cure the failure) after receiving written notice from the other party shall constitute a default under this Agreement. Any such written notice shall give reasonable detail in the nature and extent of the failure and identify the Agreement's provision(s) containing the obligations at issue. If the default continues after such notice and cure period, then the offending party shall be in default and the other party may pursue any remedies given in this Agreement or under the law.

22. **Mechanics Liens.** Mid-America All-Indian Center Inc. and the City agree to save and hold each other free and harmless and indemnify the other against all claims for labor and materials in connection with improvements, repair or alterations to Mid-America All-Indian Center Inc. that were conducted at the specific request and expense of the other, and the cost of defending against such claims, including reasonable attorney's fees.

23. **Parking Lot Maintenance.** City shall at its sole expense, pave and perform all maintenance on the existing parking lot constructed for use at Mid-America All-Indian Center Inc.'s facilities and shall maintain such parking lot in good condition and repair.

24. **Compliance with Law.** Mid-America All-Indian Center Inc. shall, at its sole cost and expense, materially comply and secure compliance with all requirements of Municipal, State and Federal authorities now in force, or which may hereafter be in force, pertaining to the premises covered by this Agreement, or the operations conducted thereon, and shall faithfully observe, and secure observance with, in the use of the premises, all Municipal ordinances and State and Federal Statutes now in force or which may hereafter be in force, and shall pay before delinquency all taxes, assessments, and fees assessed or levied upon Mid-America All-Indian Center Inc. or the premises by reason of any buildings, structures, machines, appliances or other improvements of any nature whatsoever, erected, installed or maintained by Mid-America All-Indian Center Inc. or by reason of the business or other activities of Mid-America All-Indian Center Inc. upon or in connection with said premises. Mid-America All-Indian Center Inc. specifically agrees to maintain a tax exempt status per

applicable state and federal revenue and taxation codes during the entire term of this agreement. Failure to maintain such tax exempt status shall be considered a material default of this agreement.

25. **Accounting, Record Keeping, Audit.** All accounting for the receipt and disbursement of City funding shall be performed in accordance with generally accepted accounting principles for governments. City shall make all such records available to the Mid-America All-Indian Center Inc. or its authorized representative during normal business hours.

    **Mid-America All-Indian Center Inc.** All accounting for the receipt and disbursement of Mid-America All-Indian Center Inc. funds shall be performed in accordance with generally accepted accounting principles for nonprofit organizations. Mid-America All-Indian Center Inc. shall, within 120 days of the end of each year, make available to the City financial statements for the year together with an independent auditor's report signed by a certified public accountant. Mid-America All-Indian Center Inc. shall make all financial records available to the City or its authorized representative for inspection, review, or audit during normal business hours.

26. **Changes in By-Laws.** Any proposed changes in the corporate powers or structure of Mid-America All-Indian Center Inc., or its by-laws which would materially affect its ability to carry out the purposes of this Agreement shall be immediately communicated to the City.

27. **Equal Employment Opportunity.** Mid-America All-Indian Center Inc. shall ensure that all services and facilities offered and operated by Mid-America All-Indian Center Inc. in connection with Mid-America All-Indian Center Inc. are open and available to all members of the public regardless of race, religion, national origin, sex, disability and political belief.

    **Mid-America All-Indian Center Inc.** shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, age or ancestry.

    In all solicitations or advertisements for employees, Mid-America All-Indian Center Inc. shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

28. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provision of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-29350), 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 reasoned opinion of its legal counsel, the Agreement may be deemed to violated the terms of such laws.

29. **Non-Assignability.** Neither this Agreement nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the written consent of the other party.

30. **Organization's Governing Board.** It is mutually understood and agreed by the parties hereto that under no circumstances shall the City make any claim to any of the assets of the organization's governing board or its successor. The City shall have one (1) City Council appointed designee on the Board of Trustees governing board, but, prior to any appointment, the City shall consider recommendations from the Board of Trustees of the Mid-America All-Indian Center regarding such appointment.

31. **Annual Reports**. Mid-America All-Indian Center Inc. agrees to submit, on an annual basis, a State of the Organization report similar to a Board of Director's report that addresses financial stability, growth and strategic planning. The annual report should also address paid attendance, programming growth, capital improvements (if any) and the most current IRS 990 form. The organization agrees to undergo an annual review process. Any deficiencies in performance or stability will require the Board of Trustees to work with the City to develop an improvement plan.

32. **Collaboration with other organizations.** Mid-America All-Indian Center Inc. agrees to use reasonable efforts to create collaborative partnerships to share resources among multiple cultural arts organizations.

33. **Extensions.** The parties acknowledge that the operation of the Mid-America All-Indian Center Inc. requires a collaborative effort by the parties and they, therefore, agree to negotiate any and all extension, revisions, and amendments to this Agreement in good faith.

THE CITY OF WICHITA, KANSAS

By: _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law
And City Attorney

ATTEST:

**MID-AMERICA ALL-INDIAN CENTER, INC.**

_____
By: Paula D. Langworthy
Chairperson of the Board of Trustees

**CONTRACT**

**for**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Music Theatre for Young People** a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **six thousand dollars ($6,000)** payable in four quarterly installments due the first business day of the months January, April, July, and October 2011 upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward

fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Music Theatre for Young People**

_____
Matthew Rumsey, Producing Director
*Music Theatre for Young People*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Music Theatre for Young People, PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

Record public appearances and press releases sent and published in local media.

**Goal 1**
In response to current economic conditions and an increase in scholarship applications, increase funding, by December 31, 2011, for cast member/camp participants scholarships by 3% of the scholarships granted in 2010 through grant money, individual donations, and corporate contributions.

**Goal 2**
During 2011, contract with a professional costumer and set designer for each of th four main stage shows, and a professional lighting designer for the teen show, in order to enhance the professional quality of the experience provided to the young people as well as further educate them in these areas of the theatre.

**Goal 3**
Increase MTFYP memberships by 3% of the 2010 memberships by December 31, 2011 through more effective communications with the supporters of MTFYP.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts & Cultural Services or call 316-303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the **Division of Arts and Cultural Services, City of Wichita, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-Annual and Final Reports**

Prepare one (1) semi-annual provider report and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The report will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2012**. Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

**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 Nondiscrimination Equal Employment Opportunity/**Affirmative A**ction** Program Requi**re**ments:

A. Dur**ing the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall c**omply with all t**he** provisions of th**e 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 wit**h Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated there under.

B. Requirements of the State of Kansas:

1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present 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 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 Subsections 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 contract and it may be canceled, terminated or suspended in whole or in

part by the contracting agency;

D. Exempted from these requirements are:

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

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

**CONTRACT**

**for**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Museum of World Treasures Inc.,** a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **forty five thousand dollars ($45,000)** payable in four equal quarterly installments and due the first business day beginning January, April, July, and October 2011 upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward

fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof

any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Museum of World Treasures, Inc.**

_____
Mike K. Noller, President
*Museum of World Treasures, Inc.*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Museum of World Treasures, Inc., PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'S proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'S PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
Increase contributed income received from foundations, corporations, federal, state, city, county by $85,000 versus 2010 by December 31, 2011.

**Goal 2**
Increase the number of new volunteers for educational programs participation by 20% or 5 individuals to a total of 30 individuals versus 25 individuals in 2010 by December 31, 2011.

**Goal 3**
Museum of World Treasures will develop, produce, fabricate and open three new exhibits in 2011.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts and Cultural Services at 316/303-8663**.**

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation, and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

The City will prepare budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-annual and Final Reports**
Prepare one (1) semi-annual **PROVIDER** report and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2012.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

part by the contracting agency;

D. Exempted from these requirements are:

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

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

# CONTRACT

# for

# ADMINISTRATION OF GRANT FUNDING

# IN SUPPORT OF THE ARTS

**THIS CONTRACT** entered into this **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Music Theater of Wichita**, a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **eighty-five thousand dollars ($85,000.00)**, payable in two installments and due the first business day of the months of February and June 2011, upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12$^{th}$ of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Music Theatre of Wichita**

_____

Wayne Bryan, Producing Artistic Director
*Music Theatre of Wichita*

_____

Date

**CITY OF WICHITA, KANSAS**

_____

Carl Brewer, Mayor

_____

Date

**ATTEST:**

_____

Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____

Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Music Theater of Wichita, PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'S proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'S PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
Provide educational programming for at least 3,700 young people through educational programming including Jester Awards, apprentice program, Teen Choir, performance opportunities and special needs matinee.

**Goal 2**
Maintain sponsorship levels equal to 2010 season.

**Goal 3**

Reach an audience of at least 60,000 people through our five season shows.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts and Cultural Services, at 316/303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation, and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 20011 Final Report shall bar the organization from contracting with the City for FY2012.

The City will prepare budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-Annual and Final Reports**

Prepare one (1) semi-annual **PROVIDER** report and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2012.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than

five thousand dollars ($5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.

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

**CONTRACT**

**for**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Opera Kansas Inc.**, a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **four thousand dollars ($4,000)** payable in two equal installments and due the first business day beginning January and July of 2011 of the month upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall establish require that the performance objectives will be specific, measurable, observable, and relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from

the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011**. This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof

any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Opera Kansas, Inc.**

_____
Michael Roach, President
*Opera Kansas, Inc.*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

**EXHIBIT A**
**SCOPE OF SERVICES**

**Administration of Grant Funding in Support of the Arts**

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Opera Kansas, Inc. PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City'sRequest for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they ae not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
Increase numbers of youth reached by 5% over 2010 totals by increasing the number of performances delivered to area schools in 2011.

**Goal 2**
Increase the numbers of youth reached in calendar year 2011 and improving the educational experience offered by developing a new summer vocal music camp program with an enrollment of at least 25.

**Goal 3**
Increase general public attendance by 5% over 2010 attendance by adding two recital events to the 2011 season schedule.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division, at 316-303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-Annual and Final Reports**

Prepare one (1) semi-annual **PROVIDER** report and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2012.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

part by the contracting agency;

D. Exempted from these requirements are:

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

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

**CONTRACT**

**for**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010**, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **The Orpheum Performing Arts Centre, Inc.** a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **thirty five thousand dollars ($35,000)** payable in four equal quarterly installments and due the first business day of the month beginning January, April, July and October 2011 upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from

the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof

any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Orpheum Performing Arts Centre, Ltd.**

_____
Mary Eves, President
*Orpheum Performing Arts Centre, Ltd.*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **The Orpheum Performing Arts Centre, Inc.**, **PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City'sRequest for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they ae not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
Promote awareness and increase attendance through the distribution of events flyers and an annual newsletter. Goal is that six promotional pieces are mailed in 2011.

**Goal 2**
Increase the number of performances to attain a total of 88 events for the year.

**Goal 3**
Develop a strategy to encourage the support of young professionals by implementing a Young Professional Advisory Group which meets biannually.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, printed material as appropiate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts and Cultural Services, at 316/303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-Annual and Final Reports**

Prepare one (1) semi-annual **PROVIDER** report and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2012.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

part by the contracting agency;

D. Exempted from these requirements are:

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

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

**CONTRACT**

**for**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this day of **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Wichita Association for Tallgrass Film Association,** a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **eighteen thousand dollars ($18,000)**, payable in two equal installments and due the first business day of **January and June 2011** upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days

from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12$^{th}$ of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof

any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**TALLGRASS FILM ASSOCIATION**

_____
Ann Keefer, President
*Tallgrass Film Association*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Tallgrass Film Association PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they are not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
Tallgrass seeks to increase attendance and ticket sales at its 2010 events.
Increase sales at monthly Tallgrass Third Thursday events by 15%.
Increase attendance at Tallgrass Film Festival by 5% over 2009.

**Goal 2**
Increase educational opportunities the organization offers by offering 3 workshops or seminars throughout 2010 that are not part of Tallgrass Film Festival programming, maintaining the educational event launched at the festival in 2009 (Filmmakers Panel) and adding one more educational seminar or panel.

**Goal 3**
Market to cities and towns outside Wichita, bringing attendees from throughout the state and beyond by expanding the festival marketing plan to include four Kansas towns situated more than 100 miles outside of Wichita, utilizing public radio and regional colleges and universities and by marketing the festival to two cities outside the state of Kansas, utilizing public radio, print and non-traditional advertising.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on all printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts & Cultural Services, at 316/303-8663**.**

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agency will have funding to carry out project activities over their entire contract period.

**Semi-Annual and Final Reports**

Prepare one (1) semi-annual **PROVIDER** report and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011** with the completed calendar year report due to the CITY by the weekday on or closest to **January 31, 2012.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

- Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

D. Exempted from these requirements are:

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

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

**CONTRACT**

**for**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010**, by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Wichita State University**, a state educational institution of Kansas, contracting on behalf of its **The Wichita State University Foundation c/o The Edwin A. Ulrich Museum of Art**, hereinafter called **"PROVIDER."**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **thirty five thousand dollars ($35,000), to be allocated to the Edwin A. Ulrich Museum of Art,** payable in four, equal, quarterly installments and due the first business day of the month beginning January 2011 upon presentation of a detailed invoice by PROVIDER. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12$^{th}$ of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the PROVIDER are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance.** To the extent permitted by the laws of Kansas, **PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Wichita State University Foundation**
**Edwin A. Ulrich Museum of Art**

_____
Elizabeth King, President & CEO

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Wichita State University Foundation**, contracting on behalf of the **Edwin A. Ulrich Museum of Art**, PROVIDER, that it is the intent of this contract for the PROVIDER to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the PROVIDER understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the PROVIDER understands and agrees to perform services as specified in the PROVIDER's proposal, hereinafter called PROPOSAL, as submitted to the CITY by PROVIDER, and in accordance with provisions of the City'sRequest for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the PROVIDER's PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they ae not inconsistent with this contract.

The basic duties of the PROVIDER under this contract include the following:

**Goal 1**
Maintain the school group-tour attendance sustaining the 46% increase realized in 2009 to 2010 by stronger networking and marketing to teacher by December 2011.

**Goal 2**
Increase the Ulrich Salon Circle membership by 5% over 2010 Salon membership by developing new marketing activities by December 2011.

**Goal 3**
Increase the general membership revenue by 5% over 2010 revenue by mastering new membership database software and using Office Aide mailing list with Wichita demographics correlated to arts interest by December 2011.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on all printed material, the City of Wichita logo and the following credit line: "**This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts & Cultural Services, 316-303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

Budget expenditures to ensure that the sums available to Provider are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-annual and Final Reports**

Prepare one (1) semi-annual provider report and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2012.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

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.

# Annual Operating Agreement Report Criteria for Wichita Art Museum

The City of Wichita provides the following criteria for the Organization's benefit in preparing for the annual review process. These criteria will give the Organization guidance in preparing the annual State of the Organization report, and notice of the basis the City will use to evaluate the Organization's performance for purposes of continuing funding consideration.

Quality of Organizations

- Demonstrates diversity of board members and rotation of members
- Identifies staffing levels and demonstrates staff stability.
- Stewardship of collection (Identifies acquisitions, loans and deaccessions).
- Demonstrated record of producing/presenting arts of the highest quality over the past 2 or 3 years through attendance at events and participation in programs.
- Appropriateness of the program/projects to the organization's core values; mission, audience, community, and/or constituency.
- Organizations commitment to programs and activities reflected through attendance data.
- Demonstrates a commitment to youth programming.
- Identity program and percentage of cost-recovery.

Community Impact

- Demonstrates an effort to reach wide audiences including underserved populations.
- Demonstrates ability to collaborate and create program partnerships with other organizations, local businesses, and schools.
- Demonstrates ability to contribute to the quality of life for the citizens of Wichita through diversity and attendance of audience and participation in programs.
- Rotates offerings/exhibits to enhance the experience of visitors or audience.

Financial Stability

- Identified different forms of financial support including grants, fundraisers and foundation.
- Explained how operating funds from the City of Wichita were used.
- Balanced operating budget.
- Public commitment to programs and activities reflected through earned income data. (Including total attendance, total paid admissions, total paid memberships, and total attendance of school groups/tours.)
- Executed a strategic plan.
- Demonstrated 3 year growth in earned income.
- Maintains a 3 to 6 month operating reserve.

Please note that the City of Wichita will provide an Annual Operating Agreement Report Form for the completion of the annual report and the City of Wichita retains the right to request additional information.

The parties agree that this criteria amends the existing Operating Agreement previously approved by City Council on November 2, 2010.

**Wichita Art Museum, Inc.**

_____

Marni Vliet, Chairperson of Board of Trustees
Wichita Art Museum, Inc.

**City of Wichita**

_____

CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW

**SECOND SUPPLEMENTAL AGREEMENT**
**FOR OPERATION AND MANAGEMENT OF**
**THE WICHITA ART MUSEUM**

**THIS SECOND SUPPLEMENTAL AGREEMENT** entered this date, 10-20-09, 2009, by and between THE CITY OF WICHITA, KANSAS, a municipal corporation ("City") and THE WICHITA ART MUSEUM, INC., a not-for-profit corporation duly organized under the laws of the State of Kansas ("Corporation").

**WITNESSETH:**

WHEREAS the city succeeded to the ownership and control over all property of the Wichita Art Museum Board effective January 1, 1998, including certain funds and trusts established for the Wichita Art Museum; and

WHEREAS the City and the Corporation entered into an Agreement for Operation and Management of the Wichita Art Museum dated January 6, 1998 ("Agreement"), by which the City designates the Corporation as its agent for the general supervision and care of the Wichita Art Museum and objects of art belonging to the City or exhibited therein; and

WHEREAS the parties supplemented that Agreement on April 14, 1998, to delegate the management and use of the trusts to the Corporation on behalf of the City and the Corporation undertook and continues those duties and obligations as set forth in that Supplemental Agreement; and

WHEREAS the parties desire to further supplement that agreement to clarify their financial relationships;

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

I. The Agreement is amended and supplemented to provide as follows:

A. Paragraph IV. B. 6. Of the Original Agreement shall be amended to add, at its conclusion, the following: The Board shall endeavor to show continual positive growth in private financial support measured on a rolling average of the three past accounting years.

B. Paragraph IV. B. 8. Of the Original Agreement shall be amended to add, at its conclusion, the following: The Board shall present annually to the incumbent City Manager and Director of Finance for the City any recommendations for capital improvements to the Museum facility and the potential coordination of those improvements with the Board's plans.

C. Paragraph VII. A. of the Original Agreement shall be amended to add, at its conclusion, the following: In return for performance of duties as provided in this Agreement, and to provide financial stability for planning purposes, the City agrees to provide annual funding for Art Museum operations in the following calendar years and amounts:

| | |
|---|---|
| 2010 | $1,534,643.00 |
| 2011 | $1,557,662.65 |
| 2012 | $1,604,392.52 |
| 2013 | $1,652,524.30 |
| 2014 | $1,702,100.03 |

The City's provision of the above annual funding does not preclude the Corporation from receiving additional funding through the City's competitive cultural arts funding process during these years.

D. Paragraph VII. C. of the Original Agreement shall be amended, to add at its conclusion, the following: The Board agrees to maintain an operating reserve to ensure financial security of Art Museum operations in an amount equal to that necessary to satisfy between three (3) and six (6) months of operating expenses.

II. Except to the extent specifically modified by this Second Supplemental Agreement, the original provisions of the Agreement, as modified by the initial Supplemental Agreement, remain in force and effect.

**IN WITNESS WHEREOF** the parties have entered into this Supplemental Agreement on the date written above.

THE CITY OF WICHITA, KANSAS

By: Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law
And City Attorney

ATTEST:

THE WICHITA ART MUSEUM, INC.

By: Marni Vliet, President
Chair

Approved / Accepted By City Council
This JAN 6 1998

CITY CLERK'S ORIGINAL
RETURN TO CITY CLERK

Supplemented
April 14, 1998

January 5, 1998



COPY

# AGREEMENT
# FOR OPERATION AND MANAGEMENT OF
# THE WICHITA ART MUSEUM

**THIS AGREEMENT** entered this ____ JAN 6 1998 , by and between THE CITY OF WICHITA, KANSAS, a municipal corporation ("City") and THE WICHITA ART MUSEUM, INC., a not-for-profit corporation duly organized under the laws of the State of Kansas ("Corporation").

**WITNESSETH:**

WHEREAS the City owns the Wichita Art Museum, a public facility located at 619 Stackman Drive, Wichita, Kansas, and established for the promotion of fine arts and the housing and exhibit of paintings and other objects of art owned by the City, including the Roland P. Murdock collection; and

WHEREAS the Corporation is a not-for-profit corporation authorized to aid, benefit, foster, promote, and support the development and welfare of the Wichita Art Museum and the education and welfare of its patrons; and

WHEREAS the City is authorized by ordinance to enter in an agreement with a not-for-profit corporation for the operation of the Wichita Art Museum: and

WHEREAS the City has determined that it is in the public interest to appoint and employee the Corporation as its agent for the general supervision and care of the Wichita Art Museum and objects of art belonging to the City or exhibited therein; and

WHEREAS the Corporation is authorized and willing to undertake the duties and obligations as set forth in this Agreement;

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

## I. General

A. The City hereby appoints and employs the Corporation as its agent to plan, manage, operate, and develop the Wichita Art Museum.

B. The Corporation shall serve as the agent and representative of the City to provide housing, to care for, exhibit and maintain art, including paintings and other objects of art

owned by the City; to acquire by purchase, gift, bequest, or exchange, paintings, prints, statues, and other objects of art; as well as to maintain the Roland P. Murdock collection.

C. All operations of the Wichita Art Museum by the Corporation and its Board of Trustees shall be in accordance with the ordinances of the City of Wichita and the laws of the State of Kansas.

## II. Board of Trustees

A. The Corporation shall establish and maintain Articles of Incorporation and By-Laws consistent with this Agreement which provide for organization and structure as set forth in this Section.

B. The membership of the Wichita Art Museum Board shall constitute the membership of the Corporation.

C. The governing body of the Corporation shall be its board of trustees. The Board of Trustees shall be comprised of individuals who represent the broad interests of the citizens of Wichita. The Board members shall serve without compensation.

D. The Board of Trustees should be comprised of not-to-exceed 36 members with staggered terms of office, including the City Manager who shall be an ex-officio, voting member, and additionally the Murdock Trust trustees who shall be ex-officio, non-voting members.

E. The Officers of the Board shall include at least a President, a Vice-President, a Secretary, and a Treasurer. The officers shall serve for such term as shall be established by the Board.

F. The Director of the Wichita Art Museum shall be responsible for the administration and daily operation of the Museum. The Director shall serve in an ex-officio, non-voting capacity on all committees of the Board.

G. The Board should operate through a committee structure but act as a whole on major issues of policy. All members of the Board shall be assigned to a committee.

H. The full Board shall meet on a regular schedule and its meetings shall be open to the public.

I. The Corporation agrees to maintain its status as a not-for-profit corporation, tax exempt under § 501(c)(3) of the Internal Revenue Code, properly organized and registered in the State of Kansas. Any proposed changes in the corporate powers or structure of the Corporation, or its by-laws, which would materially affect its ability to carry out the purpose of this Agreement shall be immediately communicated to the City.

## III. Authority of Corporation

A. The Corporation shall have the authority to contract and operate in its own name and in the name of the Wichita Art Museum. The Corporation shall have no power or authority to bind the City by or with any contract, to impose any liability on the City, or to place any lien on property of the City. No act or contract of the Corporation shall be in the name of the City.

B. The Corporation shall have the authority to apply for and receive grants and funding from governmental agencies and private entities. The Board shall have the authority to accept or reject, in whole or in part, gifts of property and cash, including bequests, endowments, and grants appropriate to the objects and purpose of the Museum.

C. All purchases and gifts of property, including objects of art, shall be promptly applied to the use of the Museum. All funds received or raised by the Corporation shall be promptly remitted for the use of the Museum.

D. The Corporation shall have charge of maintaining, arranging, labeling, and exhibiting collections and works of art, with complete administrative control of said property.

E. The Corporation shall have the authority to operate a gift shop and restaurant at the Museum or to enter into contracts with others for such operation.

F. The Corporation shall have the authority to allow the use of the Wichita Art Museum exhibit galleries and rooms for private functions, charitable events, and educational activities under such rules and regulation as may be adopted by the Board consistent with the public purpose of the Museum.

G. No existing building nor any building which is constructed or placed upon the property, either temporarily or permanently, shall be used for the purpose of housing the operation of any multi-game, casino-style gambling on the premises.

## IV. Duties of the Corporation and its Board of Trustees

A. The Corporation shall act as trustee or custodian and shall have the general supervision and care over the Wichita Art Museum and over the objects of art owned by the City and others and placed in the Wichita Art Museum.

B. The duties of the Corporation acting through its Board of Trustees shall include:

1. To be responsible for the exhibitions, collections, and programming of the Wichita Art Museum;

2. To adopt necessary rules and regulations for the exhibition and maintenance of the objects of art of the Wichita art museum;

3. To keep the Wichita Art Museum and its exhibits open and available to the public at all reasonable hours as may be determined by the Board;

4. To apply for and receive funds from the State or Federal government or any agencies thereof for the purpose of aiding the Wichita Art Museum;

5. To accept or reject as agent for the City all gifts, donations, and objects of art offered to the Wichita Art Museum and to receive and administer the same in accordance with the provisions of this Agreement;

6. To promote the Wichita Art Museum, be responsible for the sound fiscal management of the Museum, and actively work to raise funds and encourage private support of the Museum;

7. To develop a Museum master plan, marketing and promotional plan, along with other plans and developments as may be required;

8. To establish operating budget priorities for museum services and recommend financing mechanisms for implementation of art museum plans and developments;

9. To make annual reports to the City Council on the state of affairs of the Museum;

10. To perform such other duties and make such recommendations as may be requested by the City Council from time to time.

## V. Buildings

The Wichita Art Museum facility shall continue to be owned by the City. The Corporation shall have no authority to transfer title to the building or its fixtures. All structural improvements, changes, or alterations to the facility, and any plans for the same, shall be subject to the final approval of the City.

## VI. Objects of Art

The City shall continue to retain title to and be responsible for the objects of art titled in the name of the City or the former Wichita Art Museum Board. No title or any interest in such property shall be transferred, encumbered, or disposed of except by action of the Board, upon approval of the City Council. Any objects of art donated to the Corporation shall be held by the Board and used exclusively for Museum purposes; any funds donated to the Corporation for the purchase of art shall be held by the Board and used exclusively for the Museum. Objects of art designated permanently for Museum purposes by the City shall not be converted to other uses or permanently altered without the consent of the Board, upon approval of the City Council.

## VII. Finances.

A. The City shall continue to provide financial support for the operations of the Wichita Art Museum in such amounts as found necessary or desirable by the City Council.

B. The City shall remain financially responsible for the Museum building and its major building systems and structure and the maintenance of the grounds in such manner and with such funding as shall be determined by the City on an annual basis.

C. The Board shall submit an annual budget to the City for approval in such manner as reasonably determined by the City.

D. The Board shall maintain proper books of account as to all funds and property handed by it and shall file with the City an annual operating report covering all financial transactions of the preceding calendar year, such accounting to specifically detail financial transactions involving tax funds.

## VIII. Interaction with the City

A. The Director or President shall make annual reports to the City Council on the state of affairs of the Museum, business plan, financial reports, attendance and other critical

statistics, and programming plans for the future. Additional periodic reports on the state of affairs of the Museum should be filed with the City Council in such manner and frequency as requested by the Council.

B. The City shall provide and the Corporation shall use the services of the City's Finance Director, Personnel Director, and City Attorney in such manner and for such services as may be agreed in writing by the Director and City Manager from time to time.

## IX. Employees of the Corporation

A. The Corporation through its Board of Trustees shall have the entire control and management of the Wichita Art Museum including the right and power to employee a qualified professional Director and the necessary subordinate employees on such terms as may be determined by the Board. Such Museum employees, however, shall continue to be eligible for City employee benefits as provided under City Council Policy 8 through such procedures as may be agreed in writing by the City Manager and the Director, unless and until changes in the employment relationship are recommended to and approved by both the City and the Corporation.

B. The Corporation shall have the right to contract with individuals or institutions for professional and other services to assist the Director in carrying out the duties under this Agreement.

## X. Cash Basis and Budget Laws

It is the intent of the parties that the provisions of this Agreement are not intended to violate the Kansas Cash Basis Law (K.S.A. 10-1101, et seq.) or the Kansas Budget law (K.S.A. 79-2925). Therefore, notwithstanding anything to the contrary herein contained, the City's obligations under this Agreement are to be construed in a manner that assures that the City is at all time not in violation of the Cash Basis law or the Budget Law

## XI. Non-Discrimination

The Corporation shall not discriminate or allow discrimination in its activities or contracts under this Agreement and shall comply with the NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS attached hereto as Exhibit "A".

## XII. Non-assignment

This Agreement may not be assigned or transferred by the Corporation without the express written consent of the City, which consent may be denied without cause.

## XIII. Termination

A. This Agreement may be canceled and terminated at any time by mutual agreement, or by either party under circumstances and conditions as follows:

1. The Corporation may cancel and terminate this Agreement only after 90 days written notice to the City.

2. The City may cancel and terminate this Agreement at any time by first giving the Corporation's Board 90 days' notice in writing notifying the Corporation that such action is contemplated by the City and is in the public interest. The Corporation shall be given an opportunity to be heard on the matter by the City Council before such action is taken, if requested by the Board. Thereafter the City Council may take such action to cancel or terminate the Agreement as it deems appropriate.

3. Either party may cancel and terminate this Agreement immediately upon written notice in the event of material breach of the provisions of this Agreement, provided that upon written request, the breaching party may have a reasonable time in which to remedy such breach. In the event the breach is not satisfactorily remedied, the party may proceed to the immediate termination of the Agreement.

B. Upon termination of the agreement, all funds, objects of art, and property of any kind held or received on behalf of the City or the Museum shall remain with the Museum and shall be the property of the City. Any funds, objects of art, or property held in the name of the Corporation as restricted by the donors of such, shall remain at the Museum and applied for Museum purposes in the name of the Corporation.

## XIV. Effective Date

This Agreement shall be effective as of January 1, 1998, and may from time to time be modified, changed, or amended only as may be mutually agreed in writing between the Corporation acting through its Board of Directors and the City, or their successors.

**IN WITNESS WHEREOF** the parties have entered into this Agreement on the date written above.

THE CITY OF WICHITA, KANSAS

By _____
Bob Knight, Mayor

ATTEST:

_____
Pat Burnett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, City Attorney

THE WICHITA ART MUSEUM, INC.

By _____
President

ATTEST:

_____

ART MUSEUM AGREEMENT

JAN 6 1998
p.99

AGREEMENT FOR OPERATION AND MANAGEMENT OF WICHITA ART MUSEUM.

Agenda Report No. 98-035.

On November 18, 1997, the City Council approved a new governance structure for the Wichita Art Museum. Effective January 1, 1998, the previous Wichita Art Museum board was abolished and the City became the successor in interest to all power and authority over the Wichita Art Museum. The City is authorized to enter into a contract with a not-for-profit entity for the operation and management of the Wichita Art Museum.

A 501(c)3 tax exempt organization known as the Wichita Art Museum, Inc., has been established with authority to operate and manage the Museum. This entity with a 36 member Board of Trustees is in place and scheduled to begin operation. Formal action on the management agreement is necessary.

A proposed Management Agreement with The Wichita Art Museum, Inc., was provided to the City Council and summarized in the Agenda Report on November 18, 1997. The Council has never taken formal action to approve the agreement and this action is necessary to put the new governance structure in place. Under this agreement the new entity and its Board of Trustees will assume operation and management of the Museum.

Motion --
-- carried

Knight moved that the Agreement be approved and the Mayor be authorized to execute. Motion carried 7 to 0.

7.3 Museum, Art
JAN 6 1998

Agenda Item # 11

City of Wichita
City Council Meeting
April 14, 1998

COPY

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Agenda Report # 98-300

TO: Mayor and City Council

SUBJECT: Wichita Art Museum - Supplemental Agreement

INITIATED BY: Law Department

AGENDA: New Business

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**Recommendation**: Approve the Agreement

**Background**: On November 6, 1997, the City Council approved a new governance structure for the Wichita Art Museum. Effective January 1, 1998, the City of Wichita succeeded the Wichita Art Museum Board to the rights, obligations, and control over the Wichita Art Museum. The former Board held several trusts in its name, primarily the Burneta Adair Endowment Trust and the Wichita Art Museum Board Trust (consisting of a number of individual trusts), invested at several local banks. A number of these trusts have restrictions on the use of the principal or income placed by their grantors.

The City of Wichita succeeded to the fiduciary responsibility for the investment, management, and proper use of these trusts. All decisions relating to the trusts now rests with the City Council, and affirmative direction through Council action is necessary for any decisions on use of the trust funds or changes in investment and management. The Council may make the decision, however, to delegate any or all of these decisions to the new board (the Wichita Art Museum, Inc.).

On January 6, 1998, the City Council approved an agreement with the Wichita Art Museum, Inc. (a §501(c)(3) tax exempt corporation) to take over the operation and management of the Art Museum. The ordinance and agreement delegated management control over the works of art to the new Board (decisions on disposition or transfer of title of art works must still be approved by Council). The new board has now also asked to have direct responsibility for the management and use of the trust funds for the continued operation of the Museum.

**Analysis**: The proposed Supplement Agreement delegates the Wichita Art Museum, Inc., to act on behalf of the City and have general supervision and management of all the existing and future Art Museum trust funds. This board is required to invest and use the funds in accordance with any restrictions and conditions placed by the grantors and in compliance with statutory fiduciary responsibilities. It may amend restrictions placed by only the old WAM Board, however.

The new board will report on the investment and use of the trust funds in its periodic reports to the City Council and through Council review of the Art Museum budget.

**Financial Considerations:** The Wichita Art Museum, Inc., will be required to continue to separately account for the investment and use of each trust fund.

**Legal Considerations:** The City Council has the authority to delegate the responsibility for the management and use of Art Museum trust funds. The supplemental agreement was drafted and approved as to form by the Law Department.

**Recommendations/Actions:** Approve the Agreement and authorize the Mayor to sign.

CITY CLERK'S ORIGINAL
RETURN TO CITY CLERK

Approved / Accepted By City Council
This APR 14 1998



# SUPPLEMENTAL AGREEMENT FOR OPERATION AND MANAGEMENT OF THE WICHITA ART MUSEUM

**THIS SUPPLEMENTAL AGREEMENT** entered this date, APR 14 1998, by and between THE CITY OF WICHITA, KANSAS, a municipal corporation ("City") and THE WICHITA ART MUSEUM, INC., a not-for-profit corporation duly organized under the laws of the State of Kansas ("Corporation").

**WITNESSETH:**

WHEREAS the City succeeded to the ownership and control over all property of the Wichita Art Museum Board effective January 1, 1998, including certain funds and trusts established for the Wichita Art Museum;

WHEREAS the City and the Corporation entered into an Agreement for Operation and Management of the Wichita Art Museum dated January 6, 1998 ("Agreement"), by which the City designates the Corporation as its agent for the general supervision and care of the Wichita Art Museum and objects of art belonging to the City or exhibited therein;

WHEREAS the parties desire to supplement the Agreement to delegate the management and use of the trusts to the Corporation on behalf of the City and the Corporation is authorized and willing to undertake the duties and obligations as set forth in this Supplemental Agreement;

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

**I.** The Agreement is amended and supplemented to provide as follows:

A. As used in the Agreement and this Supplement Agreement the term "Trusts" shall include trusts, accounts, and funds held by the Wichita Art Museum Board on December 31, 1997, and now held by the City for the benefit and use of the Wichita Art Museum. The Trusts shall include, without limitation, the Wichita Art Museum Operating Accounts, the Burneta Adair Endowment Trust, and the Wichita Art Museum Board Trust. The parties acknowledge that some of the said Trusts are current use accounts or funds, some are endowed, and others are restricted as to use by donor or board, which board restrictions can be amended by the Corporation.

B. The Corporation shall act on behalf of City and shall have the general supervision and care over the Trusts now existing and any future trusts and funds established with the City or the Wichita Art Museum for the benefit and use or the Wichita Art Museum, subject to the

Approved / Accepted By City Council
This APR 14 1998

April 13, 1998



# SUPPLEMENTAL AGREEMENT FOR OPERATION AND MANAGEMENT OF THE WICHITA ART MUSEUM

**THIS SUPPLEMENTAL AGREEMENT** entered this date, APR 14 1998, by and between THE CITY OF WICHITA, KANSAS, a municipal corporation ("City") and THE WICHITA ART MUSEUM, INC., a not-for-profit corporation duly organized under the laws of the State of Kansas ("Corporation").

**WITNESSETH:**

WHEREAS the City succeeded to the ownership and control over all property of the Wichita Art Museum Board effective January 1, 1998, including certain funds and trusts established for the Wichita Art Museum;

WHEREAS the City and the Corporation entered into an Agreement for Operation and Management of the Wichita Art Museum dated January 6, 1998 ("Agreement"), by which the City designates the Corporation as its agent for the general supervision and care of the Wichita Art Museum and objects of art belonging to the City or exhibited therein;

WHEREAS the parties desire to supplement the Agreement to delegate the management and use of the trusts to the Corporation on behalf of the City and the Corporation is authorized and willing to undertake the duties and obligations as set forth in this Supplemental Agreement;

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

**I.** The Agreement is amended and supplemented to provide as follows:

A. As used in the Agreement and this Supplement Agreement the term "Trusts" shall include trusts, accounts, and funds held by the Wichita Art Museum Board on December 31, 1997, and now held by the City for the benefit and use of the Wichita Art Museum. The Trusts shall include, without limitation, the Wichita Art Museum Operating Accounts, the Burneta Adair Endowment Trust, and the Wichita Art Museum Board Trust. The parties acknowledge that some of the said Trusts are current use accounts or funds, some are endowed, and others are restricted as to use by donor or board, which board restrictions can be amended by the Corporation.

B. The Corporation shall act on behalf of City and shall have the general supervision and care over the Trusts now existing and any future trusts and funds established with the City or the Wichita Art Museum for the benefit and use or the Wichita Art Museum, subject to the

provisions of this Supplement Agreement. Any trusts or funds established directly with the Corporation shall be subject to their terms and under the full control and authority of the Corporation.

C. The Trusts and all funds derived from the investment of trust funds shall used by the Corporation in accordance with all restrictions and conditions on use of principal, interest, or both placed upon the Trusts and in accordance with the Agreement and the budget of the Corporation.

D. The Corporation shall separately account for the investment and use of such Trust funds upon its books and within its annual financial statement compilations and/or financial audit.

E. The Corporation shall insure the Trusts are managed in compliance with statutory trust fiduciary responsibilities including, without limitation, the Uniform Trustees' Powers Act (K.S.A. 58-1201 *et seq.*) and the Trusts for State and Political Subdivision Act (K.S.A. 58-2431 *et seq.*),

F. The parties recognize that the City has and maintains the ultimate fiduciary responsibility for the Trusts to the grantors and the public. The City shall exercise that responsibility by the review of the budget as set forth in Section VII of the Agreement and the receipt of reports on the Wichita Art Museum as set forth in Section VIII of the Agreement.

**II.** Except to the extent specifically modified by this Supplemental Agreement, the original provisions of the Agreement remain in force and effect.

**IN WITNESS WHEREOF** the parties have entered into this Supplemental Agreement on the date written above.

THE CITY OF WICHITA, KANSAS

By _____
Bob Knight, Mayor

ATTEST:

_____
Pat Burnett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf, City Attorney

THE WICHITA ART MUSEUM, INC.

By _____
R. A. DeVore, President

ATTEST:

_____
W. R. Conway, Jr.

provisions of this Supplement Agreement. Any trusts or funds established directly with the Corporation shall be subject to their terms and under the full control and authority of the Corporation.

C. The Trusts and all funds derived from the investment of trust funds shall used by the Corporation in accordance with all restrictions and conditions on use of principal, interest, or both placed upon the Trusts and in accordance with the Agreement and the budget of the Corporation.

D. The Corporation shall separately account for the investment and use of such Trust funds upon its books and within its annual financial statement compilations and/or financial audit.

E. The Corporation shall insure the Trusts are managed in compliance with statutory trust fiduciary responsibilities including, without limitation, the Uniform Trustees' Powers Act (K.S.A. 58-1201 *et seq.*) and the Trusts for State and Political Subdivision Act (K.S.A. 58-2431 *et seq.*),

F. The parties recognize that the City has and maintains the ultimate fiduciary responsibility for the Trusts to the grantors and the public. The City shall exercise that responsibility by the review of the budget as set forth in Section VII of the Agreement and the receipt of reports on the Wichita Art Museum as set forth in Section VIII of the Agreement.

**II.** Except to the extent specifically modified by this Supplemental Agreement, the original provisions of the Agreement remain in force and effect.

**IN WITNESS WHEREOF** the parties have entered into this Supplemental Agreement on the date written above.

THE CITY OF WICHITA, KANSAS

By _____
Bob Knight, Mayor

ATTEST:

Pat Burnett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, City Attorney

THE WICHITA ART MUSEUM, INC.

By _____
R. A. DeVore, President

ATTEST:

_____
W. C. CONEW JR

ART MUSEUM AGREEMENT
APR 14 1998
Chris Cherches
P. 421

WICHITA ART MUSEUM - SUPPLEMENTAL AGREEMENT.

City Manager reviewed the Item.

Agenda Report No. 98-300.

On November 6, 1997, the City Council approved a new governance structure for the Wichita Art Museum. Effective January 1, 1998, the City of Wichita succeeded the Wichita Art Museum Board to the rights, obligations, and control over the Wichita Art Museum. The former Board held several trusts in its name, primarily the Burneta Adair Endowment Trust and the Wichita Art Museum Board Trust (consisting of a number of individual trusts), invested at several local banks. A number of these trusts have restrictions on the use of the principal or income placed by their grantors.

The City of Wichita succeeded to the fiduciary responsibility for the investment, management, and proper use of these trusts. All decisions relating to the trusts now rests with the City Council, and affirmative direction through Council action is necessary for any decisions on use of the trust funds or changes in investment and management. The Council may make the decision, however, to delegate any or all of these decisions to the new board (the Wichita Art Museum, Inc.).

On January 6, 1998, the City Council approved an agreement with the Wichita Art Museum, Inc. (a _501(c)(3) tax exempt corporation) to take over the operation and management of the Art Museum. The ordinance and agreement delegated management control over the works of art to the new Board (decisions on disposition or transfer of title of art works must still be approved by Council). The new board has now also asked to have direct responsibility for the management and use of the trust funds for the continued operation of the Museum.

The Supplement Agreement delegates the Wichita Art Museum, Inc., to act on behalf of the City and have general supervision and management of all the existing and future Art Museum trust funds. This board is required to invest and use the funds in accordance with any restrictions and conditions placed by the grantors and in compliance with statutory fiduciary responsibilities. It may amend restrictions placed by only the old WAM Board, however.

The new board will report on the investment and use of the trust funds in its periodic reports to the City Council and through Council review of the Art Museum budget.

The Wichita Art Museum, Inc., will be required to continue to separately account for the investment and use of each trust fund.

Mayor Knight momentarily absent with Vice Mayor Cole in the Chair.

Motion --
-- carried

Lambke moved that the Agreement be approved and the Mayor be authorized to execute. Motion carried 6 to 0. (Rogers absent)

7.3

Museum, ART

**CONTRACT**

**for**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Wichita Children's Theatre & Dance Center,** a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **forty thousand dollars ($40,000)**, payable in four (4) equal quarterly installments and due the first business day of the month beginning January2011 upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12$^{th}$ of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011**. This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Wichita Children's Theatre & Dance Center**

_____
Monica Flynn, Director
*Wichita Children's Theatre & Dance Center*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

**EXHIBIT A**
**SCOPE OF SERVICES**

**Administration of Grant Funding in Support of the Arts**

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Wichita Children's Theatre & Dance Center, PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City'sRequest for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they ae not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
Wichita Children's Theatre and Dance Center will increase attendance at the Once Upon a Time shows by 2,500 by touring to Goddard and Maize over 2010; to be measured by attendance by May 2011.

**Goal 2**
Wichita Children's Theatre and Dance Center will increase attendance in theatre class by approximately 20 students by adding new classes to the 2010-2011 curriculums; to be measured by attendance by March 2011.

**Goal 3**
Wichita Children's Theatre and Dance Center will increase foundation support by $10,000 by writing additional grants for project support and underwriting; to be measured by receipts of grants in 2011.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on printed material as appropirate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts & Cultural Services, at 316/303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the **City of Wichita Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the final FY2010 report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-Annual and Final Reports**

Prepare one (1) semi-annual **PROVIDER** reports and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The report will be due to the CITY by the weekday on or closest to **June 30, 2011**, with the completed calendar year report due to the City by the weekday on or closest to **January 31, 2012**. Send one copy of each report to the **City's Division of Art & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

part by the contracting agency;

D. Exempted from these requirements are:

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

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

**CONTRACT**

**For**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Wichita Public Library Foundation, Inc.,** a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **seventy thousand dollars ($70,000)**, payable in two, equal, installments due the first business day of January and July 2011 upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER** semi-annual reports describing the actions taken and results obtained toward

fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011**. This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The service of the **PROVIDER** is to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof

any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Wichita Public Library Foundation, Inc.**

_____
Leah Barnhard, Executive Director
*Wichita Public Library Foundation, Inc.*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor
*City of Wichita*

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Wichita Public Library Foundation, Inc., PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City'sRequest for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they ae not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
Offer programming of quality and variety to attract a minimum of 68,000 participants.

**Goal 2**
Maintain satisfaction with library programs of at least 95% as reported on attendee surveys.

**Goal 3**
Generate use of Library materials, programs and services at a level that generates a return on investment of no less than $4.00 per every $1.00 of City general fund tax support.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts and Cultural Services, at 316/303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the City of Wichita, **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.** The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-Annual and Final Reports**

Prepare one (1) semi-annual **PROVIDER** report and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The preliminary reports will be due to the CITY by the weekday on or closest to **June 30, 2011,** with the completed calendar year report due to the CITY by the weekday on or closest to **January 31, 2012**. Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

part by the contracting agency;

D. Exempted from these requirements are:

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

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

**CONTRACT**

**For**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **The Wichita Symphony Orchestra**, a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **one hundred ten thousand dollars ($110,000),** payable in two equal installments. **PROVIDER** shall submit its invoices for such installments in January 2011 and April 2011 and payment for such invoices shall be due by February 26, 2011 and June 29, 2011, respectively. The Scope of Services sets forth the performance objectives by which **PROVIDER**'s performance shall be measured.

3. **Acceptance Procedure. PROVIDER** shall render the Services described in Attachment A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER** semi-annual reports describing the actions taken and results obtained toward

fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January1, 2011 through December 31, 2011.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The Services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof

any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Wichita Symphony Orchestra**

_____
Mitchell Berman, Executive Director
*Wichita Symphony Orchestra*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **The Wichita Symphony Orchestra**, **PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City'sRequest for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they ae not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
Attract at least 125 of those attending the January 28, 2011 Magic at the Symphony Blue Jeans Concert to another Classics concert during the remainder of the 2010-2011 season through a special ticket discount promotion.

**Goal 2**
Increase single ticket sales (non-student) by five percent to the Classics series over the number sold for the 2009-2010 season through the expanded use of new media.

**Goal 3**
Attract at least 100 students to each of the eight pairs of Classics concerts.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"Wichita Symphony activities is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Division of Arts and Cultural Services, at 316/303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation that are ready for payment and submit them to the City of Wichita's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.** The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-annual and Final Reports**

Prepare one (1) semi-annual **PROVIDER** reports, including one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The preliminary reports will be due to the CITY by the weekday on or closest to **June 30, 2011**, with the completed calendar year report due to the CITY by the weekday on or closest to **January 31, 2012**. Send one copy of each report to the **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

part by the contracting agency;

D. Exempted from these requirements are:

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

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

**CONTRACT**

**For**

**ADMINISTRATION OF GRANT FUNDING**

**IN SUPPORT OF THE ARTS**

**THIS CONTRACT** entered into this day of **2nd day of November, 2010,** by and between the **CITY OF WICHITA, KANSAS**, a municipal corporation, hereinafter called **"CITY"** and **Sedgwick County Zoological Society**, a not-for-profit corporation, hereinafter called **"PROVIDER".**

**WITNESSETH:**

**WHEREAS**, **CITY** desires to provide support for various artistic endeavors within its jurisdiction, and

**WHEREAS, CITY** has requested competitive proposals for that purpose, which were reviewed by the Cultural Funding Committee composed of Council-appointed community members and various City staff members, and selections from the proposals were recommended to the City Council, and

**WHEREAS**, **PROVIDER** has submitted a proposal that provides for the beneficial allocation and administration of certain funds to be provided by the **CITY,** has been selected by the **CITY,** and **PROVIDER** is ready, willing, and able to provide the services required by the **CITY.**

**NOW, THEREFORE**, the parties agree as follows:

1. **Scope of Services. PROVIDER** shall provide to the **CITY** and complete all those services specified in the Scope of Services description attached as Exhibit A, which is incorporated herein by reference.

2. **Compensation.** In exchange for these services **CITY** agrees to pay to **PROVIDER** the sum of **fifty eight thousand dollars ($58,000)** payable in four, equal, quarterly installments and due the first business day of the months January, April, July and October 2011, upon presentation of a detailed invoice by **PROVIDER**. The Scope of Services shall require that the performance objectives will be specific, measurable, observable, relevant and timed.

3. **Acceptance Procedure. PROVIDER** shall render the deliverables described in Exhibit A under the terms and conditions thereof. The **CITY** may perform site visits and records reviews to assess **PROVIDER's** performance in fulfilling this contract, and will receive from **PROVIDER semi-annual** reports describing the actions taken and results obtained toward

fulfilling the scope of services requirements. The **CITY** shall have thirty (30) working days from the delivery of each semi-annual report prepared hereunder within which to respond in writing to such delivery. If the **CITY** believes any completed semi-annual report does not conform to the requirements of the Agreement, it shall notify **PROVIDER** in writing thereof, within the above-mentioned thirty (30) days and shall indicate with particularity in what manner the report fails to conform. If the report defect is not remedied within 30 days after notice of deficiency, the parties agree that 1/12th of the total contract compensation shall become due to the City as liquidated damages, and not as a penalty.

4. **Term.** The term of this contract shall be from **January 1, 2011 through December 31, 2011.** This contract is subject to termination at either party's discretion at any time within the original contract term or within any successive renewal, upon thirty (30) days written notice to the other**.**

5. **Time of Performance**. The services of the **PROVIDER** are to commence as soon as practicable after the date of this contract, and shall be undertaken and completed in a manner to assure their expeditious completion in light of the purposes of this contract within the agreed term.

6. **Indemnification and Insurance. PROVIDER** 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 **PROVIDER**, its officers, agents, servants, or employees, occurring in the performance of its services under this contract. **CITY** shall save and hold the **PROVIDER** 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 **CITY**, its officers, agents, servants, or employees, occurring in the performance of this contract.

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

8. **Compliance with Laws. PROVIDER** shall comply with all laws, statutes and ordinances that may pertain to the providing of services under this contract.

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

10. **Non-Discrimination. PROVIDER** 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 as Exhibit B, which is incorporated herein by reference.

11. **Third Party Rights.** It is specifically agreed between the parties that it is not intended by any of the provisions of this contract to create in the public or any member thereof

any rights as 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.

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

13. **Savings Clause.** If any provision of this Agreement is held invalid or unenforceable by any agency or court of competent jurisdiction, the remaining provisions shall nevertheless remain valid.

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

**Sedgwick County Zoological Society, Inc.**

_____
Steve Onken, Development Director
*Sedgwick County Zoological Society, Inc.*

_____
Date

**CITY OF WICHITA, KANSAS**

_____
Carl Brewer, Mayor

_____
Date

**ATTEST:**

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

_____
Gary E. Rebenstorf, Director of Law

## EXHIBIT A

## SCOPE OF SERVICES

### Administration of Grant Funding in Support of the Arts

It is mutually agreed by and between the City of Wichita, Kansas, hereinafter called CITY, and **Sedgwick County Zoological Society Inc., PROVIDER**, that it is the intent of this contract for the **PROVIDER** to provide certain administrative services to the CITY for arts funding made available herein. The purpose of this Exhibit A is to define the scope of the services to be provided.

FIRST, the **PROVIDER** understands and agrees that the CITY will evaluate performance under this contract.

SECOND, the **PROVIDER** understands and agrees to perform services as specified in the **PROVIDER**'s proposal, hereinafter called PROPOSAL, as submitted to the CITY by **PROVIDER**, and in accordance with provisions of the City's Request for Funding Proposals, hereinafter called RFP, as issued by the CITY. Any specifications or provisions in said PROPOSAL or RFP that are inconsistent with clauses or attachments of this agreement are considered modified or superseded by those clauses or attachments.

THIRD, it is understood and agreed that all provisions of the **PROVIDER**'s PROPOSAL and all applicable provisions of the RFP are incorporated into this agreement by reference to the extent that they ae not inconsistent with this contract.

The basic duties of the **PROVIDER** under this contract include the following:

**Goal 1**
Increase support for area Title 1 schools and families in the low-to-moderate income levels.

**Goal 2**
Develop an expanded marketing plan of activities to commemorate the Zoo's 40$^{th}$ anniversary.

**Goal 3**
Grow the Animal Tales preschool program to include environmental and conservation messages.

**Organizations are required by the terms of the Contract to give recognition to the City of Wichita for its role in providing financial assistance to arts and culture in Wichita.** Grant recipients are required to use, on printed material as appropriate, the City of Wichita logo and the following credit line: **"This program is made possible in part by the City of Wichita."** Credit to additional agencies or funding sources may also be required. Failure to give credit for financial assistance is a violation of this Contract. Logos may be obtained from the City of Wichita, Arts and Cultural Services Division (CityArts), at 316/303-8663.

**Financial Management**

Prepare and present invoices after review for correctness and appropriate documentation, that are ready for payment and submit them to the **City of Wichita, Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202** for payment. The parties agree the organization will not receive payment on the FY2011 contract, irrespective of any work done or goals accomplished according to the terms of the FY2011 contract, until the Final FY2010 Report is submitted and accepted as approved. Furthermore, the parties agree that failure to timely submit the FY 2011 Final Report shall bar the organization from contracting with the City for FY2012.

Budget expenditures to ensure that the sums available to **PROVIDER** are not over expended and that agencies will have funding to carry out project activities over their entire contract period.

**Semi-Annual and Final Reports**

Prepare one (1) semi-annual **PROVIDER** report and one (1) yearend Final Report which includes: accomplishments and adherence to and satisfaction of the original contract purposes, and recommendations on future funding, based upon outcomes measurements and issues/needs identified in the process of pursuing the Scope of Services. The reports will be due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **June 30, 2011** with the completed calendar year report due to the CITY, Division of Arts & Cultural Services by the weekday on or closest to **January 31, 2012.** Send one copy of each report to the City's **Division of Arts & Cultural Services, 225 W. Douglas, Wichita, KS 67202.**

Be available to address the City Council on findings and recommendations, upon request.

**Exhibit B**

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

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

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

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

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

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

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

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

part by the contracting agency;

D. Exempted from these requirements are:

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

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

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council Members

**SUBJECT:** Petition to construct a Water Distribution System in McEvoy Addition (south of Harry, west of 127th Street East) (District II)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** New Business

---

**Recommendation:** Approve the petition.

**Background:** The signatures on the petition represent 22 of 38 (57.89%) resident owners and 50.85% of the improvement district area. District II Advisory Board sponsored an October 4, 2010, neighborhood hearing on the project. A quorum was not present, but the Board members that were present were in support of the project.

**Analysis:** The project will construct a water distribution system for a developed residential area located south of Harry, west of 127th Street East.

**Financial Considerations:** The estimated construction cost is $275,000. The petition also provides for a main benefit fee in the amount of $47,829 for a total budget of $322,829. The method of assessment is the square foot basis. The estimated assessment to individual properties for the construction of the project is $0.15 per square foot of ownership. The main benefit fee is $0.026 per square foot of ownership.

**Goal Impact:** This project addresses the Efficient Infrastructure goal by extending a water distribution system to a developed area.

**Legal Considerations:** The petition and resolution have been approved as to form by the Law Department.

**Recommendation/Action:** It is recommended that the City Council approve the petition, adopt the resolution and authorize the necessary signatures.

**Attachments:** Map, CIP Sheet, assessment roll, petition, resolution and property owner comment sheet.

**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 | Eng | 10/12/2010 | Water Distribution System in McIlvoy Addition |

| 5. CIP Project Number | 6. Accounting Number | 7. CIP Project Date (Year) | 8. Approved by WCC Date |
|---|---|---|---|
| NI_200424 | | 2010 | |

| 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 & Culverts | | | | |
| Drainage | | | | |
| Sanitary Sewer | | | | |
| Sidewalk | | | | |
| Water | | | $322,820 | $322,820 |
| Freeway | | | | |
| Totals | | | $322,820 | $322,820 |
| Total CIP Amount Budgeted | | | | |
| Total Prelim. Estimate | | | | |

12A.

| | Yes | No |
|---|---|---|
| Platting Required | | |
| Lot Split | | |
| Petition | X | |
| Ordered by WCC | | |

Remarks:

[illegible]%

*Water Utility

448-90900

13. Recommendation:

Approve the project and adopt the resolution

| Division Head | Department Head | Budget Officer | City Manager |
|---|---|---|---|
| | | Date | Date |

132019

First Published in the Wichita Eagle on November 5, 2010

RESOLUTION NO. 10-279

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90500 (SOUTH OF HARRY, WEST OF 127TH ST. EAST) IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF WATER DISTRIBUTION SYSTEM NUMBER 448-90500 (SOUTH OF HARRY, WEST OF 127TH ST. EAST) IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct Water Distribution System Number 448-90500 (south of Harry, west of 127th St. East).

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be Two Hundred Seventy-Five Thousand Dollars ($275,000) exclusive of the cost of interest on borrowed money, with 100 percent of the total cost payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after October 1, 2010, exclusive of the costs of temporary financing.

That, in accordance with the provisions of K.S.A. 12-6a19, a benefit fee be assessed against the improvement district with respect to the improvement district's share of the cost of the existing water main, such benefit fee to be in the amount of Forty-Seven Thousand Eight Hundred Twenty-Nine Dollars ($47,829).

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

MCEVOY ADDITION

Lots 2 through 5 Inclusive, Block B
Lots 1, 2, 8, 9 and 10 Except Drainage Easement, Block C
Lots 3 through 7 Inclusive, Block C
Lots 11through 16 Inclusive, Block C
Lots 17 through 29 Inclusive Except Drainage Easement, Block C
Lots 11 through 20 Inclusive, Block D

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a square foot basis.

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

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 2nd day of November, 2010.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF DIRECTOR OF LAW

# Water

Label SubDiv Lot Num
Label SubDiv
Storm Conduit
Storm Structures
Inlet
Manhole
Outfall
Other
Property Parcels
Sewer Flow
Sewer Lines
Water Lines Schematic
Roads
State Highway
US Federal Highway
Interstate
KTA
Arterial
Collector
Minor
Ramp
Township and Range
Section
Quarter Section
Waterways
Streams
Parks
Airports
SDERASTER.S-DEDATA.ORTH-O
City Limits
Andale
Bel Aire

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.

Estimated assessments for extending a Water line to serve part of McEvoy Addition

| Key No. | Property Owner | Property Address | Legal Description | Area (sq. ft.) | Distribution Line Assessment* | Main Benefit Fee*** | Total Assessment | 10/11/10 Annual Payment** | Resident Owners | cost area rate | $275,000.00 1839585 0.14949024 | Area Signed | Res. Own. Signed |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| MCEVOY ADD | | | | | | | | | | | | | |
| C 52848 | CRAW, PAUL R ETUX 12517 E HARRY WICHITA KS 67207 | | LOTS 2-3, BLOCK B | 77922 | $11,649 | $2,026 | $13,675 | $1,006 | 2 | | | 77922 | 2 |
| C 52849 | SMITH, GEORGE J & KAREN I ETAL | 12422 E OSIE | LOT 4, BLOCK B | 43500 | $6,503 | $1,131 | $7,634 | $562 | 2 | | | 43500 | 2 |
| C 52850 | MEIER, LARRY R ETUX | 12402 E OSIE | LOT 5, BLOCK B | 43500 | $6,503 | $1,131 | $7,634 | $562 | 2 | | | | |
| C 52851 | GREGG FAMILY TRUST | 12425 E OSIE | LOT 1-2-3-4-5-6 EXC DRG EASEMENT, BLOCK C | 266198 | $39,794 | $6,921 | $46,715 | $3,437 | 1 | | | | |
| C 52852 | STEPHENSON, RUSSELL D & CAROL J COOPER | 1760 S 123RD ST E | LOT 7, BLOCK C | 47370 | $7,081 | $1,232 | $8,313 | $612 | 2 | | | | |
| C 52853 | BENNETT, DARRIN L & KIMBERLY K | 1800 S 123RD ST E | LOT 8 EXC DRG EASEMENT, BLOCK C | 41310 | $6,175 | $1,074 | $7,249 | $533 | 2 | | | 41310 | 2 |
| C 52854 | HALEY, JOHN T | 1818 S 123RD ST E | LOT 9 EXC DRG EASEMENT, BLOCK C | 40918 | $6,117 | $1,064 | $7,181 | $528 | 1 | | | 40918 | 1 |
| C 52855 | HALEY, JOHN T 1818 S 123RD ST E WICHITA KS 67207 | | LOT 10 EXC DRG EASEMENT, BLOCK C | 43642 | $6,524 | $1,135 | $7,659 | $564 | repeat | | | 43642 | repeat |
| C 52856 | THOMPSON, MILES W & CINDY C | 1844 S 123RD ST E | LOT 11, BLOCK C | 43750 | $6,540 | $1,138 | $7,678 | $565 | 2 | | | 43750 | 2 |
| C 52857 | BRAWNER, DELORIS J & JIM LEROY 1828 S 125TH E WICHITA KS 67207 | | LOT 12, BLOCK C | 43750 | $6,540 | $1,138 | $7,678 | $565 | 2 | | | 43750 | 2 |
| C 52858 | JOHNSTON, ERIC K & MICHELLE A | 1904 S 123RD ST E | LOT 13, BLOCK C | 43750 | $6,540 | $1,138 | $7,678 | $565 | 2 | | | | 1 |
| C 52859 | GRAY, JANICE A FAMILY TRUST | 1916 S 123RD ST E | LOTS 14 & 15, BLOCK C | 87500 | $13,080 | $2,275 | $15,355 | $1,130 | 1 | | | 87500 | 1 |
| C 52860 | CLAREY, DAVID B & JEAN M WAYNE ATTN: JEAN M WAYNE | 1952 S 123RD ST E | LOTS 16-17 EXC DRG EASEMENT, BLOCK C | 87108 | $13,022 | $2,265 | $15,287 | $1,125 | 2 | | | | |
| C 52861 | OLDEN, MARILYN A LIV TR | 12540 E MOUNT VERNON | LOT 18 EXC DRG EASEMENT, BLOCK C | 41150 | $6,152 | $1,070 | $7,221 | $531 | 1 | | | 41150 | 1 |
| C 52862 | OLDEN, MARILYN A LIV TR 12540 E MT VERNON WICHITA KS 67207 | | LOT 19 EXC DRG EASEMENT, BLOCK C | 41181 | $6,156 | $1,071 | $7,227 | $532 | repeat | | | 41181 | repeat |
| C 52863 | OLDEN, MARILYN A LIV TR 12540 E MT VERNON WICHITA KS 67207 | | LOT 20 EXC DRG EASEMENT, BLOCK C | 41176 | $6,155 | $1,071 | $7,226 | $532 | repeat | | | 41176 | repeat |
| C 52864 | MARTIN, JUDY K 1905 S 125TH E WICHITA KS 67207 | | LOT 21 EXC DRG EASEMENT, BLOCK C | 41172 | $6,155 | $1,070 | $7,225 | $532 | 1 | | | | |
| C 52865 | MARTIN, JUDY K | 1905 S 125TH ST E | LOT 22 EXC DRG EASEMENT, BLOCK C | 41170 | $6,155 | $1,070 | $7,225 | $532 | repeat | | | | |
| C 52866 | MARTIN, JUDY K 1905 S 125TH E WICHITA KS 67207 | | LOT 23 EXC DRG EASEMENT, BLOCK C | 40965 | $6,124 | $1,065 | $7,189 | $529 | repeat | | | | |
| C 52867 | VOGT, ROGER L & JONI R | 1845 S 125TH ST E | LOT 24 EXC DRG EASEMENT, BLOCK C | 41073 | $6,140 | $1,068 | $7,208 | $530 | 2 | | | 41073 | 2 |
| C 52868 | NEWSOM, BOBBY J & REBECCA L FAMILY TR | 1831 S 125TH ST E | LOT 25 EXC DRG EASEMENT, BLOCK C | 40826 | $6,103 | $1,061 | $7,165 | $527 | 1 | | | | |
| C 52869 | BRAWNER, JIM L & DELORES J 1828 S 125TH E WICHITA KS 67207 | 1819 S 125TH ST E | LOT 26 EXC DRG EASEMENT, BLOCK C | 43591 | $6,516 | $1,133 | $7,650 | $563 | repeat | | | 43591 | repeat |
| C 52870 | ROUSHKOLB, GARY & TERESA | 1807 S 125TH ST E | LOT 27 EXC DRG EASEMENT, BLOCK C | 42923 | $6,417 | $1,116 | $7,533 | $554 | 2 | | | | |
| C 52871 | TEMMING, JEAN C 1737 S 125TH ST E WICHITA KS 67207 | 1801 S 125TH ST E | LOT 28 EXC DRG EASEMENT, BLOCK C | 41025 | $6,133 | $1,067 | $7,199 | $530 | 1 | | | | |
| C 52872 | TEMMING, JEAN C REV LIV TR | 1737 S 125TH ST E | LOT 29 EXC DRG EASEMENT, BLOCK C | 37446 | $5,598 | $974 | $6,571 | $484 | 1 | | | | |
| C 52883 | CLARK, GILFORD D | 12600 E MOUNT VERNON | LOT 11, BLOCK D | 43556 | $6,511 | $1,132 | $7,644 | $562 | 1 | | | | |
| C 52884 | COMSTOCK, DENNIS A & SHARON L | 1934 S 125TH ST E | LOT 12, BLOCK D | 43568 | $6,513 | $1,133 | $7,646 | $563 | 2 | | | 43568 | 2 |
| C 52885 | BEARDSLEE, ROBERT A ETUX | 1918 S 125TH ST E | LOT 13, BLOCK D | 43568 | $6,513 | $1,133 | $7,646 | $563 | 1 | | | | 1 |
| C 52886 | MINTER, PAUL D | 1864 S 125TH ST E | LOT 14, BLOCK D | 43568 | $6,513 | $1,133 | $7,646 | $563 | 1 | | | | |
| C 52887 | BRAWNER, DELORIS J TR 1828 S 125TH ST E WICHITA KS 67207 | 1846 S 125TH ST E | LOT 15, BLOCK D | 43568 | $6,513 | $1,133 | $7,646 | $563 | 1 | | | 43568 | 1 |
| C 52888 | BRAWNER, DELORIS J TR | 1828 S 125TH ST E | LOT 16, BLOCK D | 43568 | $6,513 | $1,133 | $7,646 | $563 | repeat | | | 43568 | repeat |
| C 52889 | BRAWNER, DELORIS J TR 1828 S 125TH ST E WICHITA KS 67207 | 1808 S 125TH ST E | LOT 17, BLOCK D | 43569 | $6,513 | $1,133 | $7,646 | $563 | repeat | | | 43569 | repeat |
| C 52890 | NAIL, LARRY J JR & SUZANNE L | 1742 S 125TH ST E | LOT 18, BLOCK D | 43568 | $6,513 | $1,133 | $7,646 | $563 | 2 | | | 43568 | 2 |
| C 52891 | VOTH, RODNEY A & KIMBERLY L 218 MOY HAYSVILLE KS 67060 | 1726 S 125TH ST E | LOT 19, BLOCK D | 43568 | $6,513 | $1,133 | $7,646 | $563 | nr | | | 43568 | nr |
| C 52892 | BRAWNER, JIM L & DELORIS J | 1708 S 125TH ST E | LOT 20, BLOCK D | 43568 | $6,513 | $1,133 | $7,646 | $563 | repeat | | | 43568 | repeat |
| | | | Totals: | 1839585 | $275,000 | $47,829 | $322,829 | | 38 | | | 935440 | 22 |

Abbreviations:
etal = and others
etux. = and wife
etvir. = and husband
nr = non resident

* Estimated assessment for the distribution lines construction based on $0.15 per square foot basis excluding inflation, and/or temporary financing.

| | |
|---|---|
| Area Signed | 50.85% |
| Resident Owners Signed | 57.89% |

** Estimated Annual escrow payment based on 4% bond sale rate, and spread over 20 years

**BREAKDOWN OF PROJECT COSTS**

| | |
|---|---|
| Amount assessed to the improvement district | $275,000 |
| Add: City Share for Dead End Mains (0%) | $0 |
| Add: Main Assessment*** | $47,829 |
| Total Estimated project cost | $322,829 |

*** The Main Benefit Fee is based on $0.026 per square foot.

SEP 29, 2010

CITY OF WICHITA

**TO:** Interested Citizens,
Property Owners,
Tenants and Community Groups

**FROM:** City Engineer's Office

**SUBJECT:** Water Line to Serve McEvoy Addition

This form may be used to express your comments or concerns either in favor of, or in opposition to, the referenced project. Your comments are welcome, and all written comments will be furnished to the City Council.

**COMMENTS:**

IN FAVOR !

I'M GETTING BACK PAIN CARRING BAGS OF SALT TO THE BASEMENT RO SYSTEM

I WILL BE HOOKING UP MY SUMP PUMP TO THE CITY WATER WITH A FLOW VORTEX. ALLOWS MY SUMP ~~PUMP~~ TO BE PUMPED VIA CITY WATE PRESSURE IN CASE OF HOME POWER FAILURE

9/25/10

RECEIVED
SEP 13 '10
CITY CLERK OFFICE

# WATER DISTRIBUTION SYSTEM PETITION

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

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

448-90500

**McEvoy Addition**
Lots 2-5 Inclusive, Block B
Lots 1, 2, 8, 9 & 10 Except Drainage Easement, Block C
Lots 3-7 Inclusive, Block C
Lots 11-16 Inclusive, Block C
Lots 17-29 Inclusive Except Drainage Easement, Block C
Lots 11-20 Inclusive, Block D

(South of Hillside, West of 127th St. East)

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

(a) That there be constructed a water distribution system, including necessary water mains, pipes, valves, hydrants, and appurtenances to serve the area described above, according to plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.

(b) That the estimated and probable cost of the foregoing improvements being **Two Hundred Seventy Five Thousand Dollars ($275,000)** exclusive of the cost of interest on borrowed money, with **100%** percent payable by the improvement district. Said estimated cost as above set forth may be increased to include temporary interest or finance costs incurred during the course of design and construction of the project, and also may be increased at the pro rata rate of 1 percent per month from and after **October 1, 2010.**

(c) That, in accordance with the provisions of K.S.A. 12-6a19, a benefit fee be assessed against the improvement district with respect to the improvement district's share of the cost of the existing water main, such benefit fee to be in the amount of **Forty Seven Thousand Eight Hundred Twenty Nine Dollars ($47,829)**

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

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority

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

(e) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a **Square Foot** basis:

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

2. It is requested that the improvement hereby petitioned be made without notice and hearing, which, but for this request, would be required by K.S.A. 12-6a04. This petition may be combined with other petitions of similar nature in order to form one public improvement project.

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

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

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

| LEGAL DESCRIPTION | SIGNATURE | DATE |
|---|---|---|
| **McEvoy Addition** | | |
| LOTS 2-3, BLOCK B | CRAW, PAUL R ETUX | 09/02/2010 |
| | Trudi Craw | 9-2-2010 |

| | |
|---|---|
| LOT 4, BLOCK B | SMITH, GEORGE J & KAREN I ETAL<br>Karen I Smith August 27 2010<br>George J Smith 8-27-10 |
| LOT 5, BLOCK B | MEIER, LARRY R ETUX |
| LOT 1-2-3-4-5-6 EXC DRG EASEMENT, BLOCK C | GREGG FAMILY TRUST |
| LOT 7, BLOCK C | STEPHENSON, RUSSELL D & CAROL J COOPER |
| LOT 8 EXC DRG EASEMENT, BLOCK C | BENNETT, DARRIN L & KIMBERLY K<br>Darrin Lee Bennett August 29 2010<br>Kimberly K Bennett August 29, 2010 |
| LOTS 9 & 10 EXC DRG EASEMENT, BLOCK C | HALEY, JOHN T<br>8/30/10 |
| LOT 11, BLOCK C | THOMPSON, MILES W & CINDY C 8-29-10 |
| LOT 12, BLOCK C | BRAWNER, DELORIS J & JIM LEROY<br>Jim Brawner Deloris Brawner 8/28/10 |
| LOT 13, BLOCK C | JOHNSTON, ERIC K & MICHELLE A<br>8-28-2010 |
| LOTS 14 & 15, BLOCK C | GRAY, JANICE A FAMILY TRUST<br>8/28/10 |
| LOTS 16-17 EXC DRG EASEMENT, BLOCK C | CLAREY, DAVID B & JEAN M WAYNE<br>ATTN: JEAN M WAYNE |
| LOTS 18, 19, & 20 EXC DRG EASEMENT, BLOCK C | OLDEN, MARILYN A LIV TR 8-27-10<br>Marilyn Olden |
| LOTS 21, 22, & 23 EXC DRG EASEMENT, BLOCK C | MARTIN, JUDY K |
| LOT 24 EXC DRG EASEMENT, BLOCK C | VOGT, ROGER L & JONI R<br>Roger L Vogt + Joni R Vogt<br>8-29-10 |

| | |
|---|---|
| LOT 25 EXC DRG EASEMENT, BLOCK C | NEWSOM, BOBBY J & REBECCA L FAMILY TR |
| LOT 26 EXC DRG EASEMENT, BLOCK C | BRAWNER, JIM L & DELORES J 8-28-10 Jim Brawner Delores Brawner |
| LOT 27 EXC DRG EASEMENT, BLOCK C | ROUSHKOLB, GARY & TERESA |
| LOT 28 EXC DRG EASEMENT, BLOCK C | TEMMING, JEAN C |
| LOT 29 EXC DRG EASEMENT, BLOCK C | TEMMING, JEAN C REV LIV TR |
| LOT 11, BLOCK D | CLARK, GILFORD D |
| LOT 12, BLOCK D | COMSTOCK, DENNIS A & SHARON L 8/27/2010 Dennis Comstock Sharon Comstock |
| LOT 13, BLOCK D | BEARDSLEE, ROBERT A ETUX 08/29/10 Robert A. Beardslee |
| LOT 14, BLOCK D | MINTER, PAUL D |
| LOT 15, 16 & 17, BLOCK D | BRAWNER, DELORIS J TR 8-28-10 Jim Brawner Delores Brawner |
| LOT 18, BLOCK D | NAIL, LARRY J JR & SUZANNE L AUG-28-2010 Larry Suzanne |
| LOT 19, BLOCK D | VOTH, RODNEY A & KIMBERLY L 9/4/10 Rodney A. Voth Kimberly K. Voth |
| LOT 20, BLOCK D | CHILDERS, CRAIG V & LEE ANN 8-28-10 Jim Brawner Delores Brawner |

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief, being signed either in the presence of the undersigned or in the presence of one of the resident owners whose signature appears on the petition.

Shawn Mellizs
Name

455 N Main
Address

268-4632
Telephone Number

Sworn to and subscribed before me this 13th day of September, 2010.

Deborah Indlock
Deputy City Clerk

**Agenda Item No. ________**

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Revisions to Storm Water Pollution Prevention Ordinance (All Districts)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** New Business

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

**Recommendation**: Approve the ordinance revision.

**Background:** In 1989, the United States Congress established a storm water regulatory program under the Clean Water Act. In November, 1990, Environmental Protection Agency issued regulations requiring municipalities with a population in excess of 100,000 to obtain a National Pollutant Discharge Elimination System permit for storm water discharges. The permit was issued to Wichita on December 24, 1997. A condition of the permit required that the City implement a Storm Water Management Program, which included construction site erosion controls. This original permit expired on December 31, 2002.

Although the original permit had expired, the City continued operating its original Storm Water Management Program until Kansas Department of Health and Environment issued a new permit on September 28, 2007. The new permit contained many of the elements of the old permit, but several changes were made, the most important of which requires that Best Management Ppractices (BMPs) be utilized in critical basins to reduce Total Maximum Daily Load pollutants (phosphorus, nitrogen, biochemical oxygen demand, suspended solids and bacteria); as well as the principal pollutants of concern (biochemical oxygen demand, e. coli, cadmium, copper and zinc) in areas of new development and redevelopment. The changes in the Storm Water Pollution Prevention Ordinance recommended today are intended to implement the requirements of the 2007 permit.

Details for designing facilities to comply with the new pollution prevention requirements are outlined in a new "Storm Water Manual" that has been developed for the City by AMEC Earth and Environmental. The adoption of these recommended storm water ordinance revisions will give the Director of Public Works & Utilities the authority to adopt that manual for use in Wichita.

The storm water ordinance revisions for water quality were first presented to the City Council on September 15, 2009. The Council recommended staff work with all concerned parties to address issues brought up in the Council meeting. Staff submitted the ordinance for second reading on the November 3, 2009 City Council agenda at which time the City Council deferred action on the ordinance while staff did more follow-up work with stakeholders.

The current revisions being proposed in the Storm Water Ordinance are a result of specific permit requirements and negotiations with various stakeholder groups and regulatory agencies.

Through the process of writing these revisions to the Storm Water Ordinance and Storm Water Manual a need was determined to establish a knowledgeable body of stakeholders that could regularly meet to assist in providing guidance. The proposed Storm Water Advisory Board is recommended to advise the City Council and city staff in the future with storm water program changes and other storm water quality issues as they may arise from time to time. The board would be established by the City Council approval of the attached ordinance entitled "Membership and Governance of the Storm water Advisory Board." The make-up of the board is defined in the referenced ordinance and will include appointees from industry stakeholder groups.

**Analysis:** The Storm Water Pollution Prevention ordinance revisions will change the code title to "Storm Water Management and Pollution Prevention" to reflect the addition of drainage design standards that address water quality issues. A summary of the major revisions proposed in the ordinance are listed below:

1. New developments and areas of redevelopments which will result in a land disturbance area of one acre or greater will be reviewed and may be required to provide water quality treatment and downstream channel erosion protection using several possible BMP methods as outlined in the Storm Water Manual when the development impacts water quality by increasing impervious area. The acceptable BMPs include storm water ponds, conventional dry detention ponds, extended dry detention ponds, infiltration trench, grass channel, rain gardens, proprietary treatment devices, gravity separators, and several other options. The BMPs, if properly constructed and maintained, will meet State/Federal permit compliance requirements without the need for additional testing and monitoring.
2. Property owners will be responsible for maintaining storm water management facilities in accordance with the approved plans and biennially inspected.
3. Storm water management facilities will require additional storage volume and outlet controls to reduce discharge rates for the more frequent storms to protect against downstream bank erosion.
4. New development sites resulting in an increase in impervious area greater than one acre will be required to analyze and control storm water post-construction peak discharges.
5. The proposed storm water quality requirements will become effective on January 1, 2011 for all new developments. Developments approvals prior to January 1, 2011, must be constructed 90 days following January 1, to be exempt from the water quality requirements.

**Financial Considerations:** The ordinance revisions will result in some increased development and construction costs. However, staff feels that through proper site planning these increased costs can be minimized by incorporating the post-construction BMPs with existing landscaping requirements and using alternative designs that reduce areas of imperviousness.

**Goal Impact:** This project addresses the Safe and Secure Community goal by improving environmental health and community safety.

**Legal Considerations:** The ordinances have been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council approve the Storm Water Ordinance revision and the Storm Water Advisory Board Ordinance.

**Attachments:** Storm Water Ordinance, Storm Water Advisory Board Ordinance and Delineated Ordinance.

ORDINANCE NO. ____

AN ORDINANCE PERTAINING TO THE STORM WATER MANAGEMENT AND POLLUTION PREVENTION CODE OF THE CITY OF WICHITA, KANSAS; AMENDING SECTIONS 16.32.010, 16.32.080, 16.32.100, 16.32.110, 16.32.120, AND 16.32.130; CREATING NEW SECTIONS 16.32.091, 16.32.092, 16.32.093, 16.32.094, 16.32.095, 16.32.096, 16.32.097, AND 16.32.098; AND REPEALING THE ORIGINALS OF SECTIONS 16.32.010, 16.32.080, 16.32.100, 16.32.110, 16.32.120, and 16.32.130.

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

SECTION 1. Section 16.32.010 of the Code of the City of Wichita, Kansas, shall be amended to read as follows**:**

**Sec. 16.32.010. General provisions.**

A. Purposes. The purpose and objective of this chapter are as follows:

1. To maintain and improve the quality of surface water and groundwater within the city;
2. To mitigate the discharge of contaminated storm water runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4) and natural waters within the city;
3. To promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants into the storm sewers of the city;
4. To encourage recycling of used motor oil and safe disposal of other hazardous consumer products;
5. To facilitate compliance with state and federal standards and permits by owners of industrial and construction sites within the city;
6. To enable the city to comply with all federal and state laws and regulations applicable to its NPDES permit for storm water discharges.
7. To regulate the management of storm water for purposes of public safety, welfare and quality of life;
8. To manage and maintain local floodplains;
9. To maintain and improve the quality of surface waters within the city;
10. To facilitate compliance with city standards and permits by owners of developed, redeveloped and undeveloped properties within the city;
11. To enable the city to comply with all federal and state laws and regulations applicable to its NPDES permit for storm water discharges.

B. Administration. Except as otherwise provided herein, the director, or his appointed representative, shall administer, implement, and enforce the provisions of this chapter.

C. Authority. The Director may develop additional policies, criteria, specifications and standards in a Storm Water Manual and/or in other policy, master plans, watershed plans or guidance documents as necessary to effectively implement the requirements of this chapter. The policies, criteria and requirements of the Storm Water Manual and/or other policy, plans or guidance documents may be implemented and amended by the Director, are referenced in this chapter when required, and shall be enforceable, consistent with the provisions

contained in this chapter. A public meeting shall be held bi-annually to allow public comment on this chapter and the Storm Water Manual.

In the event that a violation of any provision of this chapter has occurred, or that work does not have a required plan or permit, or that work does not comply with an approved plan or permit, the city may issue a Notice of Violation to the permittee, plan holder or property owner and/or any other person or entity having responsibility for the property or properties where the violation occurred under the provisions of subsection .100 B. of this chapter.

In the spirit of the purposes defined above for this chapter and in the administration of these requirements, the Director may consider the cost-effectiveness of storm water management controls provided that such controls meet the water quality, channel erosion protection and flood protection requirements of this chapter or are waived or exempted in accordance with the criteria defined in this chapter.

D. Regulatory or legal conflicts. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or existing ordinances and regulations, except as specifically noted in this chapter. However, where the provisions of this ordinance and another regulation conflict or overlap, that provision which is more restrictive or imposes higher standards or requirements shall prevail.

E. Abbreviations. The following abbreviations when used in this chapter shall have the designated meanings:

| | | |
|---|---|---|
| BMP | - | Best Management Practices |
| CFR | - | Code of Federal Regulations |
| CLOMR | - | Conditional Letter of Map Revision |
| EPA | - | U.S. Environmental Protection Agency |
| FEMA | - | Federal Emergency Management Agency |
| HHW | - | Hazardous Household Waste |
| KAR | - | Kansas Administrative Regulations |
| KSA | - | Kansas Statutes Annotated |
| LOMR | - | Letter of Map Revision |
| mg/l | - | Milligrams per liter |
| MS4 | - | Municipal Separate Storm Sewer System |
| NOI | - | Notice of Intent |
| NOT | - | Notice of Termination |
| NPDES | - | National Pollutant Discharge Elimination System |
| OCI | - | Office of Central Inspection |
| PST | - | Petroleum Storage Tank |
| SWP3 | - | Storm Water Pollution Prevention Plan |
| TMDL | - | Total Maximum Daily Load |
| USC | - | United States Code |

F. Definitions. Unless a provision explicitly states otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated.

1. "As-built plan" means a drawing showing the actual state of permanent storm water facilities as installed.

2. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

3. "Best management practices (BMP)" means schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States or the city's MS4 and includes both temporary measures used during construction and permanent measures that are constructed in accordance with the provisions of this ordinance. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas. The BMPs required in this chapter will be sufficient to

prevent or reduce the likelihood of pollutants entering storm sewers, ditches, or ponds.

4. "City" means the City of Wichita.

5. "Commencement of construction" means the disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

6. "Commercial" means pertaining to any business, trade, industry or other activity engaged in for profit.

7. "Construction general permit" refers to the *Kansas General Permit for Storm water Discharges from Construction Sites*.

8. "Contractor" means any person or firm performing construction work at a construction site, including any general contractor and subcontractors. Also includes, but is not limited to, earthwork, paving, building, plumbing, mechanical, electrical, landscaping contractors, and material suppliers delivering materials to the site.

9. "Development" or "new development" means undisturbed property where improvements are planned or intended that will result in land disturbance activities or impervious areas either during or after construction.

10. "Director" means the person appointed to the position of Public Works and Utilities Director by the City Manager of the City, or his/her duly authorized representative. Authorized representatives can include, but are not limited to, the City Engineer, the Storm Water Engineer, and others, as so authorized.

11. "Discharge" means any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.

12. "Discharger" means any person who causes, allows, permits, or is otherwise responsible for a discharge, including without limitation any owner of a construction site or industrial facility.

13. "Domestic sewage" means human excrement, gray water (From home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveyances of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, that is free from industrial waste.

14. "Drainage plan" refers to the detailed water quantity and quality calculations and plan that are required for final plat approval or for issuance of a building permit.

15. "Earthwork" means the disturbance of soils on a site associated with clearing, grading, or excavation activities.

16. "Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency, the regional office thereof, any federal department, agency or commission that may succeed to the authority of the EPA, and any duly authorized official of EPA or such successor agency.

17. "Extremely hazardous substance" means any substance listed in the appendices to 40 CFR Part 355, Emergency Planning and Notification.

18. "Facility" means any building, structure, installation, process, or activity from which there is or may be discharge of a pollutant.

19. "Fertilizer" means a substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers.

20. "Final stabilization" means the status when all soil disturbing activities at a site have been completed. This would establish a uniform perennial vegetative cover with a density of seventy percent coverage for unpaved areas and those not covered by permanent structures or equivalent permanent stabilization measures (by employing riprap, gabions, or geotextiles).

21. "Fire protection water" means any water, and any substances or materials contained therein, used by any person to control or extinguish a fire, or to inspect or test fire equipment.

22. "Garbage" means putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

23. "Harmful quantity" means the amount of any substance that will cause a violation of a State Water Quality Standard or any adverse impact to the city's drainage system.

24. "Hazardous household waste (HHW)" means any material generated in a household (including single and multiple residences) by a consumer which, except for the exclusion provided in 40 CFR Section 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.

25. "Hazardous substance" means any substance listed in Table 302.4 of 40 CFR Part 302.

26. "Hazardous waste" means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

27. "Hazardous waste treatment, disposal, and recovery facility" means all contiguous land, and structures, other appurtenances and improvements on the land used for the treatment, disposal, or recovery of hazardous waste.

28. "Impervious area" or "impervious cover" means the number of square feet of hard surface areas which either prevent or retard the entry of water into soil mantle, as it entered under natural conditions as undisturbed property, and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as undisturbed property, including, but not limited to, roofs, roof extensions, patios, porches, driveways, sidewalks, pavement, athletic courts, and compacted dirt or graveled areas.

29. "Individual building sites" means and includes sites of building construction or earthwork activities that are not a part of a new subdivision development and any individual lot within a newly developing subdivision.

30. Industrial General Permit. See "Kansas General Permit for Storm water Discharges Associated with Industrial Activity."

31. "Industrial waste" means any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade or business.

32. "Industry" means and includes: (a) municipal landfills; (b) hazardous waste treatment, disposal, and recovery facilities; (c) industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, U.S.C. Section 11023; industrial facilities required to obtain NPDES storm water discharge permits due to their Standard Industrial Classification or narrative description; and (d) industrial facilities that the director determines are contributing a substantial pollutant loading to the MS4, which are sources of storm water discharges associated with industrial activity.

33. "Kansas General Permit for Storm water Discharges Associated with Industrial Activity (or industrial general permit)" means the industrial general permit issued by

KDHE and any subsequent modifications or amendments thereto, including group permits.

34. "Kansas General Permit for Storm water Discharges from Construction Sites (or construction general permit)" means the construction general permit issued by KDHE and any subsequent modifications on amendments thereto, including group permits.

35. "Land disturbance" means the disturbance of soils on a site associated with clearing, grading, excavation, new development or redevelopment activities.

36. "Landfill" means an area of land or an excavation in which municipal solid waste is placed for permanent disposal, and which is not a land treatment facility, a surface impoundment, or an injection well.

37. "Municipal separate storm sewer system (MS4)" means the system of conveyances, (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the city and designed or used for collecting or conveying storm water, and which is not used for collecting or conveying sewage.

38. "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial waste.

39. "NPDES permit" means for the purpose of this chapter, this is a permit issued by EPA or the state of Kansas that authorizes the discharge of storm water pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis

40. "Nonpoint source" means the source of any discharge of a pollutant that is not a point source.

41. "Notice of intent (NOI)" means the notice of intent that is required by either the industrial general permit or the construction general permit.

42. "Notice of termination (NOT)" means the notice of termination that is required by either the industrial general permit or the construction general permit.

43. "Notice of violation" means a written notice provided to the owner or contractor detailing any violations of this chapter and any clean-up action expected of the violators.

44. "OCI" means office of central inspection and includes its superintendent and his or her authorized representatives.

45. "Off-line storm water management facility" means a storm water management facility that receives storm water runoff only from the property upon which it is located, and receives no storm water runoff from other adjacent or upstream properties. Off-line storm water management facilities should not be confused with off-line storm water treatment, which is defined and described in detail in the Storm Water Manual.

46. "Oil" means any kind of oil in any form, including, but not limited to: petroleum, fuel oil, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with waste.

47. "On-line storm water management facility" means a storm water management facility that receives storm water runoff from the property upon which it is located, and which also receives storm water runoff from other upstream properties. On-line storm water management facilities should not be confused with on-line storm water treatment, which is defined and described in detail in the Storm Water Manual.

48. “Outfall” or “storm water outfall” means the terminus of the storm water system for a development or redevelopment where the storm water runoff is released into a larger public or private storm water management system, or into a stream, waters of the United States or other water body.

49. “Owner” means the person who owns a facility, part of a facility, or land.

50. “Person” means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, government entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, state, and local government entities.

51. “Pesticide” means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator, defoliant, or desiccant.

52. “Petroleum product” means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle, or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel.

53. “Petroleum storage tank (PST)” means any one or combination of aboveground or underground storage tanks that contain petroleum product and any connecting underground pipes.

54. “Point source” means any discernable, confined, and discrete conveyance including, but not limited to: any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

55. “Pollutant” means dredged spoil, spoil waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, yard waste, hazardous household wastes, used motor oil, anti-freeze, litter, and industrial, municipal, and agricultural waste discharged into water and/or any substance, debris, matter that may be carried downstream by storm water runoff, and/or any substance or matter that may be dissolved in storm water runoff.

56. “Pollution” means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

57. “Qualified personnel” means persons who possess the required certification, license, or appropriate competence, skills, and ability as demonstrated by sufficient education, training, and/or experience to perform a specific activity in a timely and complete manner consistent with the regulatory requirements and generally accepted industry standards for such activity.

58. “Redevelopment” or “redevelopment site” means a change to previously existing improved property, including but not limited to the demolition or building structures, filling, grading, paving, or excavating.

59. “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal separate storm sewer system (MS4) or the waters of the United States.

60. “Reportable quantity (RQ)” means, for any hazardous substance, the quantity established and listed in Table 302.4 of 40 CFR Part 302; for any extremely hazardous substance, the quantity established in 40 CFR Part 355.

61. "Rubbish" means nonputrescible solid waste, excluding ashes, that consist of: (a) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (b) noncombustible waste materials, including grass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (one thousand six hundred to one thousand eight hundred degrees Fahrenheit).

62. "Sanitary sewer" means the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the city sewage treatment plant (and to which storm water, surface water, and groundwater are not intentionally admitted).

63. "Septic tank waste" means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

64. "Service station" means any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from pumps.

65. "Sewage", means the domestic sewage mid and/or industrial waste that is discharged into the city sanitary sewer system and passes through the sanitary sewer system to the city sewage treatment plant for treatment.

66. "Site" means the land or water area where development or redevelopment is physically located or being conducted, including lands adjacent to the development that is not subject to land disturbing activities but that is used as a staging area or for other uses in connection with the new development or redevelopment.

67. "Solid waste" means any garbage, rubbish, refuse, sludge from a waste treatment plait, water supply treatment plant, or air pollution control facility, and other discarded material including: solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, agricultural operations, and community and institutional activities.

68. "Special flood hazard area" means an area having special flood hazards and shown on a Flood Hazard Boundary Map (FHBM), Flood Insurance Rate Map (FIRM) or Flood Boundary and Floodway Map (FBFM) for a community issued by the Federal Emergency Management Agency (FEMA).

69. "State" means the state of Kansas.

70. "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

71. "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant which is listed as one of the categories of facilities in 40 CFR Section 122.26(b)(14), and which is not excluded from EPA's definition of the same term.

72. "Storm water management facility" or "storm water control" means any structure or installation used to manage storm water quality, flow rate, or volume.

73. "Storm Water Manual" refers to the latest version, as amended, of the document on file with the Director of Public Works entitled *City of Wichita/Sedgwick County Storm Water Manual*.

74. "Storm water pollution prevention plan (SWP3)." Means a plan required by an NPDES storm water permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in storm water discharges associated with construction or other industrial activity.

75. “Subdivision development” means and includes activities associated with the platting of any parcel of land into two or more lots and includes all construction taking place thereon.

76. “Ten-percent (10%) point” or “10% point” means the location on a stream where the drainage area that is controlled by a storm water management facility comprises ten-percent (10%) of the total drainage area at that location. Stated differently, the 10% point is the location in the storm water system downstream from a new development or redevelopment where the total area draining to that location equals ten (10) times the drainage area of the new development or redevelopment site. It is important to note that multiple 10% points may be identified for a single new development or redevelopment site, if the site discharges to multiple, separate streams, waters of the U.S. or other bodies of water.

77. "Undisturbed property" means real property which has not been altered from its natural condition so that the entrance of water into the soil mantle is prevented or retarded through changes to the topography or soils.

78. “Used oil (or used motor oil)” means any oil that has been refined from crude oil a synthetic oil that, as a result of use, storage, or handling; has become unsuitable for its original purpose because of impurities or the loss of original properties.

79. “Water of the state (or water)” means any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

80. “Water quality standard” means the designation of a body or segment of surface water in the state for desirable uses and the narrative an numerical criteria deemed by the state to be necessary to protect those uses.

81. “Waters of the United States” means all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and the flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any water within the federal definition of “waters of the United States” at 40 CFR Section 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the Federal Clean Water Act.

82. “Watershed” means the cumulative area that drains to a common point.

83. “Watershed plan” means an engineering and planning study for the drainage system and/or land areas of a watershed that may include a plan for storm water management in the watershed. Watershed plans can include, but are not limited to, the analysis of flooding problems, water quality problems, potential storm water capital improvements, land use patterns, and regulatory issues for existing and potential future land use conditions and address solutions to these problems.

84. “Wetland” means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

85. “Yard waste” means leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

SECTION 2. Section 16.32.080 of the Code of the City of Wichita, Kansas, shall be amended to read as follows:

**Sec. 16.32.080. Compliance monitoring.**

A. Right of Entry. The Director, the Superintendant of OCI and the City Health Officer, or their authorized representatives, shall have the right to enter the premises of any person discharging storm water to the municipal separate storm sewer system (MS4) or to waters of the United States at any reasonable time to determine if the discharger is complying with all requirements of this chapter, and with any state or federal discharge permit, limitation, or requirement. Dischargers shall allow the inspectors ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties.

B. Records. Subject to the requirements of subsection A, dischargers shall make available, upon request, any SWP3's, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, notice of intent, and any other records, reports, and other documents related to compliance with this chapter and with any state or federal discharge permit.

C. Sampling. The Director shall have the right to set up on the discharger's property such devices that are necessary to conduct sampling of storm water discharges.

SECTION 3. Section 16.32.091 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**Sec. 16.32.091. Storm Water Quality Management Standards**

A. Applicability.

1. Water quality treatment and downstream channel protection shall be required of owners of new developments and redevelopments that causes a land disturbance greater than or equal to one (1) acre, including projects that cause a land disturbance less than one (1) acre that are part of a larger common plan of development or sale.

2. The requirements of 16.32.091 shall not apply to:

   i. new developments or redevelopments that have a construction plan approved by January 1, 2011 and will have completed construction of all storm water management facilities within 90 days of January 1, 2011. This does not exempt such new developments from water quality management regulations that may be required in the future by EPA or KDHE; or,

   ii. redevelopment projects that consist solely of ordinary maintenance activities, remodeling of buildings on the existing foundation, resurfacing (milling and overlay) of existing paved areas, and exterior changes or improvements.

B. Water Quality Treatment Standard for New Developments. Storm water runoff from applicable new developments must be treated for water quality prior to discharge from the development site in accordance with the storm water treatment standards and criteria provided in the Storm Water Manual.

C. Water Quality Treatment Standard for Redevelopments. Owners of applicable redevelopments must adhere to one of the following requirements.

1. The total impervious cover of the property after redevelopment shall be reduced by at least twenty-percent (20%) from the total impervious cover of the property prior to the proposed redevelopment.
2. Storm water runoff from at least thirty percent (30%) of the site's existing impervious cover and for one-hundred percent (100%) of any new land disturbance that will result from the proposed redevelopment shall be treated for water quality prior to discharge from the redevelopment site in accordance with the storm water treatment standards and criteria provided in the Storm Water Manual.
3. The owner shall provide storm water controls at an alternative location in the same watershed as the proposed redevelopment. The level of storm water control provided shall be equivalent to what would have been provided at the proposed redevelopment for either requirement 1 or 2 above, at a minimum.
4. In agreement and partnership with the City of Wichita, the owner shall provide engineering design and/or construction activities to address one or more known downstream water quality or channel erosion issues located within the same watershed as the proposed redevelopment, through stream restoration and/or other off-site remedies approved by the Director.
5. The owner shall pay a fee in-lieu-of water quality control and channel protection control, in an amount to be determined by the city in accordance with the in-lieu-of fee schedule as adopted by the City Council of the City of Wichita per the watershed plan which covers the redevelopment.
6. Any combination of (1) through (5) above may be acceptable to the City of Wichita or other solution(s) approved by the Director that meets the intent of this chapter.

D. Downstream Stabilization Standard. Downstream long-term channel protection shall be provided for applicable new developments and redevelopments prior to discharge from the new/redevelopment site in accordance with the downstream stabilization standards and criteria provided in the Storm Water Manual.

SECTION 4. Section 16.32.092 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

**Sec. 16.32.092. Storm Water Quantity Management Standards**

A. Applicability. Storm water runoff peak discharge analysis and control shall be required for new developments and redevelopments that will create or add one (1) acre or greater of impervious cover, including projects that have less than one (1) acre in impervious cover that are part of a larger common plan of development or sale that will result in one (1) acre or greater of impervious cover.

B. Water Quantity Management Standard. Storm water runoff peak discharge analysis and control shall be required for applicable new developments or redevelopments in accordance with the storm water quantity standards and criteria provided in the Storm Water Manual.

SECTION 6. Section 16.32.093 of the Code of the City of Wichita, Kansas, shall be created to read as follows**:**

**Sec. 16.32.093. Other Storm Water Management Requirements**

A. Applicability. Section 16.32.093 is applicable to new developments and redevelopments that are required to comply with section 16.32.091 and/or section 16.32.092.

B. Alternative Standards for Individual Watersheds. Alternative storm water management standards, either lesser or greater than those specified in this chapter, may be required by the Director in those areas or watersheds where water quality, flooding or erosion problems are known to exist, or in individual watersheds where a watershed plan or storm water master plan, approved by the City Council of the City of Wichita, specifies such alternative standards.

C. Other Requirements for Storm Water Discharges.

1. Storm water discharges shall be managed in consideration of the erosion control measures detailed in the Storm Water Manual.

2. Any discharge of storm water runoff to groundwater must meet all applicable local, State and Federal requirements, permits, plans and programs. The owner is responsible for complying with all local State and Federal permits that are applicable to the site.

D. Requirement to Stabilize Banks. Banks of all streams, channels, ditches and other earthen storm water conveyances shall be left in a stabilized condition upon completion of the new development or redevelopment. No actively eroding, bare or unstable vertical banks shall remain after completion of construction.

E. Requirement to Use the Storm Water Manual. All storm water facilities and systems, including those designed and constructed for water quality treatment, channel protection, and peak discharge control shall be designed, constructed and maintained in accordance with the criteria, standards, and specifications presented in this chapter and in the Storm Water Manual. The standards for water quality treatment, downstream channel protection and peak discharge analysis and control shall be achieved through the use of one or more storm water quality management facilities that are designed and constructed in accordance with the design criteria, guidance, and specifications provided in the Storm Water Manual. Methods, designs or technologies for storm water quality management facilities that are not provided in the Storm Water Manual may be submitted for approval by the city if it is proven that such methods, designs or technologies will meet or exceed the storm water treatment standards set forth in the Storm Water Manual and this ordinance. Proof of such methods, designs, or technologies must meet the minimum testing criteria set forth in the Storm Water Manual.

F. Storm Water Facilities on Public Property. Storm water management facilities shall not be installed within public rights-of-way or on public property unless a permit has been issued by the city engineer.

G. Access Easement Required. In order to provide access to storm water and/or water quality volume reduction areas by inspection and maintenance personnel, vehicles and equipment, the property owner(s) shall provide an access and maintenance easement in accordance with the requirements and policies presented in the Storm Water Manual.

SECTION 7. Section 16.32.094 of the Code of the City of Wichita, Kansas, shall be created to read as follows**:**

**Sec. 16.32.094. Waivers and Exemptions from Storm Water Management Standards for New Developments**

A. Exemptions. Owners of properties where the following activities are undertaken are exempt from the requirements of sections 16.32.091, 16.32.092, 16.32.093 and 16.32.094 of this chapter.

1. Minor land disturbing activities at individual locations, such as gardening, building or grounds maintenance and landscaping, provided that the activity does not result in equal to or greater than one (1) acre of land disturbance;

2. Individual utility service connections, unless such activity is carried-out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a grading permit would otherwise be required by regulation;

3. Installation, maintenance or repair of individual septic tank lines or drainage fields, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a grading permit would otherwise be required by the regulation;

4. Installation of posts or poles;

5. Farming activities;

6. Unplanned emergency work and emergency repairs necessary to protect life or property.

B. Waivers. All or some of the storm water management standards required in section 16.32.091 and/or 16.32.092 of this chapter may be waived by the Director under the following circumstances.

1. Existing Downstream Facilities. A waiver may be provided for one or more storm water management standards if the waived standard(s) are met by discharging the storm water runoff to an existing storm water management facility, whether public or private, that is:

i. provided in accordance with an existing watershed plan that is approved by the city; and,

ii. already in existence, or will be in existence at the time of construction of the new development or redevelopment; and,

iii. designed, constructed and maintained to provide a level of storm water control that is equal or greater than that which would be afforded by on-site storm water management facilities.

iv. If a waiver is provided for this reason, the owner of the new development or redevelopment will be required to pay a fee in-lieu-of water quality control, channel protection control and peak discharge control, in an amount to be determined by the city in accordance with an adopted in-lieu-of fee schedule as adopted by the City Council of the City of Wichita per the watershed plan which covers the new development or redevelopment.

2. Adverse Impact. A waiver may be provided if engineering studies determine that installing a storm water management facility in order to meet the storm water management standard being considered for waiver will cause adverse impact to water quality, or cause increased channel erosion, or downstream flooding.

3. Technical Criterion. A waiver may be provided if the technical criterion required to waive the storm water management standard, as presented in the Storm Water Manual, is met. In any case, a waiver is subject to satisfaction of the following requirements, which shall be shown in drainage plans submitted for the new development or redevelopment:

i. the waiver applicant shall provide an engineering study, as defined in 16.32.094.C that proves the adequacy of downstream or shared off-site storm water management facilities to offer equivalent or greater protection than the standard(s) for which a waiver is requested; and,

ii. the waiver applicant obtains any necessary CLOMR prior to construction, and a LOMR upon completion of construction; and,

iii. the waiver applicant obtains all State and Federal permits that may be applicable to the site.

C. Engineering Study Required. In the event that a waiver from storm water management control requirements is requested, the adequacy of downstream or shared off-site storm water

management facilities to control storm water runoff shall be determined, reviewed and approved by an engineering study that is performed in accordance with the calculation methods presented in the Storm Water Manual. The engineering studies shall be performed at the expense of the owner(s) of the proposed new development or redevelopment, unless a study has already been or is being performed by the city as part of a watershed plan or other land use plan.

SECTION 8. Section 16.32.095 of the Code of the City of Wichita, Kansas, shall be created to read as follows**:**

**Sec. 16.32.095. General Requirements for Storm Water Design Plans**

A. Storm water design information shall be submitted as part of the preliminary plat, final plat and construction plans, in accordance with the site development process established by the city.

B. A building permit shall not be issued for the land development activity until the required storm water design information and corresponding plans are approved by the city.

C. At a minimum, the storm water design information submitted at each stage of the city development process shall include the specific required elements that are listed and/or described in the Storm Water Manual, and shall be prepared in accordance with the policies, guidance and calculation methods (unless equivalent methods are pre-approved by the city) presented in the Storm Water Manual. Additional storm water design information may be required as necessary to allow an adequate review of the existing or proposed site conditions.

D. The submittal of storm water design information shall be subject to the requirements set forth in the minimum subdivision regulations, zoning ordinance, or other city regulations.

E. Storm water design information shall be prepared under the supervision of and stamped by a professional engineer licensed to practice in the State of Kansas.

F. The portions of the new development or redevelopment on which storm water management facilities and systems are located shall be shown on the preliminary and final plats for all residential subdivisions and recorded with the plat as permanent reserves or easements consistent with the policies stated in the Storm Water Manual. Non-residential plats and/or subdivisions having a total area less than or equal to fifteen (15) acres shall be required to demonstrate the viability of proposed storm water management facilities and systems. In such cases, the Director is authorized to allow contingent dedications for storm water facilities providing that the owner/developer enters into an agreement with the City guaranteeing the construction of the said facilities in accordance with a schedule approved in the said agreement.

G. Conformity to the Approved Plans.

1. Grading designs shown on approved master grading plans and the design of storm water facilities and controls shown on approved design plans shall be adhered to during grading and construction activities. Under no circumstance is the owner or operator of land development activities allowed to deviate from the approved plans without prior approval of a plan amendment by the city.

2. Grading and storm water design plans shall be amended to meet all local ordinances and standards if the proposed site conditions change after plan approval is obtained, or if it is determined by the city during the course of grading or construction that the approved plan is inadequate.

H. Duty to Provide an Operations and Maintenance Plan.

1. An Operations and Maintenance Plan shall be included with the storm water design information submitted with the construction plan. The Operations and Maintenance Plan shall include the required operation and maintenance provisions for each storm water

management facility and water quality volume reduction area that is serving, or will serve, the development or redevelopment. The Operations and Maintenance Plan shall include all of the required elements that are listed and/or described in the Storm Water Manual, and shall be prepared in accordance with the policies and guidance provided in the Storm Water Manual.

2. The Operations and Maintenance Plan shall include an executed legal document entitled "Restrictive Covenants for Storm Water Facilities" (Covenants). The property owner shall record the Covenants with the deed for the property. The location of the storm water management facility(s) and water quality volume reduction areas, the recorded location of the Covenants document, and inspection and maintenance guidance outlining the property owner's responsibility shall be shown on a plat that is recorded for the property

I. Duty to Provide Storm Water Construction Information on As-Built Drawings.

1. Prior to the release of the performance bond, complete As-Built Drawings shall be provided to the Director, and shall include sufficient design information to show that the storm water facilities will operate as designed under the approved drainage plan.

2. The As-Built Drawings shall include the required elements that are listed and/or described in the Storm Water Manual, and shall be prepared in accordance with the policies and guidance provided in the Storm Water Manual.

3. The As-Built Drawings shall be prepared and stamped by a professional engineer licensed to practice in the State of Kansas.

SECTION 9. Section 16.32.096 of the Code of the City of Wichita, Kansas, shall be created to read as follows**:**

**Sec. 16.32.096. Maintenance and Inspection of Storm Water Drainage Paths and Controls.**

A. Duty to Inspect and Maintain Storm Water Systems and Controls. Property owners shall at all times properly maintain and shall at intervals in accordance with the Operations and Maintenance Plan inspect all storm water facilities, systems, conveyances, pipes, channels, ditches, swales, inlets, catchbasins, water quality volume credit areas, and other facilities and systems of storm water treatment and control (and related appurtenances) so that they operate at their full function. Maintenance and inspection of privately-owned storm water management facilities, systems, conveyances, pipes, channels, ditches, swales, inlets, catchbasins, water quality volume credit areas, and other facilities and systems of storm water treatment and control (and related appurtenances) shall be performed at the expense of the owner(s) of such facilities.

B. Duty to provide inspection reports. After construction of each BMP on the property is complete, property owners shall provide to the Director on a bi-annual basis a completed and signed copy of the inspection report for each BMP that is included with the Operations and Maintenance Plan for the property. The inspection report is due every two years no later than the date (month and day) of approval of the as-built plan for the property.

C. Duty to Preserve Approved Grading Designs. Re-grading an individual lot or lots, or portions of a lot or lots, in a manner that is not accordance the approved master grading plan, such that the direction(s) of storm water runoff is altered from the direction that would occur under the approved master grading plan, shall be considered a violation of this chapter.

D. Duty to Preserve Existing Drainage Paths. Blockage of a channel, ditch, stream or any other drainage path or storm water system appurtenance that is located in a storm water easement or drainage easement shall be considered a violation of this chapter.

E. Pollutant Removal for Maintenance. The removal of pollutants, sediment and/or other debris for the purpose of maintenance of storm water management facilities shall be performed in accordance with all city, State, and Federal laws.

F. Inspection During Grading or Construction.

1. During grading or construction, the property owner or his/her appointed designee shall conduct site inspections in accordance with the requirements stated in the Kansas General Permit for Storm Water Discharges from Construction Sites. The property owner will also ensure construction conformance with the approved drainage and construction plans. More stringent inspection requirements may be imposed as necessary for purposes of water quality protection and public safety and to pursue total conformance of the site with the approved plans.

2. The following areas and items must be inspected throughout grading and construction to ensure that land disturbance activities do not cause adverse impacts to the performance of storm water management facilities and/or water quality volume reduction areas:

i. all unstabilized areas that drain to a permanent storm water facility or water quality volume reduction area;

ii. temporary and permanent storm water management facilities; and,

iii. all erosion prevention and sediment control measures.

G. Inspection After Construction. Once the site has been stabilized and construction has ceased, the property owner or his/her appointed designee shall conduct routine inspections for the storm water management facilities and water quality reduction areas, based on the guidance provided in the Operations and Maintenance Plan and the requirements of the "Restrictive Covenants for Storm Water Facilities" for the property, as set forth in section 16.32.095.H.2. of this ordinance.

H. Inspection Records. Property owners shall make available upon request any self-inspection reports, monitoring/maintenance records, compliance evaluations, notices of intent, and any other records, reports, receipts, and other documents related to compliance with this chapter and with any related local, State or Federal permit.

I. Right-of-Entry. The Director or his/her designee shall have the right to enter the premises of any person discharging storm water to the MS4 or to waters of the United States at any reasonable time to determine if the discharger is complying with all requirements of this chapter, and with any State or Federal discharge permit, limitation, or requirement. Dischargers shall allow the Director or his/her designee ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties. Failure of a property owner to allow entry onto a property for the purposes set forth in this section shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy, and/or civil penalties and/or damage assessments in accordance with the enforcement provisions of this chapter.

J. Inspection and Notice by City. The city may periodically inspect these privately owned storm water controls. If the facility is not operating as shown in the approved As-Built Drawing, or should conditions be found that cause or may cause the pollution of downstream receiving waters or the erosion of downstream channels or the flooding of adjacent or downstream properties, the Director may issue a notice of violation in accordance with the enforcement provisions stated in this chapter and shall notify the property owner(s) of the potential violation(s). The Director may order the property owner(s) to perform corrective actions as are necessary to facilitate the proper operation of these facilities for the purposes of flood prevention, channel protection, water quality treatment and/or public safety, and/or to ensure compliance with jurisdictional regulatory conditions.

K. Failure to Perform Corrective Actions. If property owner(s) fail to make the necessary corrective actions in the timeframe specified in the enforcement provisions of this chapter, the city is authorized to perform the corrective actions at the expense of the owner(s). If the owner(s) fail to reimburse the city for the corrective actions upon demand, the city may

assess the cost of the corrective actions to the owner and initiate any collection proceedings authorized by law.

L. Access to Adjacent Properties. This ordinance does not authorize access by a property owner or site operator to private property adjacent to or downstream of the owner's property. Arrangements concerning removal of sediment or pollutants on adjoining property must be settled by the owner or operator with the adjoining landowner.

SECTION 10. Section 16.32.097 of the Code of the City of Wichita, Kansas, shall be created to read as follows**:**

**Sec. 16.32.097. Special Provisions for Open Channels.**

A. No structure or land shall hereafter be developed, redeveloped, located, extended, converted, or structurally altered without full compliance with the terms of this section, the City of Wichita Floodplain Management Ordinance (Chapter 27.06) and other applicable local, state or federal regulations.

B. Requirements for vegetative buffer zones or maintenance access areas that have been established in approved and adopted watershed plans have priority over the provisions of this section.

C. Closure of open channels. Existing or proposed open channels may be enclosed if a maintenance plan approved by the City is provided; if the closed conduit conforms to the design criteria set in the Storm Water Manual for minimum slopes, self-cleaning velocities, and maintenance access points.

D. Access Easement Required. All open channels must have a minimum twenty (20) foot wide maintenance access on each side of the stream as measured from the top-of-bank on each side of the stream, except as required by KSA 24-126 as amended, and KAR 5-45-12 as amended for "streams" defined in KAR 5-45-1 as amended.

SECTION 11. Section 16.32.100 of the Code of the City of Wichita, Kansas, shall be amended to read as follows**:**

**Sec. 16.32.100. Enforcement actions.**

A. The discharge of, or potential discharge of, any pollutant to the MS4 or waters of the United States and/or the failure to comply with the provisions of this chapter and/or the failure to comply with and directive, citation, or order issued under this chapter; are violations of this chapter for which enforcement action may be taken.

B. Prior to taking any enforcement action as specified in this section, a violator will be issued a notice of violation except when, in the opinion of the Director, an owner or contractor has repeatedly ignored the requirements of this chapter and has not made any reasonable intent to comply with these provisions. When issued, the notice of violation will detail the nature of the violation, actions to be taken to remedy the violation, actions to be taken to clean-up any pollutants, and any specific time periods within which to accomplish said actions. Failure to successfully comply with the notice of violation may result in enforcement action.

C. The enforcement actions to be taken under this chapter, as provided in Section 16.32.110 are as follows:

1. Criminal Penalty. Any person violating any provision of this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars. Each and every day during which any violation of any provision of this chapter is committed, continue, or permitted is a separate violation.

2. Stop Work Order. Notwithstanding other penalties provided by this chapter, whenever the Director or OCI, or their designees, finds that any owner or contractor on a construction site has violated, or continues to violate, any provision of this chapter or any order issued thereunder, the Director or OCI may after reasonable notice to the owner or contractor issue a stop work order to the owner and contractors by posting such order at the construction site. Said order shall also be distributed to all city departments and divisions whose decisions may affect any activity at the site. Unless express written exception is made, the stop work order shall prohibit any further construction activity at building permit, grading permit, site development plan approval, or any other approval necessary to commence or to continue construction or to assume occupancy at the site. Issuance of a stop work order shall not be a bar against, or a prerequisite for, taking any other action against the violator. Failure to comply with the requirements of any stop work order is a violation of this chapter.

3. Administrative Penalty Process.

    a. When the Director finds that any person has violated or continues to violate the provisions set forth in this chapter, or the person's NPDES permit or any order issued thereunder, the Director may issue an order for compliance to the person. Such orders may contain any requirements as might be reasonably necessary and appropriate to address noncompliance including, but not limited to, the installation of best management practices, additional self-monitoring, and/or disconnection from the MS4.

    b. The Director is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any person responsible for noncompliance. Such orders shall include specific action to be taken by the person to correct the noncompliance within a time period specified by the order.

    c. Notwithstanding any other remedies or procedures available to the city, any person who is found to have violated any provision of this chapter, or any NPDES permit or any order issued under this chapter, may be assessed an administrative penalty as follows:

        1. The minimum administrative penalty for any violation shall be no less than five hundred dollars ($500) per day the violation is maintained and not more than two thousand five hundred dollars ($2,500) per day for each day the violation is maintained;

        2. Failure to obtain required NPDES permit: up to two thousand five hundred dollars ($2,500) per violation;

        3. Failure to prepare stormwater pollution prevention plan: up to two thousand five hundred dollars ($2,500) per violation;

        4. Failure to install best management practices: up to two thousand five hundred dollars ($2,500) per violation;

        5. Failure to maintain best management practices: up to two thousand five hundred dollars ($2,500) per violation;

        6. Failure to perform required sampling and testing or provide testing reports: up to one thousand dollars ($1,000) per violation.

        7. Commencement of construction without an approved drainage plan: up to two thousand five hundred dollars ($2,500) per day of noncompliance;

        8. Failure to comply with approved drainage plan: up to two thousand five hundred dollars ($2,500) per day of noncompliance;

9. Failure to maintain storm water management facilities: up to two thousand five hundred dollars ($2,500) per day of noncompliance.

d. Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation.

e. Separate but multiple violations (except for violations under subsection C.3.d) by the same person(s) on one or more sites within any period of twelve consecutive months shall be cause to double the amount of penalty assessed under section C.3.c above for each violation after the first.

f. Upon assessment of any administrative penalty, the city will bill the violator for said charge and the Director shall have such collection remedies as are available at law.

SECTION 12. Section 16.32.110 of the Code of the City of Wichita, Kansas, shall be amended to read as follows:

**Sec. 16. 32.110. Applicability of enforcement actions.**

A. Illegal dumping will be subject to criminal penalties process.

B. Illegal connections will be subject to either the criminal or administrative penalty processes.

C. Industrial violations will be subject to the administrative penalty process.

D. Individual building sites not requiring a federal or state NPDES permit will be subject to the criminal penalty and the stop work order processes; however, any owner or contractor of such site found with multiple violations of this chapter will also be subject to the administrative penalty process.

E. Individual building sites requiring a federal or state NPDES permit will be subject to the administrative penalty process.

F. Subdivision developers in subdivisions not requiring a federal or state NPDES permit will be subject to the criminal penalty and stop work order processes; however, any such developer found with multiple violations of this chapter will also be subject to the administrative penalty process.

G. Subdivision developers of subdivisions requiring a federal or state NPDES permit will be subject to the administrative penalty process.

H. City contractors and utility companies working on projects not requiring a federal or State NPDES permit will be subject to the criminal penalty process.

I. City contractors and utility companies working on projects requiring federal or state NPDES permit will be subject to the administrative penalty process.

J. Property owners, subdivision developers, commercial and industrial developers, and city contractors working on new developments and redevelopments requiring compliance with the City of Wichita storm water quality or quantity management standards will be subject to the criminal penalty, stop work order and administrative penalty processes.

K. Owners of storm water management facilities and systems that are required to be maintained in accordance with an approved Operations and Maintenance Plan will be subject to the criminal penalty and administrative penalty processes.

SECTION 13. Section 16.32.120 of the Code of the City of Wichita, Kansas, shall be amended to read as follows**:**

**Sec. 16. 32.120. Hearing and appeal.**

A. Persons who desire to appeal a requirement, violation or penalty invoked under this chapter may request a hearing and appeal as follows:

1. Any party affected by a penalty, order, directive or determination issued or made, pursuant to this chapter may, within seven days of the issuance of such penalty, order, directive, or determination request a hearing before the Director to show cause why such should be modified or made to not apply to such person. Such request shall be in writing and addressed to the Director of Public Works and Utilities at 455 North Main Street, Wichita, Kansas, 67202. The Director or his designee shall hold the requested hearing as soon as practical after receiving the request, at which time the person affected shall have an opportunity to be heard. At the conclusion of the hearing, the Director shall issue a written response to the person requesting the hearing affirming, modifying, or rescinding the penalty, order, directive, or determination issued or made.

2. Any party aggrieved by the decision of the Director may appeal such decision to the City Council within seven days of receipt of the decision by filing notice of appeal with the city clerk. Upon hearing, the City Council may affirm, modify, or reverse the decision of the Director.

SECTION 14. Section 16.32.130 of the Code of the City of Wichita, Kansas, shall be amended to read as follows:

**Sec. 16. 32.130. Enforcement personnel authorized.**

A. The following personnel employed by the city shall have the power to issue notices of violations, criminal citations and implement other enforcement actions under this chapter:

1. All deputies under the supervision of the Superintendent of the Office of Central Inspections;

2. All authorized personnel under the supervision of the Director of Public Works and Utilities;

3. All authorized personnel under the supervision of the City Health Officer.

SECTION 15. Sections 16.32.010, 16.32.080, 16.32.100, 16.32.110, 16.32.120, and 16.32.130 of the Code of the City of Wichita is hereby repealed.

SECTION 16. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon adoption and publication in the Official city newspaper.

PASSED by the governing body of the City of Wichita, Kansas this date_____.

_____

Carl Brewer, Mayor

Attest:

_____

Karen Sublett, City Clerk

Approved as to Form:

_____

Gary E. Rebenstorf, Director of Law

ORDINANCE NO. _____

AN ORDINANCE CREATING SECTIONS 2.12.1160, 2.12.1161, 2.12.1162, and 2.12.1163 OF THE CODE OF THE CITY OF WICHITA, PERTAINING TO MEMBERSHIP AND GOVERNANCE OF THE STORM WATER ADVISORY BOARD; AND REPEALING THE ORIGINALS OF THE SAME SECTIONS.

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

SECTION 1. Section 2.12.1160 of the Code of the City of Wichita shall read as follows:

2.12.1160 – Storm Water Advisory Board - Created

There is hereby created an advisory board to the City known as the Wichita Storm Water Advisory Board.

SECTION 2. Section 2.12.1161 of the Code of the City of Wichita shall read as follows:

2.12.1161 – Storm Water Advisory Board – Membership - Appointment – Terms

(a) Storm Water Advisory Board shall be composed of ten members (nine of which are voting members) each appointed for a period of two (2) years and/or until their successor is appointed and qualified. The member may serve multiple terms. In the event of death, resignation or other disqualification of any member, his or her successor shall be appointed to fill only the unexpired term created by such vacancy. Appointees shall be qualified by experience and/or education and have experience dealing with such issues as may, from time-to-time, come before the Board for consideration. The members shall be and selected by the following entities:

2.1 One Representative of Wichita Area Builders' Association (WABA)

2.2 One Representative of Certified Commercial Investment Member, Kansas Chapter (CCIM)

2.3 One Representative of Wichita Area Association of Realtors (WAAR)

2.4 One Representative selected from the collective memberships of the following organizations:

2.4.1 Sierra Club, Kansas Chapter of Southwind

2.4.2 RiverCity WRAPS

2.5 One Representative of Sedgwick County Public Works

2.6 One Representative of Wichita Public Works

2.7 One Representative of Kansas Department of Health & Environment, South Central District Watershed Field Coordinator (Ex Officio)

2.8 One Representative of Sedgwick County Storm Water Advisory Board (SMAB)

2.9 One Representative of Wichita Society of Professional Engineers (WSPE)

2.10 One Appointee of the Wichita City Manager

(b) The members shall receive no compensation for their services, but may be reimbursed for all necessary expenses incurred in the performance of their duties as members of such Board.

SECTION 3. Section 2.12.1162 of the Code of the City of Wichita shall read as follows:

2.12.1162 – Storm Water Advisory Board – Organization

The Board shall conduct meetings, elect officers, and adopt by-laws in accordance with the policy for boards and commissions. The City Manager shall provide the necessary staff support to insure that the Board receives informational support and professional and technical assistance necessary to carry on its duties and conduct its meetings.

SECTION 4. Section 2.12.1163 of the Code of the City of Wichita shall read as follows:

2.12.1163 – Storm Water Advisory Board – Duties

The SWAB shall advise the City Council and City Staff on matters pertaining to storm water management polices impacting new development, re-development, residential, and commercial construction within the City of Wichita and perform such other duties as may be requested by the City from time to time.

Any changes proposed to be made to the content of the City of Wichita Storm Water Management Ordinance, and directly associated Policies adopted to aid in the enforcement of the Ordinance, shall be reviewed by the Board in a timely manner and recommendations forwarded to the City Council for their consideration in discussion and adoption of any proposed changes.

The Director of Public Works shall have the option of utilizing the Board to review any proposed additions/deletion of provisions contained in the Wichita/Sedgwick County Storm Water Manual approved for use by the City in conjunction with the adoption of the Storm Water Management Ordinance, and such other matters as he may deem appropriate.

Any and all deliberations and actions engaged in by the Board shall be done in consideration of provisions contained in the City of Wichita's Municipal Separate Storm Water Sewer (MS4) Permit issued to the City by the Kansas Department of Health and Environment, including direct decrees to the City by the Environmental Protection Agency.

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

PASSED AND ADOPTED at Wichita, Kansas, this _____ day of _____, 2008.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, City Attorney

## CHAPTER 16.32. STORMWATER POLLUTION PREVENTION

### Sec. 16.32.010. General provisions.

A. Purposes. The purpose and objective of this chapter are as follows:

1. To maintain and improve the quality of surface water and groundwater within the city;
2. 2. To mitigate the discharge of contaminated storm water runoff from industrial, commercial, residential, and construction sites into the municipal separate storm sewer system (MS4) and natural waters within the city;
3. To promote public awareness of the hazards involved in the improper discharge of hazardous substances, petroleum products, household hazardous waste, industrial waste, sediment from construction sites, pesticides, herbicides, fertilizers, and other contaminants into the storm sewers of the city;
4. To encourage recycling of used motor oil and safe disposal of other hazardous consumer products;
5. To facilitate compliance with state and federal standards and permits by owners of industrial and construction sites within the city;
6. To enable the city to comply with all federal and state laws and regulations applicable to its NPDES permit for storm water discharges;
7. 7. To regulate the management of storm water for purposes of public safety, welfare and quality of life;
8. 8. To manage and maintain local floodplains;
9. 9. To maintain and improve the quality of surface waters within the city;
10. 10. To facilitate compliance with city standards and permits by owners of developed, redeveloped and undeveloped properties within the city;

B. Administration. Except as otherwise provided herein, the director, or his appointed representative, shall administer, implement, and enforce the provisions of this chapter.

C. Authority. The Director may develop additional policies, criteria, specifications and standards in a Storm Water Manual and/or in other policy, master plans, watershed plans or guidance documents as necessary to effectively implement the requirements of this chapter. The policies, criteria and requirements of the Storm Water Manual and/or other policy, plans or guidance documents may be implemented and amended by the Director, are referenced in this chapter when required, and shall be enforceable, consistent with the provisions contained in this chapter. A public meeting shall be held bi-annually to allow public comment on this chapter and the Storm Water Manual.

In the event that a violation of any provision of this chapter has occurred, or that work does not have a required plan or permit, or that work does not comply with an approved plan or permit, the city may issue a Notice of Violation to the permittee, plan holder or property owner and/or any other person or entity having responsibility for the property or properties where the violation occurred under the provisions of subsection .100 B. of this chapter.

In the spirit of the purposes defined above for this chapter and in the administration of these requirements, the Director may consider the cost-effectiveness of storm water management controls provided that such controls meet the water quality, channel erosion protection and flood protection requirements of this chapter or are waived or exempted in accordance with the criteria defined in this chapter.

D. D. Regulatory or legal conflicts. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, deed restrictions, or existing ordinances and regulations, except as specifically noted in this chapter. However, where the provisions of this ordinance

and another regulation conflict or overlap, that provision which is more restrictive or imposes higher standards or requirements shall prevail.

E. Abbreviations. The following abbreviations when used in this chapter shall have the designated meanings:

| | | |
|---|---|---|
| BMP | - | Best Management Practices |
| CFR | - | Code of Federal Regulations |
| CLOMR | - | Conditional Letter of Map Revision |
| EPA | - | U.S. Environmental Protection Agency |
| FEMA | - | Federal Emergency Management Agency |
| HHW | - | Hazardous Household Waste |
| KAR | - | Kansas Administrative Regulations |
| KSA | - | Kansas Statutes Annotated |
| LOMR | - | Letter of Map Revision |
| mg/l | - | Milligrams per liter |
| MS4 | - | Municipal Separate Storm Sewer System |
| NOI | - | Notice of Intent |
| NOT | - | Notice of Termination |
| NPDES | - | National Pollutant Discharge Elimination System |
| OCI | - | Office of Central Inspection |
| PST | - | Petroleum Storage Tank |
| SWP3 | - | Storm Water Pollution Prevention Plan |
| TMDL | - | Total Maximum Daily Load |
| USC | - | United States Code |

F. Definitions. Unless a provision explicitly states otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated.

1. 1. "As-built plan" means a drawing showing the actual state of permanent storm water facilities as installed.

2. 2. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year.

3. "Best management practices (BMP)" means schedule of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States or the city's MS4. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas. The BMPs required in this chapter will be sufficient to prevent or reduce the likelihood of pollutants entering storm sewers, ditches, or ponds.

4. "City" means the City of Wichita.

5. "Commencement of construction" means the disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

6. "Commercial" means pertaining to any business, trade, industry or other activity engaged in for profit.

7. "Construction general permit" refers to the *Kansas General Permit for Stormwater Discharges from Construction Sites*.

8. "Contractor" means any person or firm performing construction work at a construction site, including any general contractor and subcontractors. Also includes, but is not limited to, earthwork, paving, building, plumbing, mechanical, electrical, landscaping contractors, and material suppliers delivering materials to the site.

9. 9. “Development” or “new development” means undisturbed property where improvements are planned or intended that will result in land disturbance activities or impervious areas either during or after construction.

10. “10.“Director” means the person appointed to the position of Public Works and Utilities Director by the City Manager of the City, or his/her duly authorized representative. Authorized representatives can include, but are not limited to, the City Engineer, the Storm Water Engineer, and others, as so authorized.

11. “Discharge” means any addition or introduction of any pollutant, storm water, or any other substance whatsoever into the municipal separate storm sewer system (MS4) or into waters of the United States.

12. “Discharger” means any person who causes, allows, permits, or is otherwise responsible for a discharge, including without limitation any owner of a construction site or industrial facility.

13. “Domestic sewage” means human excrement, gray water (From home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, factories, and institutions, that is free from industrial waste.

14. 14. “Drainage plan” refers to the detailed water quantity and quality calculations and plan that are required for final plat approval or for issuance of a building permit.
14. “Earthwork” means the disturbance of soils on a site associated with clearing, grading, or excavation activities.

15. “Environmental Protection Agency (EPA)” means the United States Environmental Protection Agency, the regional office thereof, any federal department, agency or commission that may succeed to the authority of the EPA, and any duly authorized official of EPA or such successor agency.

16. “Extremely hazardous substance” means any substance listed in the appendices to 40 CFR Part 355, Emergency Planning and Notification.

17. “Facility” means any building, structure, installation, process, or activity from which there is or may be discharge of a pollutant.

18. “Fertilizer” means a substance or compound that contains an essential plant nutrient element in a form available to plants and is used primarily for its essential plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers.

19. “Final stabilization” means the status when all soil disturbing activities at a site have been completed. This would establish a uniform perennial vegetative cover with a density of seventy percent coverage for unpaved areas and those not covered by permanent structures or equivalent permanent stabilization measures (by employing riprap, gabions, or geotextiles).

20. “Fire protection water” means any water, and any substances or materials contained therein, used by any person to control or extinguish a fire, or to inspect or test fire equipment.

21. “Garbage” means putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

22. “Harmful quantity” means the amount of any substance that will cause a violation of a State Water Quality Standard or any adverse impact to the city’s drainage system.

23. “Hazardous household waste (HHW)” means any material generated in a household (including single and multiple residences) by a consumer which, except for the exclusion provided in 40 CFR Section 261.4(b)(1), would be classified as a hazardous waster under 40 CFR Part 261.

24. “Hazardous substance” means any substance listed in Table 302.4 of 40 CFR Part 302.

25. “Hazardous waste” means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

26. “Hazardous waste treatment, disposal, and recovery facility” means all contiguous land, and structures, other appurtenances and improvements on the land used for the treatment, disposal, or recovery of hazardous waste.

27. 28. “Impervious area” or “impervious cover” means the number of square feet of hard surface areas which either prevent or retard the entry of water into soil mantle, as it entered under natural conditions as undisturbed property, and/or causes water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions as undisturbed property, including, but not limited to, roofs, roof extensions, patios, porches, driveways, sidewalks, pavement, athletic courts, and compacted dirt or graveled areas.

28. “Individual building sites” means and includes sites of building construction or earthwork activities that are not a part of a new subdivision development and any individual lot within a newly developing subdivision.

29. Industrial General Permit. See “Kansas General Permit for Stormwater Discharges Associated with Industrial Activity.”

30. “Industrial waste” means any waterborne liquid or solid substance that results from any process of industry, manufacturing, mining, production, trade or business.

31. “Industry” means and includes: (a) municipal landfills; (b) hazardous waste treatment, disposal, and recovery facilities; (c) industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, U.S.C. Section 11023; industrial facilities required to obtain NPDES stormwater discharge permits due to their Standard Industrial Classification or narrative description; and (d) industrial facilities that the director determines are contributing a substantial pollutant loading to the MS4, which are sources of stormwater discharges associated with industrial activity.

32. “Kansas General Permit for Stormwater Discharges Associated with Industrial Activity (or industrial general permit)” means the industrial general permit issued by KDHE and any subsequent modifications or amendments thereto, including group permits.

33. “Kansas General Permit for Stormwater Discharges from Construction Sites (or construction general permit)” means the construction general permit issued by KDHE and any subsequent modifications on amendments thereto, including group permits.

34. 35. “Land disturbance” means the disturbance of soils on a site associated with clearing, grading, excavation, new development or redevelopment activities.

35. “Landfill” means an area of land or an excavation in which municipal solid waste is placed for permanent disposal, and which is not a land treatment facility, a surface impoundment, or an injection well.

36. “Municipal separate storm sewer system (MS4)” means the system of conveyances, (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the city and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

37. “Municipal solid waste” means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial waste.

38. “NPDES permit” means for the purpose of this chapter, this is a permit issued by EPA or the state of Kansas that authorizes the discharge of stormwater pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis

39. “Nonpoint source” means the source of any discharge of a pollutant that is not a point source.

40. “Notice of intent (NOI)” means the notice of intent that is required by either the industrial general permit or the construction general permit.

41. “Notice of termination (NOT)” means the notice of termination that is required by either the industrial general permit or the construction general permit.

42. “Notice of violation” means a written notice provided to the owner or contractor detailing any violations of this chapter and any clean-up action expected of the violators.

43. “OCI” means office of central inspection and includes its superintendent and his or her authorized representatives.

44. 45. “Off-line storm water management facility” means a storm water management facility that receives storm water runoff only from the property upon which it is located, and receives no storm water runoff from other adjacent or upstream properties. Off-line storm water management facilities should not be confused with off-line storm water treatment, which is defined and described in detail in the Storm Water Manual.“Oil” means any kind of oil in any form, including, but not limited to: petroleum, fuel oil, crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, sludge, oil refuse, and oil mixed with waste.

45. 47. “On-line storm water management facility” means a storm water management facility that receives storm water runoff from the property upon which it is located, and which also receives storm water runoff from other upstream properties. On-line storm water management facilities should not be confused with on-line storm water treatment, which is defined and described in detail in the Storm Water Manual.

46. 48. “Outfall” or “storm water outfall” means the terminus of the storm water system for a development or redevelopment where the storm water runoff is released into a larger public or private storm water management system, or into a stream, waters of the United States or other water body.

47. “Owner” means the person who owns a facility, part of a facility, or land.

48. “Person” means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, government entity, or any other legal entity; or their legal representatives, agents, or assigns, including all federal, state, and local government entities.

49. “Pesticide” means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator, defoliant, or desiccant.

50. “Petroleum product” means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle, or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel.

51. “Petroleum storage tank (PST)” means any one or combination of aboveground or underground storage tanks that contain petroleum product and any connecting underground pipes.

52. “Point source” means any discernable, confined, and discrete conveyance including, but not limited to: any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

53. “Pollutant” means dredged spoil, spoil waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, yard waste, hazardous household wastes, used motor oil, anti-freeze, litter, and industrial, municipal, and agricultural waste discharged into water.

54. “Pollution” means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

55. “Qualified personnel” means persons who possess the required certification, license, or appropriate competence, skills, and ability as demonstrated by sufficient education, training, and/or experience to perform a specific activity in a timely and complete manner consistent with the regulatory requirements and generally accepted industry standards for such activity.

56. 58. “Redevelopment” or “redevelopment site” means a change to previously existing improved property, including but not limited to the demolition or building structures, filling, grading, paving, or excavating.

57. “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the municipal separate storm sewer system (MS4) or the waters of the United States.

58. “Reportable quantity (RQ)” means, for any hazardous substance, the quantity established and listed in Table 302.4 of 40 CFR Part 302; for any extremely hazardous substance, the quantity established in 40 CFR Part 355.

59. “Rubbish” means nonputrescible solid waste, excluding ashes, that consist of: (a) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and (b) noncombustible waste materials, including grass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (one thousand six hundred to one thousand eight hundred degrees Fahrenheit).

60. “Sanitary sewer” means the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to the city sewage treatment plant (and to which stormwater, surface water, and groundwater are not intentionally admitted).

61. “Septic tank waste” means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

62. “Service station” means any retail establishment engaged in the business of selling fuel for motor vehicles that is dispensed from pumps.

63. “Sewage”, means the domestic sewage mid and/or industrial waste that is discharged into the city sanitary sewer system and passes through the sanitary sewer system to the city sewage treatment plant for treatment.

64. “Site” means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

65. “Solid waste” means any garbage, rubbish, refuse, sludge from a waste treatment plait, water supply treatment plant, or air pollution control facility, and other discarded material including: solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, agricultural operations, and community and institutional activities.

66. “State” means the state of Kansas.

67. “Stormwater” means stormwater runoff, snow melt runoff, and surface runoff and drainage.

68. “Stormwater discharge associated with industrial activity” means the discharge from any conveyance which is used for collecting and conveying stormwater and which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant which is listed as one of the categories of facilities in 40 CFR Section 122.26(b)(14), and which is not excluded from EPA’s definition of the same term.

69. “Stomwater pollution prevention Plan (SWP3).” Means a plan required by an NPDES stormwater permit and which describes and ensures the implementation of practices that are to be used to reduce the pollutants in stormwater discharges associated with construction or other industrial activity.

70. “Subdivision development” means and includes activities associated with the platting of any parcel of land into two or more lots and includes all construction taking place thereon.

71. 77. “Ten-percent (10%) point” or “10% point” means the location on a stream where the drainage area that is controlled by a storm water management facility comprises ten-percent (10%) of the total drainage area at that location. Stated differently, the 10% point is the location in the storm water system downstream from a new development or redevelopment where the total area draining to that location equals ten (10) times the drainage area of the new development or redevelopment site. It is important to note that multiple 10% points may be identified for a single new development or redevelopment site, if the site discharges to multiple, separate streams, waters of the U.S. or other bodies of water.

72. 78. "Undisturbed property" means real property which has not been altered from its natural condition so that the entrance of water into the soil mantle is prevented or retarded through changes to the topography or soils.

73. “Used oil (or used motor oil)” means any oil that has been refined from crude oil a synthetic oil that, as a result of use, storage, or handling; has become unsuitable for its original purpose because of impurities or the loss of original properties.

74. “Water of the state (or water)” means any groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, navigable or non-navigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

75. “Water quality standard” means the designation of a body or segment of surface water in the state for desirable uses and the narrative an numerical criteria deemed by the state to be necessary to protect those uses.

76. “Waters of the United States” means all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and the flow of the tide; all interstate waters, including interstate wetlands; all other waters the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce; all impoundments of waters otherwise defined as waters of the United States under this definition; all tributaries of waters identified in this definition; all wetlands adjacent to waters identified in this definition; and any water within the federal definition of “waters of the United States” at 40 CFR Section 122.2; but not including any waste treatment systems, treatment ponds, or lagoons designed to meet the requirements of the Federal Clean Water Act.

77. 83. “Watershed” means the cumulative area that drains to a common point.

78. 84. “Watershed plan” means an engineering and planning study for the drainage system and/or land areas of a watershed that may include a plan for storm water management in the watershed. Watershed plans can include, but are not limited to, the analysis of flooding problems, water quality problems, potential storm water capital improvements, land use patterns, and regulatory issues for existing and potential future land use conditions and address solutions to these problems.

79. “Wetland” means any area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

80. “Yard waste” means leaves, grass clippings, yard and garden debris, and brush that results from landscaping maintenance and land-clearing operations.

(Ord. No. 44-123 § 1)

**Sec. 16.32.020. General prohibition.**

A. No person shall introduce or cause to be introduced into the municipal separate storm sewer system (MS4) any discharge that is not composed entirely of stormwater, except as allowed in subsection B.

B. The following nonstormwater discharges are deemed acceptable and not a violation of this section:

1. A discharge authorized by, and in full compliance with, an NPDES permit (other than the NPDES permit for discharges from the MS4);

2. A discharge or flow resulting from emergency fire fighting;

3. A discharge or flow of fire protection water that does not contain oil or hazardous substances or materials;

4. A discharge from water line flushing;

5. A discharge or flow from lawn watering, landscape irrigation, or other irrigation water;

6. A discharge or flow from a diverted stream flow or natural spring;

7. A discharge or flow from uncontaminated pumped groundwater or rising groundwater;

8. Uncontaminated groundwater infiltrations;

9. Uncontaminated discharge or flow from a foundation drain, crawl space pump, footing drain, or sump pump;

10. A discharge or flow from a potable water source not containing any harmful substance or material from the cleaning or draining of a storage tank or other container;
11. A discharge or flow from air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;
12. A discharge or flow from individual residential car washing;
13. A discharge of flow from a riparian habitat or wetland or natural spring;
14. A discharge of flow from water used in street washing that is not contaminated with any soap, detergent, degreaser, solvent, emulsifier, dispersant, or any other harmful cleaning substance;
15. Stormwater runoff from a roof that is not contaminated by any runoff or discharge from an emissions scrubber or filter or any other source of pollutant;
16. Swimming pool water, excluding filter backwash; that has been dechlorinated so that it contains no harmful quantity of chorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning.
17. Heat pump discharge waters (residential only).

C. Notwithstanding the provisions of subsection B of this section, any discharge shall be prohibited by the section if the discharge in question has been determined by the director to be a source of a pollutants to the waters of the United States or to the MS4, written notice of such determination has been provided to the discharger, and the discharge has occurred more than ten days beyond such notice.

(Ord. No. 44-123 § 2)

**Sec. 16.32.030. Specific prohibitions and requirements.**

A. The specific prohibitions and requirements in this section are not necessarily inclusive of all the discharges prohibited by the general prohibition in Section 16.32.020.

B. No person shall introduce or cause to be introduced into the MS4 any discharge that causes or contributes to causing the city to violate a KDHE water quality standard, the city's NPDES stormwater permit, or any state-issued discharge permit for discharges from its MS4.

C. No person shall dump, spill, leak, pump, pour, emit, empty, discharge, leach, dispose, or otherwise introduce or cause, allow, or permit to be introduced the following substances into the MS4:

1. Any used motor oil, antifreeze or any other petroleum product or waste;
2. A harmful quantity of industrial waste;
3. Any hazardous waste, including household hazardous waste;
4. Any domestic sewage or septic tank waste, grease trap waste, or grit trap waste;
5. Any garbage, rubbish, or yard waste;
6. Wastewater that contains a harmful quantity of soap, detergent, degreaser, solvent, or surfactant based cleaner from a commercial carwash facility; from any vehicle washing, cleaning, or maintenance at any new or used automobile or other vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus, or heavy equipment, by a business or public entity that operates more than five such vehicles.

7. Wastewater from the washing, cleaning, de-icing, or other maintenance of aircraft;
8. Wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains any harmful quantity of soap, detergent, degreaser, solvent, or any surfactant based cleaner.
9. Any wastewater from commercial floor, rug, or carpet cleaning;
10. Any wastewater from the washdown or other cleaning of pavement that contains any harmful quantity of soap, detergent solvent, degreaser, emulsifier, dispersant, or any other harmful cleaning substance; or any wastewater from the wash-down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all harmful quantities of such released material have been previously removed;
11. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emission filter, or the blowdown from a boiler;
12. Any ready-mixed concrete, mortar, ceramic, asphalt base material or hydromulch material, or discharge resulting from the cleaning of vehicles or equipment containing or used in transporting or applying such material;
13. Any runoff, washdown water or waste from any animal pen, kennel, fowl or livestock containment area;
14. Any filter backwash from a swimming pool or fountain;
15. Any swimming pool water containing a harmful level of chlorine, muriatic acid or other chemical used in the treatment or disinfection of the swimming pool water or in pool cleaning;
16. Any discharge from water line disinfection by super chlorination if it contains a harmful level of chlorine at the point of entry into the MS4 or waters of the United States;
17. Any water from a water curtain in a spray room used for painting vehicles or equipment;
18. Any contaminated runoff from a vehicle wrecking yard;
19. Any substance or material that will damage, block, or clop the MS4;
20. Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by leaking PST; or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge has received an NPDES permit from the state.

D. No person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities in excess of what could be retained on site or captured by employing sediment and erosion control measures to the maximum extent practicable under prevailing circumstances.

E. No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4, or allow such a connection to continue.

F. Regulation of Pesticides and Fertilizers.

1. No person hall use or cause to be used any pesticide or fertilizer in any manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide or fertilizer to enter the MS4 or waters of the United States.

2. No person shall dispose of, discard, store, or transport a pesticide or fertilizer, or its container, in a manner that the person knows, or reasonably should know, is likely to cause, or does cause, a harmful quantity of the pesticide or fertilizer to enter the MS4 or waters of the United States.

G. Used Oil Regulation.

1. No person shall discharge used oil into the MS4 or a sewer, drainage system, septic tank, surface water, groundwater, or water course.

H. Cleanup. Should it be determined by the director that any person or business has allowed any pollutant into the MS4 or waters of the United States, immediate measures will be taken by the responsible party to remove the pollutants. If the pollutants are not removed within the time period specified by the director, the city may remove the pollutants and assess the cost thereof to the responsible party. The city may use any legal means to collect said cost, should the responsible party fail to pay said cost within forty-five days.

(Ord. No. 44-123 §4)

**Sec. 16.32.040. Release reporting and cleanup.**

A. Any person responsible for any release of any hazardous material that may flow, leach, enter, or otherwise be introduced into the MS4 or waters of the United States shall comply with all state, federal, and any other local law requiring reporting, clean-up, containment, and any other appropriate remedial action in response to the release.

B. Within thirty days following such release, the Wichita fire department shall submit a written report to the public works department detailing spill information and the methods used to remedy the problem.

(Ord. No. 44-123 §4)

**Sec. 16.32.050. Stormwater discharges from construction activities.**

A. General Requirements (All Sites).

1. The owners of construction sites shall ensure that best management practices are used to control and reduce the discharge of pollutants into the MS4 and waters of the United States to the maximum extent possible under the circumstances.

2. Qualified personnel (provided by the owner of the construction site) shall inspect disturbed areas that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measurers, and location where vehicles enter or exit the site, at least once every seven calendar days and within twenty-four hours of the end of a storm that is one-half inch or greater. All erosion and sediment control measures and other identified best management practices shall be observed in order to ensure that they are operating correctly and are effective in preventing significant impacts to receiving waters and the MS4. Based on the results of the inspection, the best management practices shall be revised as appropriate as soon as practicable. These inspections, along with a description of revisions, will be documented in writing and available for inspection by the director and OCI upon request.

3. Should it be found that soil or pollutants have already or may be carried into the MS4 or waters of the United States, immediate measures will be taken by the owner to remedy the violation and/or remove the pollutants. If the owner fails to remove pollutants within the time period prescribed in the notice of violation from the city, the city may remove the pollutants and assess the cost thereof to the responsible owner.

Failure of the owner to pay said costs will be grounds for the denial of further approvals or the withholding of occupancy certificates.

4. When determined to be necessary for the effective implementation of this section, the director may require any plans and specification that are prepared for the construction of the site improvements to illustrate and describe the best management practices required by subsection A.1 of this section above that will be implemented at the construction site. Should the proper BMP's not be installed or if they BMP's are ineffective, upon reasonable notice to the owner, the city may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other city approval necessary to commence or continue construction, or to assume occupancy.

5. The owner of a site of construction activity is responsible for compliance with the requirements in this subsection. In the case of new subdivisions, builders on individual lots can operate under the developers NPDES permit if the developer's SWP3 deals with individual lots and the contractors certification has been signed.

6. Any contractor on a construction site will also be required to use best management practices so as to minimize pollutants that enter into the MS4.

7. All persons shall avoid damaging BMP devices once in place. Any person damaging a BMP device shall be responsible for the repair of the damaged BMP device. Malicious destruction of a BMP device or failure of such responsible person to repair BMP device will be deemed a violation of this chapter.

B. Sites Requiring Federal and/or State NPDES Stormwater Discharge Permits. All owners of and contractors on sites of construction activity, that require a federal or state NPDES stormwater discharge permit, or that are part of a common plan of development or sale requiring said permit(s), shall comply with the following requirements (in addition to those in subsection A):

1. Any owner who intends to obtain coverage for stormwater discharges from a construction site under the Kansas General Permit for Stormwater Discharges From Construction Sites ("the construction general permit") shall submit a signed copy of its notice of intent (NOI) to OCI when a building permit application is made. If the construction activity is already underway upon the effective date of this chapter,* the NOI shall be submitted within thirty days. When ownership of the construction site changes, a revised NOI shall be submitted within fifteen days of the change in ownership.

***Editor's note:** Ordinance 44-123, which enacted Chapter 16.32, is effective on January 1, 1999.

2. A stormwater pollution prevention plan (SWP3) shall be prepared and implemented in accordance with the requirements of the construction general permit or any individual or group NPDES permit issued for stormwater discharges from the construction site, and with any additional requirement imposed by or under this chapter and any other city ordinance.

3. The SWP3 shall be prepared by a qualified person and shall comply with State NPDES requirements. The signature of the preparer shall constitute his/her attestation that the SWP3 fully complies with the requirements of the permit issued.

4. The SWP3 shall be completed prior to the submittal of the NOI to OCI and for new construction, prior to the commencement of construction activities. The SWP3 shall be updated and modified as appropriate and as required by the NPDES permit.

5. The director and/or OCI may require any owner who is required by subsection B.2 of this section to prepare a SWP3, to submit the SWP3, and any modifications thereto, to the Director and/or OCI for review at any time.

6. Upon the director's review of the SWP3 and any site inspection that he/she may conduct, if the SWP3 is not being fully implemented, the director may upon reasonable notice to the owner, deny approval of any building permit, grading permit, site development plan, final occupancy certificate, or any other city approval necessary to commence or continue construction. A stop work order may also be issued.

7. All contractors working on a site subject to an NPDES permit shall sign a copy of the following certification statement before beginning work on the site:

I certify under penalty of law that I understand the terms and conditions of the National Pollutant Discharge Elimination System (NPDES) permit that authorizes the stormwater discharges associated with construction activity from the construction site identified as part of this certification and with the Stormwater Pollution Prevention Plan Chapter of the city, and I agree to implement and follow the provisions of the Stormwater Pollution Prevention Plan (SWP3) for the construction site;

The certification must include the name and title of the person providing the signature; the name, address, and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

All contractors will be responsible for their own activities to ensure that they comply with the owners' SWP3. Failure to comply with the SWP3 or malicious destruction of BMP devices is hereby deemed to be a violation of this chapter.

8. The SWP3 and the certifications of contractors required by subsection B.7 of this section, and with any modifications attached, shall be retained at the construction site or at a local office in Wichita from the date of construction commencement through the date of final stabilization.

9. The director may notify the owner at any time that the SWP3 does not meet the requirements of the NPDES permit issued or any additional requirement imposed by or under this chapter. Such notification shall identify those provisions of the permit or chapter which are not being met by the SWP3, and identify which provisions of the SWP3 require modification in order to meet such requirements. Within thirty days of such notification from the director, the owner shall make the required changes to the SWP3 and shall submit to the director a written certification from the owner that the requested changes have been made.

10. The owner shall amend the SWP3 whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, and which has not otherwise been addressed in the SWP3, or if the SWP3 proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in stormwater discharges.

11. Qualified personnel (provided by the owner of the construction site) shall inspect disturbed areas that have not been finally stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site, at least once every seven calendar days and within twenty-four hours of the end of the storm that is one-half inch or greater. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the SWP3 shall be observed to ensure that they are operating correctly. Where

discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters or the MS4. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

12. Based on the results of the inspections required by subsection B.11 of this section, the pollution prevention measures identified in the SWP3 shall be revised as appropriate. Such modifications shall provide for timely implementation of any changes to the SWP3 within ten calendar days following the inspection.

13. A report summarizing the scope of any inspection required by subsection B.11 of this section, and the names(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWP3, and actions taken in accordance with subsection B.12 of this section above shall be made and refined on site or at a local office in Wichita as part of the SWP3. Such report shall identify any incidence of noncompliance. Where a report does not identify any incidence of noncompliance, the report shall contain a certification that the facility is in compliance with the SWP3, the facility's NPDES permit, and this chapter. The report shall be certified and signed by the person responsible for making it.

14. The owner shall retain copies of any SWP3 and all reports required by this chapter or by the NPDES permit for the site, and records of all data used to complete the NOI for a period of at least three years from the date that the site is finally stabilized.

15. Upon final stabilization of the construction site, the owner shall submit written certification to the director and OCI that the site has been finally stabilized. The city may withhold the final occupancy or use permit for any premises constructed on the site until such certification of final stabilization has been filed and the director has determined, following any appropriate inspection, that the final stabilization has occurred and that any required permanent structural controls have been completed.

(Ord. No. 44-123 § 5)

**Sec. 16.32.060. Stormwater discharges associated with industrial activity.**

A. All operators of: (1) municipal landfills; (2) hazardous waste treatment, disposal, and recovery facilities; (3) industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) 42, U.S.C. Section 11023; industrial facilities required to obtain NPDES stormwater discharge permits due to their Standard Industrial Classification or narrative description; and (4) industrial facilities that the director determines are contributing a substantial pollutant loading to the MS4, which are sources of stormwater discharges associated with industrial activity, shall comply with the following requirements:

1. Any owner who intends, after the effective date of this chapter,* to obtain coverage for a stormwater discharge associated with industrial activity under the Kansas General Permit for Stormwater Discharges Associated With Industrial Activity ("the industrial general permit") shall submit a signed copy of its notice of intent (NOI) to the director.

***Editors note:** Ordinance 44-123, which enacted Chapter 16.32, is effective on January 1, 1999.

2. When required by their NPDES permit, all industries listed in this section shall prepare a stormwater pollution prevention plan (SWP3) and implement said plan in accordance with the requirements of their state or federal NPDES permit.

3. The SWP3, when required shall be prepared and signed by a qualified individual and will comply with all state NPDES requirements. The signature of the preparer shall constitute his/her attestation that the SWP3 fully complies with the requirements of the NPDES permit.

4. The SWP3, when required, shall be updated and modified as appropriate and as required by the NPDES permit and this chapter.

5. A copy of any NOI that is required by subsection A.1 of this section shall be submitted to the city in conjunction with any application for a permit or any other city approval necessary to commence or continue operation of the industrial facility.

6. The Director may require any operator who is required by subsection A.2 of this section to prepare a SWP3, to submit the SWP3, and any modifications thereto, to the director for review.

7. Upon the director's review of the SWP3 and any site inspection that he/she may conduct, the director may upon reasonable notice to the owner deny approval necessary to commence or continue operation of the facility, on the grounds that the SWP3 does not comply with the requirements of the NPDES permit, or any additional requirement imposed by or under this chapter. Also if at any time the director determines that the SWP3 is not being fully implemented, upon reasonable notice to the owner, he/she may deny approval of any application for a permit or other city approval necessary to commence or continue operation of the facility.

8. The SWP3, if required, with any modifications attached, shall be retained at the industrial facility from the date of commencement of operations until all stormwater discharges associated with industrial activity at the facility are eliminated and the required notice of termination (NOT) has been submitted.

9. The director may notify the owner at any time that the SWP3 does not meet the requirements of the NPDES permit, or any additional requirement imposed by or under this chapter. Such notification shall identify those provisions of the permit or chapter which are not being met by the SWP3, and identify which provisions require modification in order to meet such requirements. Upon thirty days of such notification from the director, the owner shall submit to the director a written certification that the requested changes have been made.

10. The owner shall amend the SWP3, if required, whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the MS4 or to the waters of the United States, or if the SWP3 proves to be ineffective in eliminating or significantly minimizing pollutants, or in otherwise achieving the general objective of controlling pollutants in stormwater discharges.

11. As may be required by the facilities NPDES permit, qualified personnel (provided by the owner) shall inspect equipment and areas of the facility specified in the SWP3 at appropriate intervals or as may be specified in their NPDES permit. A set of tracking or follow up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspection shall be maintained.

12. Industrial facilities will implement a sampling and testing program as required by their individual NPDES permits. The director may require written reports of any such monitoring and testing to be submitted to him/her.

13. The owner shall retain the SWP3 and all sampling and testing reports until at least one year after stormwater discharges associated with industrial activity at the facility are eliminated, or the operator is no longer operating the facility, and a notice of termination (NOT) has been submitted.

14. For discharges subject to the semi-annual or annual monitoring requirements of the industrial general permit, in addition to the records-retention requirements of the paragraph above, owners are required to retain for six year period from the date of sample collection, records of all sampling and testing information collected. Owners must submit such monitoring results, and/or a summary thereof, to the director upon his/her request.

15. After the effective date of this chapter,* no stormwater discharge shall contain any hazardous metals in a concentration that would result in the violation of any Kansas Surface Water Quality Standard.

(Ord. No. 44-123 § 6)

***Editor's note:** Ordinance 44-123, which enacted Chapter 16.32, is effective on January 1, 1999.

**Sec. 16.32.070. Ditches and ponds.**

A. Duty to Maintain. The owner of any private drainage ditch or pond that empties into the city's MS4 or the waters of the Unit States has a duty to use BMP's on the ditches or pond to minimize the pollutant levels downstream. Such BMP's include, but are not limited to, removing excessive build-up of silt, repairing bank erosion, maintaining vegetative cover, the cleaning of inlet and outlet works, and the like.

B. Inspection and Notice by City. The city will periodically inspect these privately owned ditches and ponds. Should conditions be found that because the pollution of downstream receiving waters, the director shall so notify the owners, and state what actions are expected by the owners to remedy the problem.

C. Failure to Repair. Should the owners fail to make the necessary repair within one hundred twenty days after notice, the city is authorized to do the repairs at the expense of the owner. Should the owner fail to reimburse the city for the cost of the repairs upon demand, the city may assess the cost thereof to the owner and initiate any collection proceedings authorized by law.

(Ord. No. 44-123 § 7)

**Sec. 16.32.080. Compliance monitoring.**

A. Right of Entry. The director, OCI, and the city-county health department, or their authorized representatives, shall have the right to enter the premises of any person discharging stormwater to the municipal separate storm sewer system (MS4) or to waters of the United States at any reasonable time to determine if the discharger is complying with all requirements of this chapter, and with any state or federal discharge permit, limitation, or requirement. Dischargers shall allow the inspectors ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties.

B. Records. Subject to the requirements of subsection A, dischargers shall make available, upon request, any SWP3's, modifications thereto, self-inspection reports, monitoring records, compliance evaluations, notice of intent, and any other records, reports, and other documents related to compliance with this chapter and with any state or federal discharge permit.

C. Sampling. The director shall have the right to set up on the discharger's property such devices that are necessary to conduct sampling of stormwater discharges.

(Ord. No. 44-123 § 8)

**Sec. 16.32.090. Subdivision development.**

A. The developer of any subdivision requiring a federal or state NPDES stormwater discharge permit will be responsible for obtaining the required permit and developing and implementing an overall SWP3 for the subdivision. Said SWP3 shall include BMP's to be used on individual lot building sites.

B. City contractors installing public streets; water sanitary sewer, storm sewer lines; and/or sidewalks will be required to comply with the developers SWP3's and sign the appropriate contractor certification statement. For work in public right-of-way or easements requiring a federal or state NPDES stormwater discharge permit, the city shall be responsible for obtaining the required permit and preparing and implementing the required SWP3's.

C. Any utility company installing utilities within a new subdivision will also be required to comply with the developers SWP3's and sign the appropriate contractor certification statement. For work in public rights-of-way or easements requiring a federal or state NPDES stormwater discharge permit, the utility company shall be responsible for obtaining the required permit and preparing and implementing the required SWP3's.

D. The purchasers or individual lots within the subdivision for construction purposes shall comply with the developers SWP3 and shall sign a certification statement agreeing to do so.

(Ord. No. 44-123 § 9)

SECTION 3. Section 16.32.091 of the Code of the City of Wichita, Kansas, is hereby created to read as follows:

Sec. 16.32.091. Storm Water Quality Management Standards

A. Applicability.

1. Water quality treatment and downstream channel protection shall be required of owners of new developments and redevelopments that causes a land disturbance greater than or equal to one (1) acre, including projects that cause a land disturbance less than one (1) acre that are part of a larger common plan of development or sale.

2. The requirements of 16.32.091 shall not apply to:

i. new developments or redevelopments that have a construction plan approved by January 1, 2011 and will have completed construction of all storm water management facilities within 90 days of January 1, 2011. This does not exempt such new developments from water quality management regulations that may be required in the future by EPA or KDHE; or,

ii. redevelopment projects that consist solely of ordinary maintenance activities, remodeling of buildings on the existing foundation, resurfacing (milling and overlay) of existing paved areas, and exterior changes or improvements.

B. Water Quality Treatment Standard for New Developments. Storm water runoff from applicable new developments must be treated for water quality prior to discharge from the development site in accordance with the storm water treatment standards and criteria provided in the Storm Water Manual.

C. Water Quality Treatment Standard for Redevelopments. Owners of applicable redevelopments must adhere to one of the following requirements.

1. The total impervious cover of the property after redevelopment shall be reduced by at least twenty-percent (20%) from the total impervious cover of the property prior to the proposed redevelopment.

2. Storm water runoff from at least thirty percent (30%) of the site's existing impervious cover and for one-hundred percent (100%) of any new land disturbance that will result from the proposed

redevelopment shall be treated for water quality prior to discharge from the redevelopment site in accordance with the storm water treatment standards and criteria provided in the Storm Water Manual.

3. The owner shall provide storm water controls at an alternative location in the same watershed as the proposed redevelopment. The level of storm water control provided shall be equivalent to what would have been provided at the proposed redevelopment for either requirement 1 or 2 above, at a minimum.

4. In agreement and partnership with the City of Wichita, the owner shall provide engineering design and/or construction activities to address one or more known downstream water quality or channel erosion issues located within the same watershed as the proposed redevelopment, through stream restoration and/or other off-site remedies approved by the Director.

5. The owner shall pay a fee in-lieu-of water quality control and channel protection control, in an amount to be determined by the city in accordance with the in-lieu-of fee schedule as adopted by the City Council of the City of Wichita per the watershed plan which covers the redevelopment.

6. Any combination of (1) through (5) above may be acceptable to the City of Wichita or other solution(s) approved by the Director that meets the intent of this chapter.

D. Downstream Stabilization Standard. Downstream long-term channel protection shall be provided for applicable new developments and redevelopments prior to discharge from the new/redevelopment site in accordance with the downstream stabilization standards and criteria provided in the Storm Water Manual.

SECTION 4. Section 16.32.092 of the Code of the City of Wichita, Kansas, is

hereby created to read as follows:

Sec. 16.32.092. Storm Water Quantity Management Standards

A. Applicability. Storm water runoff peak discharge analysis and control shall be required for new developments and redevelopments that will create or add one (1) acre or greater of impervious cover, including projects that have less than one (1) acre in impervious cover that are part of a larger common plan of development or sale that will result in one (1) acre or greater of impervious cover.

B. Water Quantity Management Standard. Storm water runoff peak discharge analysis and control shall be required for applicable new developments or redevelopments in accordance with the storm water quantity standards and criteria provided in the Storm Water Manual.

SECTION 6. Section 16.32.093 of the Code of the City of Wichita, Kansas, shall be created to read as follows:

Sec. 16.32.093. Other Storm Water Management Requirements

A. Applicability. Section 16.32.093 is applicable to new developments and redevelopments that are required to comply with section 16.32.091 and/or section 16.32.092.

B. Alternative Standards for Individual Watersheds. Alternative storm water management standards, either lesser or greater than those specified in this chapter, may be required by the Director in those areas or watersheds where water quality, flooding or erosion problems are known to exist, or in individual watersheds where a watershed plan or storm water master plan, approved by the City Council of the City of Wichita, specifies such alternative standards.

C. Other Requirements for Storm Water Discharges.

1. Storm water discharges shall be managed in consideration of the erosion control measures detailed in the Storm Water Manual.

2. Any discharge of storm water runoff to groundwater must meet all applicable local, State and Federal requirements, permits, plans and programs. The owner is responsible for complying with all local State and Federal permits that are applicable to the site.

D. Requirement to Stabilize Banks. Banks of all streams, channels, ditches and other earthen storm water conveyances shall be left in a stabilized condition upon completion of the new development or redevelopment. No actively eroding, bare or unstable vertical banks shall remain after completion of construction.

E. Requirement to Use the Storm Water Manual. All storm water facilities and systems, including those designed and constructed for water quality treatment, channel protection, and peak discharge control shall be designed, constructed and maintained in accordance with the criteria, standards, and specifications presented in this chapter and in the Storm Water Manual. The standards for water quality treatment, downstream channel protection and peak discharge analysis and control shall be achieved through the use of one or more storm water quality management facilities that are designed and constructed in accordance with the design criteria, guidance, and specifications provided in the Storm Water Manual. Methods, designs or technologies for storm water quality management facilities that are not provided in the Storm Water Manual may be submitted for approval by the city if it is proven that such methods, designs or technologies will meet or exceed the storm water treatment standards set forth in the Storm Water Manual and this ordinance. Proof of such methods, designs, or technologies must meet the minimum testing criteria set forth in the Storm Water Manual.

F. Storm Water Facilities on Public Property. Storm water management facilities shall not be installed within public rights-of-way or on public property unless a permit has been issued by the city engineer.

G. Access Easement Required. In order to provide access to storm water and/or water quality volume reduction areas by inspection and maintenance personnel, vehicles and equipment, the property owner(s) shall provide an access and maintenance easement in accordance with the requirements and policies presented in the Storm Water Manual.

SECTION 7. Section 16.32.094 of the Code of the City of Wichita, Kansas, shall be created to read as follows:

Sec. 16.32.094. Waivers and Exemptions from Storm Water Management Standards for New Developments

A. Exemptions. Owners of properties where the following activities are undertaken are exempt from the requirements of sections 16.32.091, 16.32.092, 16.32.093 and 16.32.094 of this chapter.

1. Minor land disturbing activities at individual locations, such as gardening, building or grounds maintenance and landscaping, provided that the activity does not result in equal to or greater than one (1) acre of land disturbance;

2. Individual utility service connections, unless such activity is carried-out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a grading permit would otherwise be required by regulation;

3. Installation, maintenance or repair of individual septic tank lines or drainage fields, unless such activity is carried out in conjunction with the clearing, grading, excavating, transporting, or filling of a lot or lots for which a grading permit would otherwise be required by the regulation;

4. Installation of posts or poles;

5. Farming activities;

6. Unplanned emergency work and emergency repairs necessary to protect life or property.

B. Waivers. All or some of the storm water management standards required in section 16.32.091 and/or 16.32.092 of this chapter may be waived by the Director under the following circumstances.

1. Existing Downstream Facilities. A waiver may be provided for one or more storm water management standards if the waived standard(s) are met by discharging the storm water runoff to an existing storm water management facility, whether public or private, that is:

i. provided in accordance with an existing watershed plan that is approved by the city; and,

ii. already in existence, or will be in existence at the time of construction of the new development or redevelopment; and,

iii. designed, constructed and maintained to provide a level of storm water control that is equal or greater than that which would be afforded by on-site storm water management facilities.

iv. If a waiver is provided for this reason, the owner of the new development or redevelopment will be required to pay a fee in-lieu-of water quality control, channel protection control and peak discharge control, in an amount to be determined by the city in accordance with an adopted in-lieu-of fee schedule as adopted by the City Council of the City of Wichita per the watershed plan which covers the new development or redevelopment.

2. Adverse Impact. A waiver may be provided if engineering studies determine that installing a storm water management facility in order to meet the storm water management standard being considered for waiver will cause adverse impact to water quality, or cause increased channel erosion, or downstream flooding.

3. Technical Criterion. A waiver may be provided if the technical criterion required to waive the storm water management standard, as presented in the Storm Water Manual, is met. In any case, a waiver is subject to satisfaction of the following requirements, which shall be shown in drainage plans submitted for the new development or redevelopment:

i. the waiver applicant shall provide an engineering study, as defined in 16.32.094.C that proves the adequacy of downstream or shared off-site storm water management facilities to offer equivalent or greater protection than the standard(s) for which a waiver is requested; and,

ii. the waiver applicant obtains any necessary CLOMR prior to construction, and a LOMR upon completion of construction; and,

iii. the waiver applicant obtains all State and Federal permits that may be applicable to the site.

C. Engineering Study Required. In the event that a waiver from storm water management control requirements is requested, the adequacy of downstream or shared off-site storm water management facilities to control storm water runoff shall be determined, reviewed and approved by an engineering study that is performed in accordance with the calculation methods presented in the Storm Water Manual. The engineering studies shall be performed at the expense of the owner(s) of the proposed new development or redevelopment, unless a study has already been or is being performed by the city as part of a watershed plan or other land use plan.

SECTION 8. Section 16.32.095 of the Code of the City of Wichita, Kansas, shall be created to read as follows:

Sec. 16.32.095. General Requirements for Storm Water Design Plans

A. Storm water design information shall be submitted as part of the preliminary plat, final plat and construction plans, in accordance with the site development process established by the city.

B. A building permit shall not be issued for the land development activity until the required storm water design information and corresponding plans are approved by the city.

C. At a minimum, the storm water design information submitted at each stage of the city development process shall include the specific required elements that are listed and/or described in the Storm Water Manual, and shall be prepared in accordance with the policies, guidance and calculation methods (unless equivalent methods are pre-approved by the city) presented in the Storm Water Manual.

Additional storm water design information may be required as necessary to allow an adequate review of the existing or proposed site conditions.

D. The submittal of storm water design information shall be subject to the requirements set forth in the minimum subdivision regulations, zoning ordinance, or other city regulations.

E. Storm water design information shall be prepared under the supervision of and stamped by a professional engineer licensed to practice in the State of Kansas.

F. The portions of the new development or redevelopment on which storm water management facilities and systems are located shall be shown on the preliminary and final plats for all residential subdivisions and recorded with the plat as permanent reserves or easements consistent with the policies stated in the Storm Water Manual. Non-residential plats and/or subdivisions having a total area less than or equal to fifteen (15) acres shall be required to demonstrate the viability of proposed storm water management facilities and systems. In such cases, the Director is authorized to allow contingent dedications for storm water facilities providing that the owner/developer enters into an agreement with the City guaranteeing the construction of the said facilities in accordance with a schedule approved in the said agreement.

G. Conformity to the Approved Plans.

1. Grading designs shown on approved master grading plans and the design of storm water facilities and controls shown on approved design plans shall be adhered to during grading and construction activities. Under no circumstance is the owner or operator of land development activities allowed to deviate from the approved plans without prior approval of a plan amendment by the city.

2. Grading and storm water design plans shall be amended to meet all local ordinances and standards if the proposed site conditions change after plan approval is obtained, or if it is determined by the city during the course of grading or construction that the approved plan is inadequate.

H. Duty to Provide an Operations and Maintenance Plan.

1. An Operations and Maintenance Plan shall be included with the storm water design information submitted with the construction plan. The Operations and Maintenance Plan shall include the required operation and maintenance provisions for each storm water management facility and water quality volume reduction area that is serving, or will serve, the development or redevelopment. The Operations and Maintenance Plan shall include all of the required elements that are listed and/or described in the Storm Water Manual, and shall be prepared in accordance with the policies and guidance provided in the Storm Water Manual.

2. The Operations and Maintenance Plan shall include an executed legal document entitled “Restrictive Covenants for Storm Water Facilities” (Covenants). The property owner shall record the Covenants with the deed for the property. The location of the storm water management facility(s) and water quality volume reduction areas, the recorded location of the Covenants document, and inspection and maintenance guidance outlining the property owner’s responsibility shall be shown on a plat that is recorded for the property

I. Duty to Provide Storm Water Construction Information on As-Built Drawings.

1. Prior to the release of the performance bond, complete As-Built Drawings shall be provided to the Director, and shall include sufficient design information to show that the storm water facilities will operate as designed under the approved drainage plan.

2. The As-Built Drawings shall include the required elements that are listed and/or described in the Storm Water Manual, and shall be prepared in accordance with the policies and guidance provided in the Storm Water Manual.

3. The As-Built Drawings shall be prepared and stamped by a professional engineer licensed to practice in the State of Kansas.

SECTION 9. Section 16.32.096 of the Code of the City of Wichita, Kansas, shall be created to read as follows:

Sec. 16.32.096. Maintenance and Inspection of Storm Water Drainage Paths and Controls.

A. Duty to Inspect and Maintain Storm Water Systems and Controls. Property owners shall at all times properly maintain and shall at intervals in accordance with the Operations and Maintenance Plan inspect all storm water facilities, systems, conveyances, pipes, channels, ditches, swales, inlets, catchbasins, water quality volume credit areas, and other facilities and systems of storm water treatment and control (and related appurtenances) so that they operate at their full function. Maintenance and inspection of privately-owned storm water management facilities, systems, conveyances, pipes, channels, ditches, swales, inlets, catchbasins, water quality volume credit areas, and other facilities and systems of storm water treatment and control (and related appurtenances) shall be performed at the expense of the owner(s) of such facilities.

B. Duty to provide inspection reports. After construction of each BMP on the property is complete, property owners shall provide to the Director on a bi-annual basis a completed and signed copy of the inspection report for each BMP that is included with the Operations and Maintenance Plan for the property. The inspection report is due every two years no later than the date (month and day) of approval of the as-built plan for the property.

C. Duty to Preserve Approved Grading Designs. Re-grading an individual lot or lots, or portions of a lot or lots, in a manner that is not accordance the approved master grading plan, such that the direction(s) of storm water runoff is altered from the direction that would occur under the approved master grading plan, shall be considered a violation of this chapter.

D. Duty to Preserve Existing Drainage Paths. Blockage of a channel, ditch, stream or any other drainage path or storm water system appurtenance that is located in a storm water easement or drainage easement shall be considered a violation of this chapter.

E. Pollutant Removal for Maintenance. The removal of pollutants, sediment and/or other debris for the purpose of maintenance of storm water management facilities shall be performed in accordance with all city, State, and Federal laws.

F. Inspection During Grading or Construction.

1. During grading or construction, the property owner or his/her appointed designee shall conduct site inspections in accordance with the requirements stated in the Kansas General Permit for Storm Water Discharges from Construction Sites. The property owner will also ensure construction conformance with the approved drainage and construction plans. More stringent inspection requirements may be imposed as necessary for purposes of water quality protection and public safety and to pursue total conformance of the site with the approved plans.

2. The following areas and items must be inspected throughout grading and construction to ensure that land disturbance activities do not cause adverse impacts to the performance of storm water management facilities and/or water quality volume reduction areas:

i. all unstabilized areas that drain to a permanent storm water facility or water quality volume reduction area;

ii. temporary and permanent storm water management facilities; and,

iii. all erosion prevention and sediment control measures.

G. Inspection After Construction. Once the site has been stabilized and construction has ceased, the property owner or his/her appointed designee shall conduct routine inspections for the storm water management facilities and water quality reduction areas, based on the guidance provided in the Operations and Maintenance Plan and the requirements of the “Restrictive Covenants for Storm Water Facilities” for the property, as set forth in section 16.32.095.H.2. of this ordinance.

H. Inspection Records. Property owners shall make available upon request any self-inspection reports, monitoring/maintenance records, compliance evaluations, notices of intent, and any other records, reports, receipts, and other documents related to compliance with this chapter and with any related local, State or Federal permit.

I. Right-of-Entry. The Director or his/her designee shall have the right to enter the premises of any person discharging storm water to the MS4 or to waters of the United States at any reasonable time to determine if the discharger is complying with all requirements of this chapter, and with any State or Federal discharge permit, limitation, or requirement. Dischargers shall allow the Director or his/her designee ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and for the performance of any additional duties. Failure of a property owner to allow entry onto a property for the purposes set forth in this section shall be cause for the issuance of a stop work order, withholding of a certificate of occupancy, and/or civil penalties and/or damage assessments in accordance with the enforcement provisions of this chapter.

J. Inspection and Notice by City. The city may periodically inspect these privately owned storm water controls. If the facility is not operating as shown in the approved As-Built Drawing, or should conditions be found that cause or may cause the pollution of downstream receiving waters or the erosion of downstream channels or the flooding of adjacent or downstream properties, the Director may issue a notice of violation in accordance with the enforcement provisions stated in this chapter and shall notify the property owner(s) of the potential violation(s). The Director may order the property owner(s) to perform corrective actions as are necessary to facilitate the proper operation of these facilities for the purposes of flood prevention, channel protection, water quality treatment and/or public safety, and/or to ensure compliance with jurisdictional regulatory conditions.

K. Failure to Perform Corrective Actions. If property owner(s) fail to make the necessary corrective actions in the timeframe specified in the enforcement provisions of this chapter, the city is authorized to perform the corrective actions at the expense of the owner(s). If the owner(s) fail to reimburse the city for the corrective actions upon demand, the city may assess the cost of the corrective actions to the owner and initiate any collection proceedings authorized by law.

L. Access to Adjacent Properties. This ordinance does not authorize access by a property owner or site operator to private property adjacent to or downstream of the owner's property. Arrangements concerning removal of sediment or pollutants on adjoining property must be settled by the owner or operator with the adjoining landowner.

SECTION 10. Section 16.32.097 of the Code of the City of Wichita, Kansas, shall be created to read as follows:

Sec. 16.32.097. Special Provisions for Open Channels.

A. No structure or land shall hereafter be developed, redeveloped, located, extended, converted, or structurally altered without full compliance with the terms of this section, the City of Wichita Floodplain Management Ordinance (Chapter 27.06) and other applicable local, state or federal regulations.

B. Requirements for vegetative buffer zones or maintenance access areas that have been established in approved and adopted watershed plans have priority over the provisions of this section.

C. Closure of open channels. Existing or proposed open channels may be enclosed if a maintenance plan approved by the City is provided; if the closed conduit conforms to the design criteria set in the Storm Water Manual for minimum slopes, self-cleaning velocities, and maintenance access points.

D. Access Easement Required. All open channels must have a minimum twenty (20) foot wide maintenance access on each side of the stream as measured from the top-of-bank on each side of the stream, except as required by KSA 24-126 as amended, and KAR 5-45-12 as amended for "streams" defined in KAR 5-45-1 as amended.

**Sec. 16.32.100. Enforcement actions.**

A. A. The discharge of, or potential discharge of, any pollutant to the MS4 or waters of the United States and/or the failure to comply with the provisions of this chapter and/or the failure to comply with and directive, citation, or order issued under this chapter; are violations of this chapter for which enforcement action may be taken.B. Prior to taking any enforcement action as specified in this section, a violator will be issued a notice of violation except when, in the opinion of the Director, an owner or contractor has repeatedly ignored the requirements of this chapter and has not made any reasonable intent to comply with these provisions. When issued, the notice of violation will detail the nature of the violation, actions to be taken to remedy the violation, actions to be taken to clean-up any pollutants, and any specific time periods within which to accomplish said actions. Failure to successfully comply with the notice of violation may result in enforcement action.

B. The enforcement actions to be taken under this chapter, as provided in Section 16.32.110 are as follows:

1. Criminal Penalty. Any person violating any provision of this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars. Each and every day during which any violation of any provision of this chapter is committed, continue, or permitted is a separate violation.

2. Stop Work Order. Notwithstanding other penalties provided by this chapter, whenever the Director or OCI, or their designees, finds that any owner or contractor on a construction site has violated, or continues to violate, any provision of this chapter or any order issued thereunder, the director or OCI may after reasonable notice to the owner or contractor issue a stop work order to the owner and contractors by posting such order at the construction site. Said order shall also be distributed to all city departments and divisions whose decisions may affect any activity at the site. Unless express written exception is made, the stop work order shall prohibit any further construction activity at building permit, grading permit, site development plan approval, or any other approval necessary to commence or to continue construction or to assume occupancy at the site. Issuance of a stop work order shall not be a bar against, or a prerequisite for, taking any other action against the violator. Failure to comply with the requirements of any stop work order is a violation of this chapter.

3. Administrative Penalty Process.

   a. When the director finds that any stormwater discharger has violated or continues to violate the provisions set forth in this chapter, or the discharger's NPDES permit or any order issued thereunder, the director may issue an order for compliance to the discharger. Such orders may contain any requirements as might be reasonably necessary and appropriate to address noncompliance including, but not limited to, the installation of best management practices, additional self-monitoring, and/or disconnection from the MS4.

   b. The director is empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any industrial discharger responsible for noncompliance. Such orders shall include specific action to be taken by the discharger to correct the noncompliance within a time period specified by the order.

   c. Notwithstanding any other remedies or procedures available to the city, any discharger who is found to have violated any provision of this chapter, or any NPDES permit or any order issued under this chapter, may be assessed an administrative penalty as follows:

1. 1. The minimum administrative penalty for any violation shall be no less than five hundred dollars ($500) per day the violation is maintained and not more than two thousand five hundred dollars ($2,500) per day for each day the violation is maintained;
2. Failure to obtain required NPDES permit: up to two thousand five hundred dollars per violation;
3. Failure to prepare stormwater pollution prevention plan: up to two thousand dollars per violation;
4. Failure to install best management practices: up to one thousand eight hundred dollars per violation;
5. Failure to maintain best management practices: up to one thousand dollars per violation;
6. Failure to perform required sampling and testing or provide testing reports: up to one thousand dollars per violation;
7. 7. Commencement of construction without an approved drainage plan: up to two thousand five hundred dollars ($2,500) per day of noncompliance;
8. 8. Failure to comply with approved drainage plan: up to two thousand five hundred dollars ($2,500) per day of noncompliance;
9. 9. Failure to maintain storm water management facilities: up to two thousand five hundred dollars ($2,500) per day of noncompliance.

d. Each day on which noncompliance shall occur or continue shall be deemed a separate and distinct violation.

e. Separate but multiple violations (except for violations under subsection C.3.d) by the same person(s) on one or more sites within any period of twelve consecutive months shall be cause to double the amount of penalty assessed under section C.3.c above for each violation after the first.

Upon assessment of any administrative penalty, the city will bill the violator for said charge and the Director shall have such collection remedies as are available at law. (Ord. No. 44-123 § 10)

**Sec. 16.32.110. Applicability of enforcement actions.**

A. Illegal dumping will be subject to criminal penalties process.

B. Illegal connections will be subject to either the criminal or administrative penalty processes.

C. Industrial violations will be subject to the administrative penalty process.

D. Individual building sites not requiring a federal or state NPDES permit will be subject to the criminal penalty and the stop work order processes; however, any owner or contractor of such site found guilty of multiple violations of this chapter will also be subject to the administrative penalty process.

E. Individual building sites requiring a federal or state NPDES permit will be subject to the administrative penalty process.

F. Subdivision developers in subdivisions not requiring a federal or state NPDES permit will be subject to the criminal penalty and stop work order processes; however, any such developer found guilty of multiple violations of this chapter will also be subject to the administrative penalty process.

G. Subdivision developers of subdivisions requiring a federal or state NPDES permit will be subject to the administrative penalty process.

H. City contractors and utility companies working on projects not requiring a federal or State NPDES permit will be subject to the criminal penalty process.

I. City contractors and utility companies working on projects requiring federal or state NPDES permit will be subject to the administrative penalty process.

J. J. Property owners, subdivision developers, commercial and industrial developers, and city contractors working on new developments and redevelopments requiring compliance with the City of Wichita storm water quality or quantity management standards will be subject to the criminal penalty, stop work order and administrative penalty processes.

K. K. Owners of storm water management facilities and systems that are required to be maintained in accordance with an approved Operations and Maintenance Plan will be subject to the criminal penalty and administrative penalty processes.

(Ord. No. 44-123 § 11)

Sec. 16. 32.120. Hearing and appeal.

A. A. Persons who desire to appeal a requirement, violation or penalty invoked under this chapter may request a hearing and appeal as follows:

1. Any party affected by a penalty, order, directive or determination issued or made, pursuant to this chapter may, within seven days of the issuance of such penalty, order, directive, or determination request a hearing before the Director to show cause why such should be modified or made to not apply to such person. Such request shall be in writing and addressed to the Director of Public Works at 455 North Main Street, Wichita, Kansas, 67202. The Director or his designee shall hold the requested hearing as soon as practical after receiving the request, at which time the person affected shall have an opportunity to be heard. At the conclusion of the hearing, the Director shall issue a written response to the person requesting the hearing affirming, modifying, or rescinding the penalty, order, directive, or determination issued or made.

2. Any party aggrieved by the decision of the Director may appeal such decision to the City Council within seven days of receipt of the decision by filing notice of appeal with the city clerk. Upon hearing, the City Council may affirm, modify, or reverse the decision of the Director.

**Sec. 16.32.130. Enforcement personnel authorized.**

A. The following personnel employed by the city shall have the power to issue notices of violations, criminal citations and implement other enforcement actions under this chapter:

1. All deputies under the supervision of the superintendent of the office of central inspections;

2. All authorized personnel under the supervision of the director of public works;

3. All health officers that are authorized representatives of the City Health Officer.

(Ord. No. 44-123 § 13)

**Sec. 16.32.140. Other legal actions.**

Notwithstanding any other remedies or procedures available to the city, if any person discharges into the MS4 in a manner that is contrary to the provisions of this chapter, or any NPDES permit or order issued hereunder, the city attorney may commence an action for appropriate legal and equitable relief including damages and costs in the district court of Sedgwick County. The city attorney may seek a preliminary or permanent injunction or both which restrains or compels the activities on the part of the discharger.

(Ord. No. 44-123 § 14)

**Sec. 16.32.150. Falsifying information.**

Falsifying information is a separate offense and deemed a misdemeanor. Any person who knowingly makes false statements, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter or any NPDES permit, or who falsifies, or tampers with any monitoring device or method required under this chapter shall, upon conviction, be punished by a fine or not more than one thousand dollars or by imprisonment for not than six months, or by both.

(Ord. No. 44-123 § 15)

**Sec. 16.32.160. Supplemental enforcement actions.**

A. Performance Bonds. Where necessary for the reasonable implementation of this chapter, the director may, by written notice, order any owner of a source of stormwater discharge associated with construction or industrial activity effected by this chapter to file a satisfactory bond, payable to the city, in a sum not to exceed a value determined by the director to be necessary to achieve consistent compliance with this chapter. The city may deny approval of any building permit, grading permit, subdivision plat, site development plan, or any other city permit or approval necessary to commence or continue construction or industrial activity at the site, or to assume occupancy, until such a performance bond has been filed.

B. Liability Insurance. Where necessary for the reasonable implementation of this chapter, the director may, by written notice, order any owner of a source of stormwater discharge associated with construction or industrial activity effected by this chapter to submit proof that it has obtained liability insurance, or other financial assurance, in an amount not to exceed a value reasonably determined by the director, that is sufficient to remediate, restore, and abate any damage to the MS4, the waters of the United States, or any other aspect of the environment that is caused by the discharge.

(Ord. No. 44-123 § 16)

**Sec. 16.32.170. Severability.**

If any provision of this chapter is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall remain in full force and effect.

(Ord. No. 44-123 § 17)

**Agenda Item No. IV-1.**

**City of Wichita**
**City Council Meeting**
November 2, 2010

**TO:** Mayor and City Council

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

**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Non-Consent)

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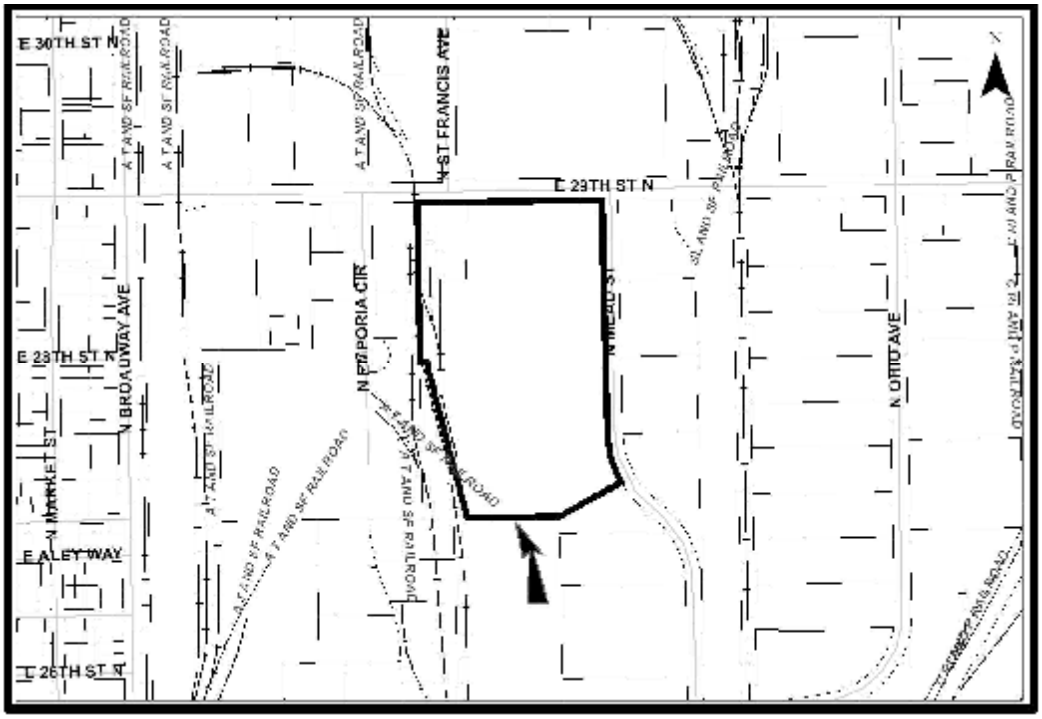
**MAPC Recommendations:** Approve, subject to amended staff conditions (6-5; 8-1).

**MAPD Staff Recommendations:** Approve, with conditions.

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



**Background:** This application was originally heard by the Wichita City Council on June 15, 2010. At that time, the action of the City Council was to return the request to District Advisory Board VI and the Metropolitan Area Planning Commission (MAPC) for further consideration. In comparison to the agenda report presented on June 15, 2010, the "background" section and the conditions of approval contained in this report have been amended to reflect modifications made as a result of the subsequent meetings. (The application was also heard by the City Council on September 21, 2010, and October 19, 2010, where requests were made by the applicant to defer the City Council hearing until all Council members are present. The City Council granted both requests.)

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

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

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

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

In response to the concerns expressed at the initial DAB VI and MAPC meetings, the applicant has modified the proposal by offering enhanced screening. The MAPC, DAB VI and members of the Bridgeport Area Business Association (BABA) have seen the modified proposal. The applicant's enhanced proposal is to construct a six to eight-foot berm that would be topped with an eight-foot tall masonry wall. Combined the berm and masonry wall would create a 14 to 16-foot tall screen that should

effectively screen from view along Mead Street and 29th Street North scrap piles up to approximately 75 feet in height. The screening is proposed to be located along the southern property line, beginning adjacent to the northern end of the grain elevator, then east to Mead Street, then north along Mead to the entrance on Mead, then west along the southern side of the driveway into the proposed facility. The berm and wall would then resume on the north side of the Mead Street driveway, then run north to 29th Street North and then west along 29th Street to the corner of the main driveway serving the parking lot to be located east of the main office building. The screening is proposed to be further enhanced by the addition of trees or shrubs.

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

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

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

The MAPC heard the application for a second time on August 19, 2010. As at the previous meetings, a similar number of people spoke in opposition citing concerns similar to those presented at previous meetings. There were also speakers in support of the application repeating comments similar to those made at the second DAB VI meeting. The MAPC voted (8-1) to recommend approval, subject to the following amended conditions that were agreed to by the applicant:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Financial Considerations:** None.

**Goal Impact:** Promote Economic Vitality and Affordable Living.

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

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

**Recommendation/Actions:**

1. Concur with the findings of the MAPC, approve the Conditional Use, subject to the recommended conditions and authorize the Mayor to sign the resolution (requires a three-fourths majority); or

2. Deny the Conditional Use request by making alternative findings, and override the MAPC's recommendation (requires simple majority).

OCA 150004

RESOLUTION No. 10-280

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

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

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

**Case No. CON2010-00008**

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

**SUBJECT TO THE FOLLOWING CONDITIONS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date

November 2, 2010.

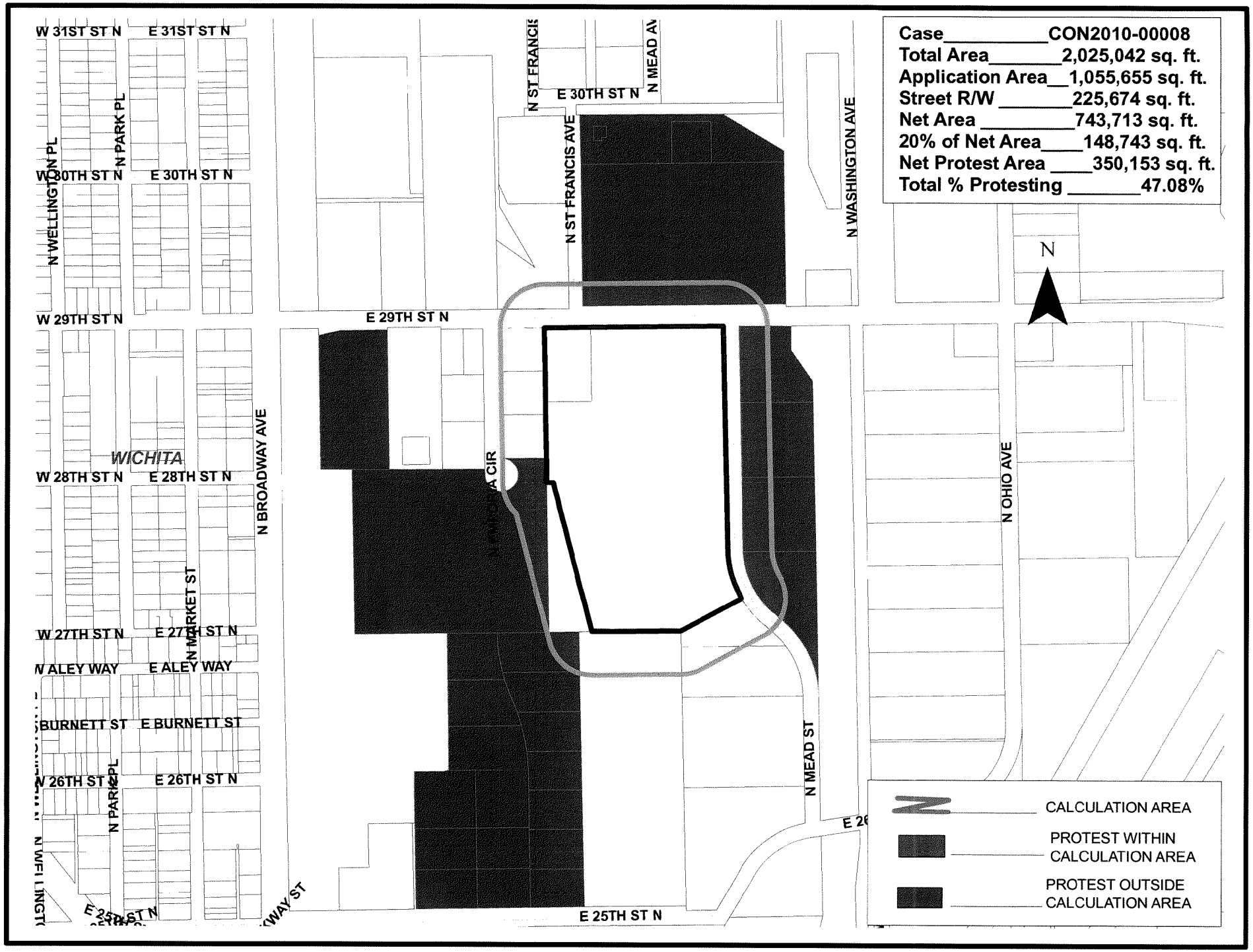
_____
Carl Brewer, Mayor

**ATTEST:**

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, City Attorney


Case CON2010-00008
Total Area 2,025,042 sq. ft.
Application Area 1,055,655 sq. ft.
Street R/W 225,674 sq. ft.
Net Area 743,713 sq. ft.
20% of Net Area 148,743 sq. ft.
Net Protest Area 350,153 sq. ft.
Total % Protesting 47.08%
N
CALCULATION AREA
PROTEST WITHIN CALCULATION AREA
PROTEST OUTSIDE CALCULATION AREA
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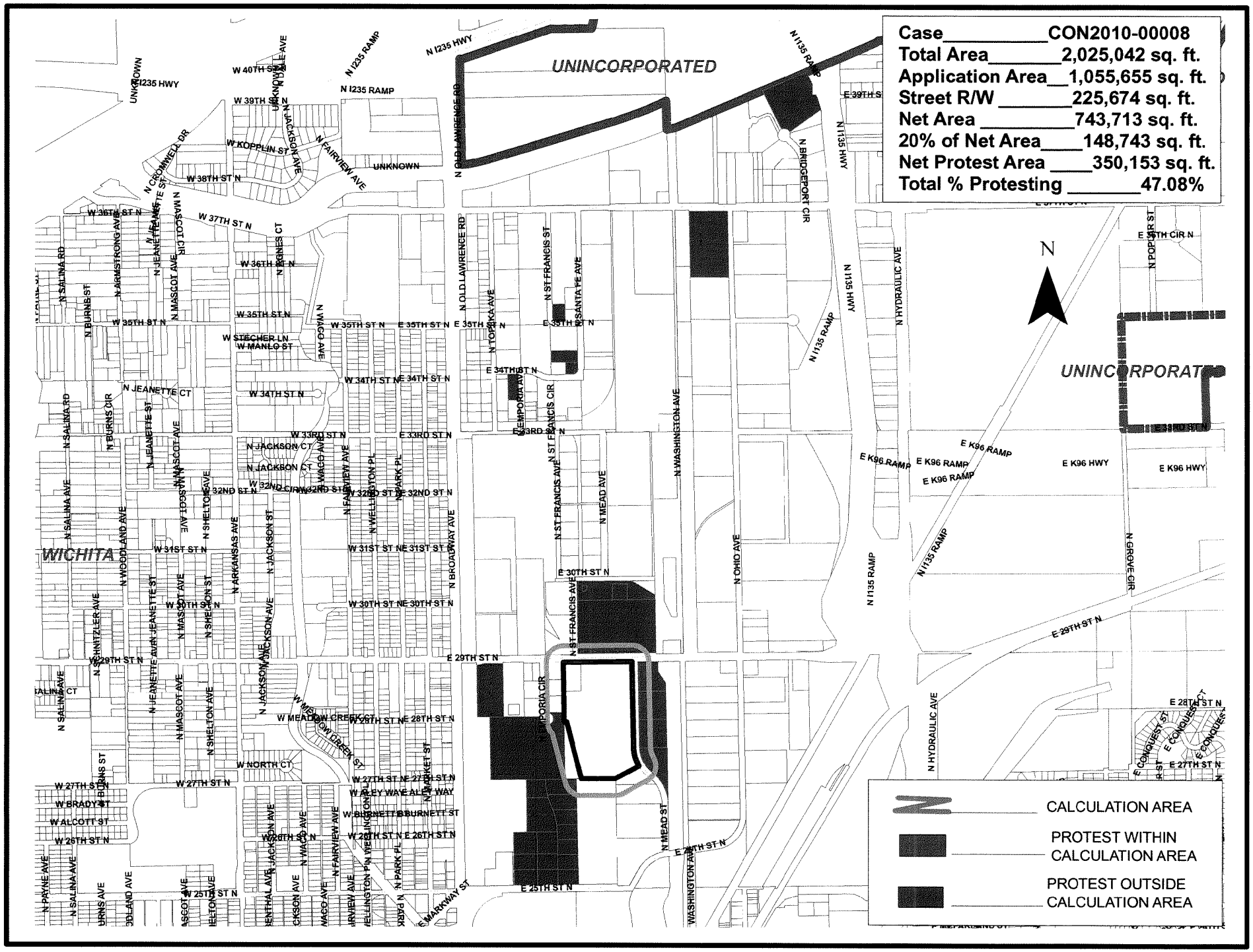
E 25TH ST N
N WELLINGTON PL
N PARK PL
N BROADWAY AVE
N MARKET ST
WICHITA
N ST FRANCIS AVE
N WASHINGTON AVE
N OHIO AVE
N MEAD ST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UNINCORPORATED
WICHITA
N
CALCULATION AREA
PROTEST WITHIN CALCULATION AREA
PROTEST OUTSIDE CALCULATION AREA

wdm ARCHITECTS

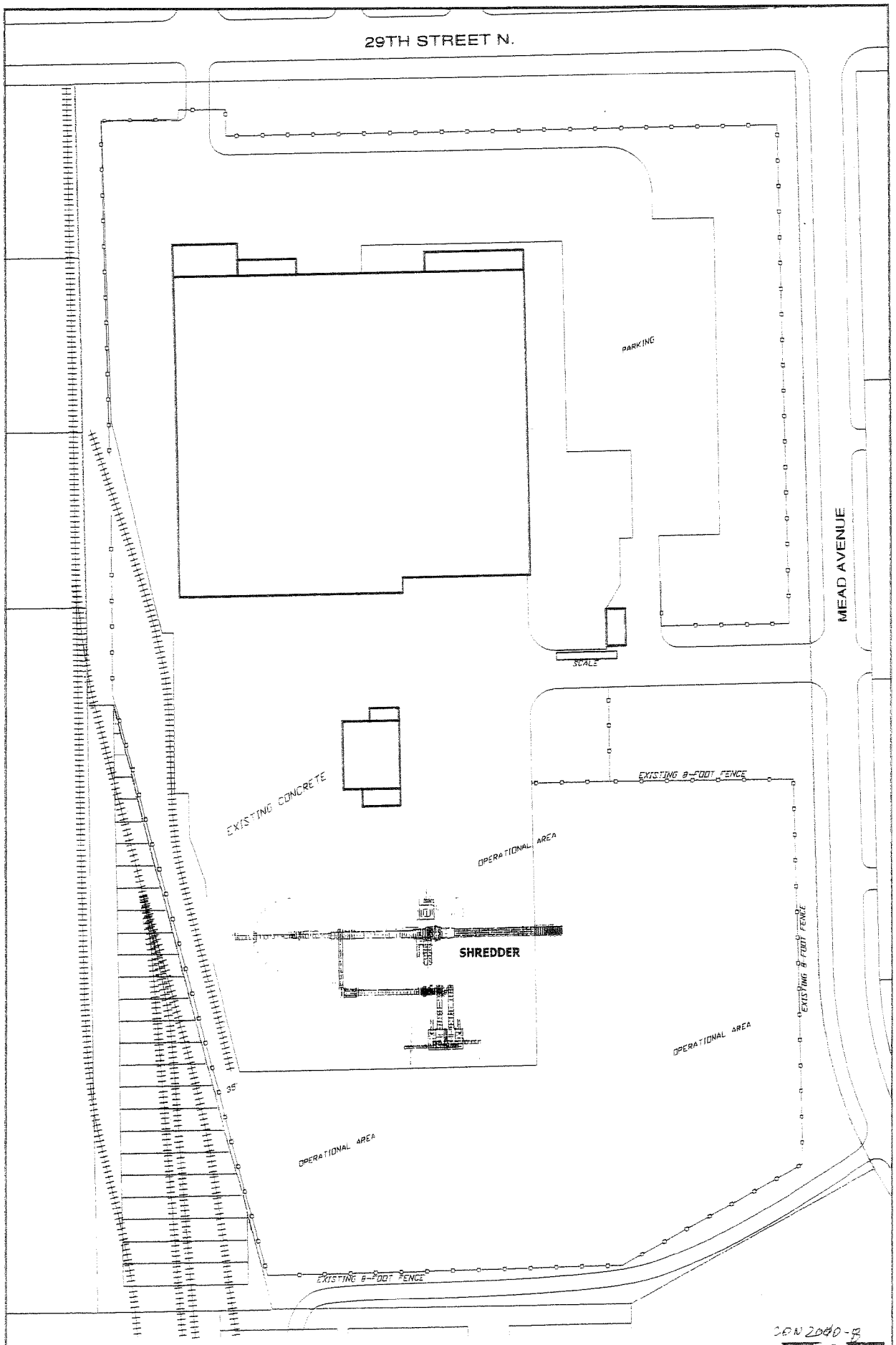
04.08.09

# PROPOSED METAL RECYCLING FACILITY

MASTER PLAN - 2010

WICHITA, KANSAS

75'




CON 2010-?

# SITE PLAN - CON2010-??

## MIDWEST SCRAP MANAGEMENT

SCALE: 1" = 100'

Baughman

ENGINEERING · SURVEYING · PLANNING
LANDSCAPE ARCHITECTURE

# EXCERPT OF THE MARCH 18, 2010 MAPC HEARING

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

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

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

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

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

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

**ADJACENT ZONING AND LAND USE:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This recommendation is based on the following findings:

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

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

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

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

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

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

**DALE MILLER**, Planning Staff presented the Staff Report.

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

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

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

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

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

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

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

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

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

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

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

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

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

**KAPLAN** replied yes sir it does.

**MITCHELL** asked how many employees are anticipated at this operation.

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

**KLAUSMEYER** asked for a clarification on the screening.

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

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

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

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

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

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

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

**LOWE** responded to date, no they haven't

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

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

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

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

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

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

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

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

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

**MARNELL** asked about another salvage operation north of 29th

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

**MARNELL** asked what type of business was that.

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

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

**OLSEN** said a couple of years.

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

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

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

**OLSEN** said yes they did.

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

protective overlay to limit the type of businesses that are going into the Bridgeport area such as salvage yards, rock crushers and sexually oriented businesses. He said this is a very pristine industrial park area with nice, clean types of businesses. He said a salvage yard will have a detrimental effect on the other businesses in the area. He said these businesses have sunk millions of dollars into their businesses and clean up of the area. He said at one time it wasn't so nice up there. He said these businesses employee 6,000 plus employees. He said this area is literally the gateway to the northern part of Wichita along I35. He said the first thing you see is this nice industrial park area. He said if this salvage yard is approved, it will be the first thing that will hit you as you drive into Wichita and it will have a negative effect on Wichita. He mentioned the photographs of the Kansas City operations with a crane and a pile of scrap that is well over 60 feet high. He said no screening, unless you come up with a bubble, is going to hide that from the area. He said he believes this is going to have an adverse affect on some of the other businesses and he is afraid that once the door is opened up, they will not be able to stop it because of the zoning. He said just because it is a GI area and everything is allowed in there but the kitchen sink doesn't necessarily mean that all types of businesses are appropriate for the area. He said especially after they have spent many hours developing the protective overlay. He said it is very rare that businesses come in and police themselves. He said this is a unique area to the City. He concluded by asking the Planning Commission to deny this because this would have an adverse effect on what they are trying to do in the area. He commented that Campbell Recycling is very limited in what they can do, but they are doing baling, scraping and processing which they do not have permission to do. He said they came back to the Commission and tried to get approval but he recalls that Commissioner McKay commented at the time of the denial that it would have an adverse effect on the quality type industrial park they are trying to do at Bridgeport.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**MOTION:** To deny the application.

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

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

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

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

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

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

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

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

**MARNELL** suggested a maximum of 35-feet in height.

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

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

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

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

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

**SHERMAN** asked about the buffer from 29th Street.

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

**KAPLAN** asked for clarification on the height restriction.

**SHERMAN** said 35-feet from the motion maker.

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

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

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

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

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

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

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

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

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

**FOSTER** asked for clarification on the protective overlay limits.

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

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

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

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

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

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

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

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

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

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

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

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

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

**ADJACENT ZONING AND LAND USE:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This recommendation is based on the following findings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**MOTION:** To grant the speaker two additional minutes.

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

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

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

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

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

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

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

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

**FOSTER** asked about the decibel level of the shredding operation.

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

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

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

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

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

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

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

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

**EILERT** responded that Midwest bought the property outright.

**RANDY SPARKMAN** said as a former City employee and zoning supervisor in the Office of Central Inspection (OCI) he was present to speak in favor of the proposed project. He said he was not only speaking for this project but for use of the GI General Industrial district in general. He said he understands owners in the area are concerned and want this GI zoned area restricted to some other uses. He commented that the GI zoning district is the least restrictive zoning district and hazardous uses are very rarely restricted in the district. He said he believed staff has levied some very good restrictions on the proposed business and specifically mentioned the 35-foot material height. He said there was a statement made at the DAB that you can see this product from the highway and various other locations. He said he submits that someone has to have extremely good vision to identify exactly what the material is from the highway. He said he was very impressed with the proposed screening and landscaping the applicant was willing to provide to protect the surrounding neighborhood. He said this area was designed specifically for this kind of use.

**FOSTER** asked what type of screening is required and mentioned some of the operations along 21st Street east and the 21st Street Revitalization Plan. He asked about screening where this site abuts the railroad tracks.

**SPARKMAN** said he was not wholly familiar with the 21st Street Revitalization Plan. He said most of the operations on east 21st Street are not wrecking and salvage, but recycling which he believed required different levels of screening. He said the Office of Central Inspection (OCI) currently has enforcement issues on screening along 21st Street.

**MILLER** commented that Glickman Metal Recycling is between Broadway and the applicant's site.

**BRIAN TURNER, HALL INDUSTRIAL SERVICES, 1221 EAST MURDOCK AVENUE** said he owns lots 2 and 3 in the Bridgeport Industrial Addition which are adjacent to this site. He said he was in favor of the proposal. He said he has personally been in scrap yards in Kansas City, Oklahoma City, Dallas and Houston and said he has never been in one that looks as nice as this one does. He also mentioned that there were similar businesses in the area. He concluded by saying he was in favor of the application.

**LAURIE CAMPBELL, OWNER, 3423 NORTH ST. FRANCIS, 3428 NORTH EMPORIA, AND LOT 2, BLOCK 3 BRIDGEPORT INDSUTRIAL ADDITION** said she is in the recycling business and supports Midwest's conditional use request. She said this is the type of business that belongs in the area since Bridgeport and the surrounding area is GI General Industrial zoned. She said she has not been approached by BABA concerning this proposal. She mentioned increased traffic in the area which resulted in the installation of a stop sign at 29th Street and Ohio Street. She said if trucks are moving in the area, that means people are doing business and money is being made, which is better than having a for sale sign on the property. She commented that you have to wait for the train in the area now. She said Midwest is making a huge investment in the community, creating jobs, paying taxes, using utilities and that this operation will provide a beneficial service to the community. She said the aircraft companies not working at their full potential right now. She said there is a shredding operation a stone's throw from this site and added that is another reason this is the best place for this type of activity. She said GI zoning will

accommodate the Midwest Scrap operation and that Midwest has bent over backwards to try to accommodate the neighbors. She said Midwest has the right to operate a business and that this is the correct location to put it in. She concluded by asking the Planning Commission to approve the conditional use request.

**BOB ALDRICH, 804 NORTH MAIN STREET** said he was present to speak in opposition of the proposed scrap and metal salvage yard. He said the Bridgeport area was created by the City of Wichita to clean up a blighted area, create tax revenues and produce jobs. He mentioned the three phases of the Bridgeport Development. He said 18 companies originally located in the industrial park because they believed it was going to be a high end industrial park. He said these companies included Coleman, Love Box, Excel and others. He said that number has grown to 43 companies on the 80-acre Bridgeport site ranging in size from ½ acre to 18 acre lots. He said this area is ideal because of its close proximity and access from K-96, I-135 and I-235 highways. He said the main purpose and intent of the City in creating this high end industrial park was to attract more job opportunities into the area. He said several of the companies' employee several thousand employees, whereas the scrap metal business will only create approximately 20 jobs. He mentioned the 21st Street Revitalization Plan and added that just because GI zoning was a catch all area, that doesn't mean everything fits into that zoning. He said if this request is approved it will be detrimental to the rest of the businesses in the area who will hesitate to expand and create more jobs. He asked the Planning Commission to consider denial of the application.

**RICK LOWE, 1509 SOUTH SPRINGHOLLOW CIRCLE** said he owns and operates two businesses in the area and is President of BABA (Bridgeport Area Business Association). He gave a brief review of the origin of BABA which began in conjunction with discussion of the 21st Street Revitalization Plan. He said land use issues are what brought the group together. He pointed out the fact that just because the area is zoned GI, doesn't mean anything and everything fits into it. He said the conditional use procedure was put in place and designed so the City can address each application on a case-by-case basis. He said they are looking for higher end industrial use and something that will fit the character of the neighborhood. He said they are currently working on a Protective Overlay (PO) for the area with Planning Staff and added that just because a site isn't in the PO area doesn't mean they shouldn't be concerned about it. He said they will be notifying landowners within 200 feet of the PO. He commented that the Planning Commission denied a conditional use permit for a piece of property further north of 29th Street on Ohio Street. He said if this request is approved it doesn't take a rocket scientist to realize that next month the Commission will be talking about a permit on Ohio Street again. He said they don't want to see a trend started of these types of industry processing uses in the area. He mentioned the 2030 Functional Land Use Guide that said the area should be used as an employment industry center. He said taking this 25 acre site and converting it to use that will employ 10-15-20 people is not compatible with the Land Use Guide. He concluded by stating that he did not believe this conditional use application was a good fit for this neighborhood and suggested they locate south of 25th Street where the other wrecking/salvage yards are located.

**JOHN C. WADSWORTH, 14810 SPORT OF KINGS, OWNER AND PRESIDENT OF PIPING AND EQUIPMENT** said he employees over 200 people with a payroll of $10,000,000 - $12,000,000 annually. He referred to the map of scrap yards in the area provided by Mr. Kaplan at the March 18, 2010, Planning Commission Hearing. He said he did not believe the map was accurate and was misleading as to the actual number of operations in the area. He briefly went through the 12 locations one-by-one referring to pictures he took of each operation. He said of the 12 locations referred to on the map, only seven were actually in operation, and five of those seven were located on east 21st Street. He referred to the area along north 21st Street between Broadway and I-135 and commented that there was absolutely no development in that area. He concluded by referring to a map of the Bridgeport area today and commented that it was not an area for recyclers. He referred to the newspaper articles provided as a handout where the St. Joseph Fire Chief suggested closing down the Midwest Scrap Management

operation in Kansas City. He ended his presentation by asking the Commission to deny the conditional use application.

**JOHN PRATHER, 1833 RIDGE ROAD, EL DORADO, VICE PRESIDENT CORPORATE RELATIONS, GROENDYKE TRANSPORTATION, INC., 3550 NORTH OHIO STREET** provided a hand out which was two articles from the *St. Joseph News-Press* dated March, 2004, regarding fires and repeated Code violations at the Midwest Scrap Management facility in St. Joseph. He said as a safety supervisor and member of the State Commission on emergency preparedness and response he has witnessed a lot of operations and been involved with safety issues and public responsibility in transporting and dealing with hazardous materials. He said Groendyke moved from Valley Center to the Bridgeport Industrial Park for ease of access to the interstate and currently has 100 employees at the Ohio Street address. He said they want to be located with "like" neighbors who are conscientious of safety and security. He said they have concerns about the track record of this operation making application to come into the Bridgeport area. He referred to the newspaper articles and said that operational issues such as these are just the tip of the iceberg. He mentioned transportation congestion and railroad tie ups and added that this operation just does not fit into this area. He commented that when Groendyke moved to Bridgeport they were looking into the future and willing to invest; however, he said this operation is contrary to the future development of Bridgeport. He concluded by saying that compliance with City, State, and Federal regulations is important and the neighbors don't feel that any fence or berm to hide a bad operation or one that is not in total compliance with regulations will help the area.

**DENISE GERBER, MORRIS COLLECTION, 128 SOUTH DELLROSE** said they own a commercial rental property at 3030 N. Ohio Street located a couple of blocks east of Ohio and 29th Streets. She said they have it rented to a transportation service operation that employees approximately 80 people. She said she would like to talk to the Commission about land valuations in the north industrial corridor. She referred to 2 handouts which where maps that reflected the 2009 land values per square foot by parcel north and south of 29th Street. She commented that land north of 29th Street averages 57 cents per square foot and noted how valuable the land has become. She said land south of 29th Street where most of the scrapping operations are located along 21st Street averages 27 cents per square foot. She said she had three observations regarding this information: #1 – the further away from the 21st businesses area, the higher the land value; #2– businesses north of 25th and 29th Streets would not be located there today if a third scrap yard was in the area; and #3 - she suggested that if the applicant located this operation south of 29th Street, they would still have railroad and arterial access in additional to it being a prime location for a scrap yard. She commented that the information from the County Appraisers office indicated that neighbors will be impacted by non-typical uses. She commented that the Midwest Scrap Management operation will cause economic obsolescence to the businesses currently located in Bridgeport with the noise, dust, smoke, ground water pollution and hazardous and dangerous conditions. She said scrap and salvage operations reduce property values and can adversely impact an area and neighbors. She said given a choice, businesses will not locate near a scrap yard.

**MOTION:** To grant the speaker 1 additional minute.

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

She asked the Commission to consider compatibility of the application and nature of the use. She said this operation is not typical of the adjoining neighbors and will lower the value of the neighbor's properties. She asked the Commission not to drive away potential future and current businesses and added that the Commission had a responsibility to make this an even better industrial park like the City leaders envisioned back in the 1970's. She asked the Commission to please vote no to the conditional land use application.

**PAT HUGHES, 1635 NORTH WATERFRONT PARKWAY, ATTORNEY, ADAMS JONES LAW FIRM** said he was present on behalf of BABA. He said he was present to tie together what the Bridgeport area is, future land uses, and the impact of the proposed development and how these concerns should drive the Commission to a decision to deny the application. He mentioned land use and how it should be discussed in the particular context of this case, not as an ad hoc decision based on the applicant's proposal or the surrounding neighbors concerns, but in the broader picture and future land use questions that are involved as to how land is going to be developed in the City of Wichita. He referred to the 2030 Functional Land Use Guide which he believed was developed as a planning tool to guide the City on decisions like this current application and good land use practices. He said the Commission needs to evaluate if the 2030 Functional Land Use Guide principles are still valid. He commented that prior to 2005 the Land Use Guide designated the Bridgeport area as industrial/transportation/ utility and communication. He said the Land Use guide calls for this area to be used as an employment/industry center. He said this proposed use is clearly not an employment center. He said the use is in the category of processing center, and added that this distinction is completely left out of the Staff Report. He said the previous planning calls for the sort of use that is already in the area, which is the combined office/warehouse facility that Cargill had. He said the applicant has not shown that the 2030 Functional Land Use Guide was ill-conceived. He said the scrapping operation is not serving a need that is being generated in the area, but is importing scrap so it is not an adjunct to the existing uses in the area. He mentioned the Golden Factors and character of the neighborhood. He said the site is compatible with the current uses which are office/warehouse; he said it is not compatible with the scrapping operation next door. He mentioned removal of the restrictions and how it will detrimentally affect nearby property. He said they question the truck traffic and violation of KDHE and Kansas Department of Transportation (KDOT) regulations that seem to go along with this type of operation and whether those violations are dangerous to the community. He said the property is not vacant and it is not necessary to remove the current property restrictions for the property to be economically productive. He said any hardship on the applicant is self-incurred, if it exists. He mentioned conformity with plans and referred to the 2030 Functional Land Use Guide, which this application does not conform to.

**MOTION:** To grant the speaker 2 additional minutes.

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

He said impact on community facilities remains unclear and whether the railroad use at this location will cause problems for traffic on 29th Street. He said there is an overwhelming opposition to the application by the neighbors. He said the supporters of the proposal want to use their properties or have applied to use their properties for scrapping operations in the Bridgeport area. He said staff's recommendation does not show the difference of employment/industry centers and processing industry uses. He said because of these reasons they feel the right result is to deny the application.

**MIKE BOYD, PARTNER, GODSEND LP, 2822 NORTH MEAD STREET** which currently houses the tenant Mahaney Roofing and is located directly across from the proposed shredder site. He said he has heard testimony that this is a land use issue, which is defined by zoning which did not include the 2030 Functional Land Use Guide. He asked how the decision can be limited to one issue when the issue can have such a deep impact on an area. He said he was alarmed when the Commission approved the use and 35 foot piles of scrap metal with only an eight-foot chain link fence as a barrier. He said he was one of the four surrounding property owners that filed a protest on the Commission's decision. He said he listened to Midwest's proposal for additional screening and thought the proposed new screening was good. He questioned some of the architectural renderings and perspectives. He mentioned that Mead Street is about three feet above the roadbed. He said he does not want the Commission to make a good decision based on bad information. He mentioned other concerns such as the applicant's plans to control the rodent problem, control dust production, provide water to cover the debris on site to cut down on the

smell, creating noise from shredding car bodies and operating a site attractive to birds. He said none of these items is attractive to surrounding neighbors and that it will adversely affect businesses near the site. He said this operation will negatively impact the entire area. He questioned Midwest's claim of investing $30,000,000 into the facility, and said the $20,000,000 shredding machine will not be bought in Wichita. He commented that within the last several years Groendyke Trucking and Piping and Equipment have invested $8,500,000 in buildings in the Bridgeport area. He said Mahaney Roofing employees 87 people and has a payroll of approximately $3,000,000 annually. He said the investment of the companies currently located in the Bridgeport area is being ignored; however, he feels what the companies currently located in Bridgeport have invested much more than the $30,000,000 Midwest is suggesting. He said this investment has resulted in creating approximately 6,000 jobs in the Bridgeport area. He asked the Commission to review the statutes and guidelines to see that the community benefits from this use. He said he feels as it stands; only Midwest will benefit and all the other businesses in Bridgeport will be devalued. He asked the Commission to deny the permit.

**LEWIS EFTINK, 1330 EAST 37TH STREET NORTH** said he was a member of BABA and supported their position on this application. He read a letter from William R. Nath, President, HOC Industries, 3511 N. Ohio Street wherein he stated that the was "adamantly and unconditionally opposed to the conditional use application to permit wrecking and salvage at 2901 N. Mead Street by Midwest Scrap Management." He commented on the detrimental effect on property values in the area and that it will deter other desirable businesses from locating in the Bridgeport. He also mentioned that granting the conditional use permit is not fair to those businesses who have invested much time and money over the years to build property values in the area.

**KAPLAN** said he thought it was interesting that the only thing opponents to the plan can focus on is the 2030 Functional Land Use Guide. He said it clearly states in the Staff Report that this proposal is in compliance with that Plan. He said the 2030 Guide indicates industrial use and employment; it does not quantify employment. He said 40 jobs are better than no jobs and added that the jobs created will not be menial jobs but will be machine operators and truck drivers. He said professional Planning Staff have made a finding that the conditional use request is compliant with 2030 Functional Land Use Guide so that issue really isn't an issue at all. He said this is all subject to interpretation and commented that if the building is left empty, there will be no jobs at all.

**MOTION:** To grant the speaker 1 additional minute.

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

He commented that this case was previously approved by the Planning Commission and that when the applicant still received complaints they went to the neighbors and as a result of those conversations they enhanced the request to make Mead Street a private driveway to cut down on traffic; they reduced the application area to 12.4 acres; they agreed to leave the current building and parking lot in tact; and provide additional landscaping. He said this is a better plan than the Commission already approved. He asked the Commission to approve the application so they can go back to the City Council.

**JOHNSON** said he has not talked to anyone about this application; however, he was going to support the application for three reasons. First, he said this is a quality facility that will put other scrap facilities to shame and perhaps encourage them to clean up in the future. He said the applicant presented greatly improved screening and volunteered to cut off access to Mead Street, if the Commission so desired it. He also mentioned that by putting the entire operation on the south of the property the building and hedge will provide a buffer to the north off of 29th Street. In addition, he said the size of the area they are requesting for the operation is one half of the original request. He said for those reasons he will be supporting the application.

**MOTION:** To approve subject to staff recommendation and the 12.4-acre limitation on size of the application; improved landscaping plan; emergency access only to Mead Street; and if an emergency access was not required, the berm would go all the way across the road.

**JOHNSON** moved, **KLAUSMEYER** seconded the motion.

**FARNEY** asked if the applicant would be subject to the scrap metal licensing procedures.

**SHARON DICKGRAFE, ASSISTANT CITY ATTORNEY** said as an auto wrecker, they are subject to a different type of license.

**MCKAY** commented that he wasn't present the last time this issue was discussed and that he had some problems. He said whether there were in fact 12 scrap yards in the area was immaterial as far as he is concerned. He said he understood a lot of the reason the Bridgeport area was developed was to clean up the area. He said the area was previously used for the operation of meat packing plants and stock yards, which was one of the reasons the Cargill plant was located there. He said land was cheap and it was in close proximity to the railroad tracks on the west. He said people are concerned that property values are going to go down, he asked where it stops. He said he listened to a presentation this morning at the Advance Plans Committee about developing an overlay for ground north of 29th Street. He said there was also discussion at this meeting about approving this request, but disapproving a request north of 29th Street. He asked what provision is there to keep this whole area from becoming salvage yards. He said he has some bad feelings going forward that this will be setting a precedent in an area the City is trying to clean up. He said he doesn't care how nice the area is, there are already 7-12 scrap yards in the area. He said he believes approving this would create a problem rather than solving one so he will not be supporting the motion.

**DENNIS** said this area is zoned for what they are talking about. He said he keeps coming back to the question "if not here where." He said, therefore, he was going to support motion, not that he thinks this operation will enhance the area.

**MCKAY** said if the area was zoned for this type of activity, they wouldn't have to be getting a conditional use.

**JOHNSON** said a conditional use permit is required no matter where this type of activity is located.

**GOLTRY** clarified that a conditional use is required in LI Limited Industrial and GI General Industrial zoning.

**JOHNSON** said so this type of activity requires a conditional use no matter where it is located?

**GOLTRY** said this type of operation could be located in the Air Force Base Overlay without a conditional use permit.

**DICKGRAFE** clarified that the motion included that the conditional use permit was for 12.4 acres.

**The Motion carried** (8-1). **MCKAY** – No.

CITY OF WICHITA

**INTEROFFICE MEMORANDUM**

**TO:** MAPC Members

**FROM:** Terri Dozal, Neighborhood Assistant, District VI

**SUBJECT:** **CON2010-00008** City Conditional Use to permit wrecking and salvage at 2901 N. Mead Avenue, generally located at the southwest corner of 29th Street North and North Mead Avenue.

**DATE:** March 17, 2010

On Wednesday, March 17, 2010 the District VI Advisory Board (DAB) considered a City Conditional Use to permit wrecking and salvage at 2901 N. Mead.

The members were provided the MAPD staff report for review prior to the meeting. *Dale Miller*, Planner presented the case background, reviewed the staff recommendation and answered questions of members and the public.

The Board asked the following questions/comments:

- How far is the existing metal recycling in the area from this location?
- What is the height for screening?
- What would be the highest estimate of trucks coming to the property on a daily basis as the staff report said fewer than 20?
- Will they recycle fuel tanks and tires?
- What controls do you have in place to keep down dust?
- Will there be hazardous liquid leaching into the ground?
- Will there be retail of yard metal to the public?
- Has the applicant met with the surrounding neighbors about the business they are bringing to the area?
- What impact will the existing businesses have from this recycling center?

Eight members of the public made the following comments, asked questions or expressed opposition of the conditional use request::

- Bridgeport is a high quality industrial park and we are opposed to this.
- What about all the visual blight this business will bring?
- Another previous conditional use request was denied by MAPD due to the 21st street revitalization and the City's investment in the Bridgeport area. I oppose.
- I have spent a lot of money on my business to improve the area. The other recycling location has explosions and they scare us. They say one thing at these meetings and do another once they have been approved to operate.
- There has to be another location to put recycling in this city. This is detrimental to our area.
- I would feel a violation of trust by the City if this non-like business is put in Bridgeport.
- An 8-ft. fence doesn't hide anything. This is not good for our neighborhood.
- I'm concerned about retaining our property value due to visual blight. I'm opposed.
- When the Glickman recycling has explosions it shakes our building and what about airborne bits of steel that will get into my equipment and increased traffic in front of my building. I'm opposed.

- The business these owners operate in Kansas City has recycled piles over 50ft high-they can do that here as an 8ft-fence will not cover anything. Another problem is gas tanks and tires strewn throughout K.C. because the recycling plants wouldn't take them. I'm opposed.
- If we get another recycling plant we will have bidding wars between them to recycle which in turn causes an influx of robbery of materials. Who is going to protect our community when this happens. I oppose.

****Action: The District VI Advisory Board members made a motion to recommend to City Council to deny (**5-0**) the conditional use request based upon previous background information of prior applicants and the Bridgeport Association members comments.

Please review this information when **CON2010-00008** is considered.

mtd

CITY OF WICHITA

**INTEROFFICE MEMORANDUM**

**TO:** MAPC Members

**FROM:** Terri Dozal, Neighborhood Assistant, District VI

**SUBJECT:** **CON2010-00008** City Conditional Use to permit wrecking and salvage. At the southwest corner of 29th Street North and North Mead Avenue (2901 N. Mead Avenue).

**DATE:** August 19, 2010

On Wednesday, August 18, 2010 the District VI Advisory Board (DAB) considered a City Conditional Use to permit wrecking and salvage. At the southwest corner of 29th Street North and North Mead Avenue

The members were provided the MAPD staff report for review prior to the meeting. *Dale Miller,* Planner presented the case background, reviewed the staff recommendation and answered questions of members and the public.

The Board asked the following questions/comments:

- What type of drainage would be used inside the facility?
- The height limit of the scrap piles would be at 35ft.?
- What is the daily number of trucks that would be coming into the area?
- Was access to the railroad tracks essential?
- What would be the environmental impact and would the material attract birds and rodents?
- What is the total height of the berms and fencing together?
- Bridgeport has developed a high-end industrial area and invested millions of dollars into it.
- This applicant has done a lot to make this an appealing location site. I've never seen that before.
- Nice landscaping.
- I have a concern with compatibility of the area.

Seven members of the public spoke in opposition of the request stating:

- Where the business would be getting their scrap from.
- The applicant hasn't met with the surrounding businesses to discuss their plans.
- Ground pollution.
- This business doesn't fit into our area and feel they are misleading about what they are going to do. First they said it would be 20-30 trucks daily and now we are hearing it will be 60 trucks coming in daily.
- Our area is a high-end industrial area and if we let this business in it is a step backwards to what we are trying to accomplish. This doesn't fit the character of the neighborhood.
- I have a concern for drivers as Mead Street isn't safe due to projectiles from the shredder.
- De-valuation of our properties and they will drive away other businesses for our area.
- What will this do to the 21st street revitalization plan? We don't want 29th street to turn into a dump site.

Three members of the public spoke in favor of the request stating:

- This is an essential business for Wichita
- The conversion of scrap to another product is an essential industry.
- This business is in the right location for its needs.

****Action:** The District VI Advisory Board members made a motion to recommend to City Council Approval **(4-3)** of the conditional use request based on staff recommendations.

Please review this information when **CON2010-00008** is considered.

mtd

## John Wadsworth

**From:** Miller, Dale [DMiller@wichita.gov]
**Sent:** Monday, March 29, 2010 3:00 PM
**To:** John Wadsworth
**Subject:** RE: CON2010-00008 Protest - Piping & Equipment

The Law Department has advised us that we cannot count e-mailed protests unless there is a signature. One easy solution would be for you to print this e-mail, sign it and fax it to me at 268-4390.

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**From:** John Wadsworth [mailto:john.wadsworth@pipingequ.com]
**Sent:** Monday, March 29, 2010 2:35 PM
**To:** Miller, Dale
**Subject:** Fwd: CON2010-00008 Protest - Piping & Equipment

John C Wadsworth
316.619.5944

Begin forwarded message:

**From:** "John Wadsworth" <john.wadsworth@pipingequ.com>
**To:** "JLMiller@wichita.gov" <JLMiller@wichita.gov>, "cbrewer@wichita.gov" <cbrewer@wichita.gov>, "JLongwell@wichita.gov" <JLongwell@wichita.gov>, "pgray@wichita.gov" <pgray@wichita.gov>, "JSkelton@wichita.gov" <JSkelton@wichita.gov>, "sschlapp@wichiita.gov" <sschlapp@wichiita.gov>, "LKWilliams@wichita.gov" <LKWilliams@wichita.gov>, "RLayton@wichita.gov" <RLayton@wichita.gov>
**Cc:** "john.wadsworth@pipingequ.com" <john.wadsworth@pipingequ.com>
**Subject: CON2010-00008 Protest - Piping & Equipment**

Ms. Miller
Attached is my opposition to the MAPC decision to allow a conditional use at 2901 N Mead. This conditional use would allow Midwest Scrap Management to develop a scrap yard with 35 foot tall stacks of scrap cars at 2901 N Mead. I look forward to hearing more facts about this company and their proposed operations as I do not believe the MAPC, MAPC Staff or DAB IV has been provided accurate information by the company or their agent, Robert Kaplan.

"We make a living by what we get, we make a life by what we give"
Sir Winston Churchill
[cid:image003.jpg@01CACEA4.7341A200]
John C. Wadsworth
john.wadsworth@pipingequ.com<mailto:john.wadsworth@pipingequ.com>
316.295.2911 (O)
316.619.5944 (C)
316.838.2014 (F)

This communication, including attachments, is for the exclusive use of addressee and may contain proprietary, confidential or privileged information. If you are not the intended recipient,

PIPING & EQUIPMENT CO., INC.
P.O. BOX 1065 WICHITA, KANSAS 67201

COPY

March 28, 2010

ATTN: MS. Janet L. Miller
City of Wichita
455 N.Main Mail Stop 1-13
Wichita, KS 67202-1688

Reference: CON2010-00008 – City Conditional Use to permit wrecking and salvage at 2901 N. Mead

Dear Ms. Miller:

As president and owner of Piping & Equipment Company, Inc. located at 1111 East 37th St North, I am **opposed** to the MAPC decision on March 18, 2010 to approve the conditional use permit for Midwest Scrap and Management, Inc. I believe Robert Kaplan the agent for Midwest Scrap and Management and Mr. Nick Hayes the proposed site manager for Midwest Scrap purposely and willfully mislead the MAPC and the MAPC staff. I do not believe the following items have been addressed by the MAPC in their 6-5 voted to approve the conditional use for 2901 N. Mead.

1. The attached map presented by Mr. Kaplan indicates there are 12 approved and operating scrap facilities in the area zoned GI between 21st Street North and 32nd Street North between Broadway and approximately I-135.
   a. Item 2 of Mr. Kaplans ledgend shows C&W Auto Salvage which in fact is a residential area,
   b. Item 5 is not a permitted wrecking and salvage yard – the business is permitted as a recycling facility of household waste,
   c. Items 8 and 11 are the same facility and business,
   d. Items 2 and 6 are the same business and not two separate salvage yards.

This map presented to the MAPC during Mr. Kaplan's rebuttal is very mis-leading.

2. Mr. Kaplan stated during his rebuttal that he had attempted to contact the eight business representatives who spoke against this conditional use request when in fact he had not tried to contact any of the eight business representative present at the MAPC or others who were present at the DAB VI meeting.
3. Midwest Scrap and Management, Inc. have indicated to the MAPC staff, "It is estimated that incoming truck trips will be fewer than 20 on an average day and up to 30 on a busier day". During the MAPC Midwest Scrap management stated there could be 60 trucks per day using the facility. 60 trucks per day is significantly differ than 30. What is the honest answer?
4. The MAPC Staff Report indicates the Applicant / Agent is Cargill Meat Solutions Corporation (property owner), Midwest Scrap Management. (prospective purchaser) / Robert Kaplan (agent). It is unclear to DAB and MAPC who the applicant is and who has title to the property.

No one in the MAPC hearing or the staff report is addressing the rail car issue. I believe when rail cars are switched into or from the facility, 29th Street North will be blocked. 29th Street north is one of the main arterial East – West street in this area.

Midwest Scrap management indicates all vehicles will not contain oils, liquids, and gas tanks. I question how this is possible as vehicles have oils, liquids, lubricants throughout the vehicle. It is well know that old propane bottles which cannot be recycled are disposed of in vehicles which are scraped. When the vehicle is crushed and shredded these propane bottles explode creating an unsafe environment. No one can address where the gas tanks from these vehicles will be

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Wichita, Kansas 67219
www.pipingequ.com

disposed of properly. Any inspection of wrecking and salvage yards currently operating can identify environmentally unsafe liquids on the ground. There are no positive environmental impacts that approval of this conditional use permit will provide the City of Wichita. Traffic volume from 20, 30, 60, or whatever the real number of trucks using the facility is will create traffic issues; noise, dust, odors, and blast from the operation of the facility are all negative issues.

The approval of a conditional use permit for this site are not consistent with the 2030 Wichita Functional Land use. The functional land use category for this site is "Employment/Industry Center" which states this category encompasses areas with uses that constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices.

Limited research of Midwest Scrap Management's current operations in St. Joseph, MO should lead to questions on corporate compliance with local, state, and federal regulations. The DOT Federal Motor Carrier Safety Agency indicated Midwest Scrap Management, Inc. USDOT Number 474469 had 80 DOT inspections in the last 24 months which resulted in 40 out of service citations ( 55.6% whne the national average is 22.27%). Midwest Scrap Managements Vehicle Inspection Indicator is 98.9% which indicates that 98.9% of the time a vehicle operated by Midwest is inspected by DOT a violation is determined. On February 20, 2004 Midwest Scrap Management had a three alarm fire at their St Joseph facility, the seventh fire in a four year period. To quote the St Joseph Fire Chief Jack Brown, "This time, Mr. Brown said he is fed up with the continuous fire calls to Midwest Scrap. This last one really sent a message to them, he said. "I told them no more, that's it. We've spent our last 24 hours at that scene"".

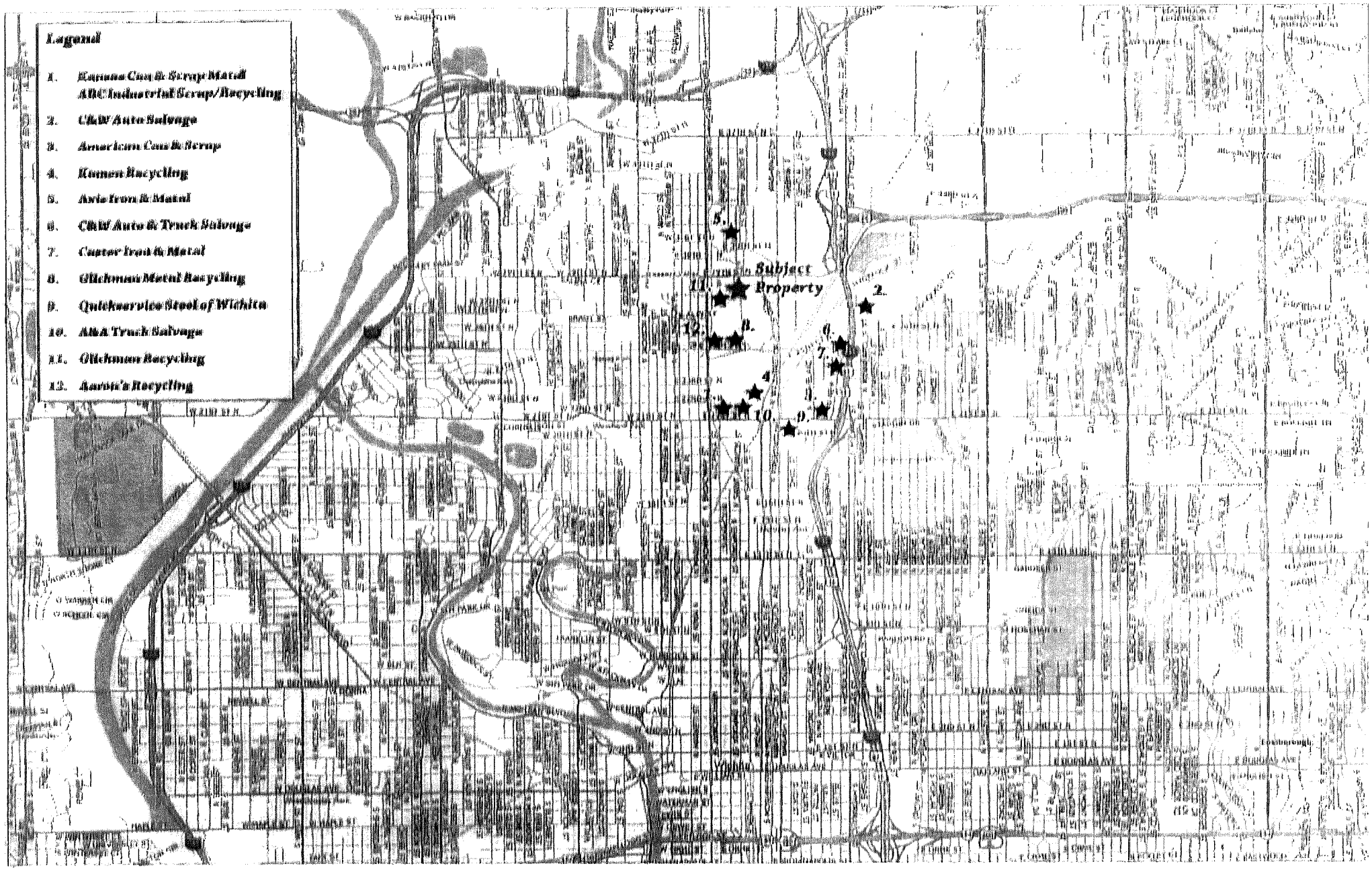
The Bridgeport Area Business Association has been working with the City of Wichita Planning department for over one year to develop a protective overlay for the Bridgeport Area. This protective overlay would support the 2030 Wichita Functional Land Use Guide. When the City of Wichita created the Bridgeport Industrial Park, it was the City vision to have a manufacturing area and transportation area to support economic development. This City vision is BABA's vision: Dedicated to maintaining and improving the appearance and safety of the area as well as establishing a vehicle for collaboration of business expertise that would help business grow and benefit employees, owners, and the community. Approval of this conditional use permit for Midwest Scrap Management, Inc. is a major step backwards.

Sincerely,

John C. Wadsworth
President

CC:City of Wichita Council members: Williams, Schlapp, Skelton, Gray, Longwell
City of Wichita Mayor Brewer
City of Wichita Manager Robert Layton
MAPC Plans Manager Dale Miller

Encl: Kaplan Map
Bridgeport Photos


Legend
1. Kansas Can & Scrap Metal
ABC Industrial Scrap/Recycling
2. C&W Auto Salvage
3. American Can & Scrap
4. Komen Recycling
5. Axis Iron & Metal
6. C&W Auto & Truck Salvage
7. Caster Iron & Metal
8. Glickman Metal Recycling
9. Quickservice Steel of Wichita
10. A&A Truck Salvage
11. Glickman Recycling
12. Aaron's Recycling
Subject Property

**Agenda Item No. IV-2.**

**City of Wichita**
**City Council Meeting**
November 2, 2010

**TO:** Mayor and City Council

**SUBJECT:** DER2010-00009 – Establish Bridgeport Industrial Area Protective Overlay on property zoned GI General Industrial and GC General Commercial; generally located in an area bounded by 29th Street North, Broadway, I-235 and I-135. (District VI)

**INITIATED BY:** Metropolitan Area Planning Department

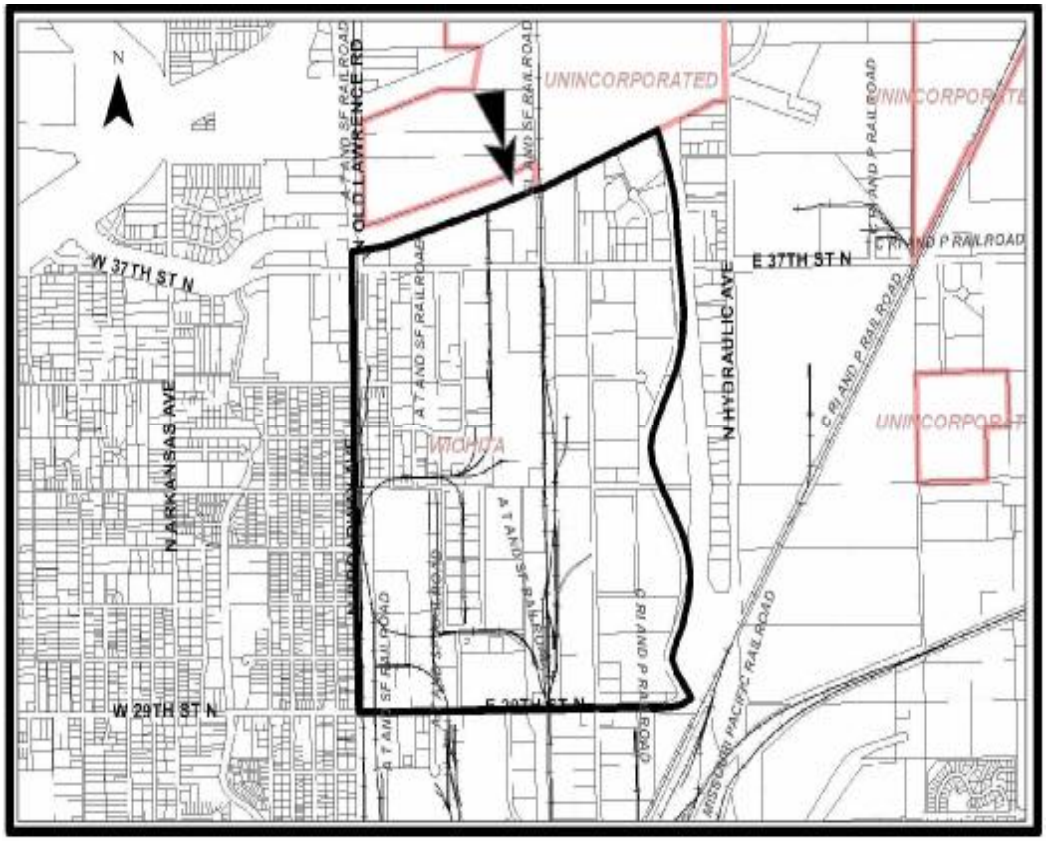
**AGENDA:** Planning (Non-Consent)

---

**MAPC Recommendation**: Approve the overlay district to the entire Bridgeport area except those properties that have chosen to "opt out" prior to the City Council hearing the case, to send a letter to each property owner in the overlay district explaining the Metropolitan Area Planning Commission's motion and indicate that property owners still have the choice to opt out of the proposed overlay up until the time of the City Council meeting (11-1).

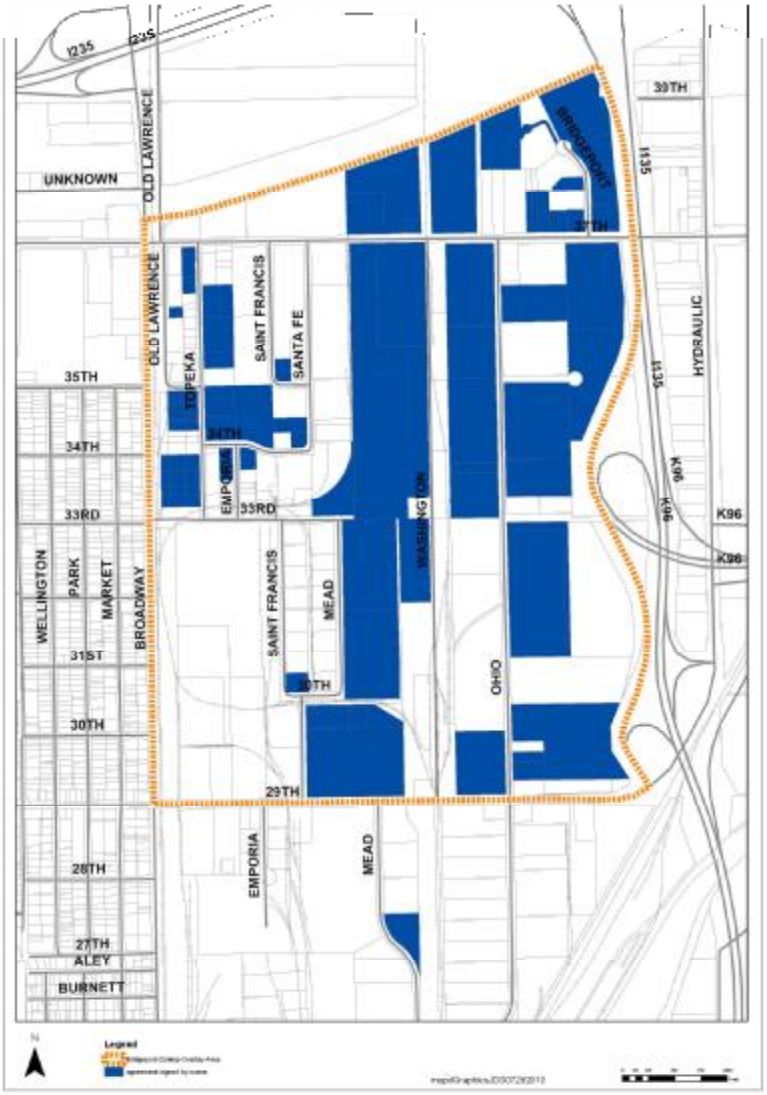
**MAPD Staff Recommendation:** Approve.

**DAB VI Recommendation:** Approve (5-0).



**BACKGROUND:** On August 19, 2010, the Metropolitan Area Planning Commission voted to direct staff to prepare a protective overlay for the industrial area located east of Broadway, south of I-235, west of I-135 and north of 29th Street North and to schedule a public hearing on this matter on September 23, 2010. This action followed nearly two years on the part of the Bridgeport Area Business Association ("BABA") to establish a protective overlay to protect the long-term viability of the area as an industrial park-like environment. BABA represents businesses within the Bridgeport area that provide substantial employment for the Wichita business community and were concerned that allowing certain types of businesses would stymie the continued growth and reinvestment of "employment/industry" type of development. The map below represents businesses in the Bridgeport area that have indicated support for the protective overlay (blue). They represent the majority of the privately held land holdings in this area.

North Industrial Corridor / Bridgeport Zoning Overlay




Problems with Current Zoning: The area is zoned GI General Industrial ("GI") except for two isolated tracts of GC General Commercial ("GC"). This is the most intensive industrial zoning district currently allowed by the Wichita-Sedgwick County Unified Zoning Code ("UZC"). GI allows by right-a full range of industrial activity from the typical manufacturing plant that employs large numbers of highly skilled workers and high caliber manufacturing jobs to outdoor storage activities not necessarily associated with any employment but with outdoor collection of used equipment, materials, etc.

The GI zoning district allows by Conditional Use a wide range of primary processing and extractive uses commonly associated with noise, odor and other nuisance factors. The presumption often is made that because the GI district is the most intensive industrial district, all locations may be suitable for these activities. Yet the impact of a landfill may be as damaging on a neighboring manufacturing facility as on other types of commercial use typical of lower intensity zoning. And, the burden typically falls on the existing manufacturing business to demonstrate why the extractive use is "inappropriate" as a neighbor rather than the extractive use demonstrating why it is "appropriate" as a Conditional Use next to the manufacturing plant. In addition, reducing nuisance factors is more difficult in the GI district because site development standards omit the customary screening from adjacent properties zoned GI or LI.

The result is an undermining of the redevelopment trend toward employment/industry center types of uses.

Where is GI zoning located within the Wichita-Sedgwick County area? The Bridgeport Area is part of a larger concentration of GI zoning, stretching from 17$^{st}$ Street North generally between Broadway and Hydraulic, through 45$^{th}$ Street North. The proposed Bridgeport Industrial Area Protective Overlay represents the area from 29$^{th}$ Street North to Chisholm Creek drainage area north of 37th Street North and east of Broadway to I-135.

GI zoned areas not included in the proposed overlay lie from 29$^{th}$ Street North south to 17$^{th}$ Street (one and one-half mile) and the area north of the I-235 to 45$^{th}$ Street North extending roughly east of Broadway to the UP rail line approximately along the K-96 eastbound ramp. The area north of the proposed overlay includes large amounts of vacant land, and some industrial park types of uses especially along Hydraulic between 37$^{th}$ and 45$^{th}$ Street North, plus a large fuel storage facility. The area south of 29$^{th}$ Street North, especially the area south of 25$^{th}$ Street North, is a concentration of wrecking/salvage operations as well as land previously used as an oil refinery and for basic industry (the old stockyards area). Another major concentration of GI zoning is near 55$^{th}$ Street South and Ridge Road, near a large grain storage operation and several chemical companies. Scattered GI zoning is generally found associated with isolated wrecking and salvage, rock crusher uses or chemical and pipeline operations.

Establishment of the Bridgeport Industrial Area: In the 1970s, Wichita undertook the redevelopment of the Bridgeport area to change it from an underutilized, blighted area to a higher value manufacturing park type of setting. In order to make parcels salable for redevelopment, the City assumed some of the environmental risk from previous uses and packaged the Bridgeport property for sale. Several new firms were recruited to the area, and businesses grew. That approach spawned new small businesses, such as building supply firms, as well as attracting larger industrial manufacturing firms. The list of participants in the Bridgeport Area Business Association demonstrates this diversity in size and type of use.

The BABA businesses hold in common a need to conduct their manufacturing plants or wholesale and warehousing activities without undue nuisance factors from primary processing and outdoor storage types of uses. Some of the more objectionable uses are: Construction Burn Site, Landfill, Mining or Quarrying, Rock Crushing, Solid Waste Incinerator, Storage, Outdoor as a Principal Use, Transfer Station, Wrecking/Salvage Yard and rendering facility.

Personal entertainment activities typically associated with alcoholic consumption and / or with attracting high concentrations of people, could pose traffic conflicts or hazards with the high volumes of truck traffic generated by Bridgeport businesses. The protective overlay proposes to prohibit: Entertainment Establishment, Event Center, Nightclub, Personal Care Service, Personal Improvement Service, Recreation and Entertainment, Rodeo, Sexually Oriented Business, Tattooing and Body Piercing, and Tavern and Drinking Establishment.

Residential uses already are prohibited in the GI district because of the well-documented incompatibility between residential and industrial uses. However, a range of "quasi-residential" uses would be prohibited, including Correctional Facility, Correctional Placement Residence, Day Care, Day Reporting

Center, Nursing Facility, Park and Recreation for public use, Recycling Collection Station, Public and Recycling Processing Center, conducted as an outdoor activity.

Past Development in the Bridgeport Area: The property was shown as zoned "F" Heavy Industry (today's GI district) in the 1958 zoning map. Prior to 1974, urban density residential housing was located between Topeka, 37th Street North, Santa Fe and 33rd Street North. All development east of Ohio Street was in residential use. The Burton Stock Car Company (listed on the Historic Register) was located between Santa Fe and Washington Avenue. Today this is the site of Johnson Controls, a major manufacturing facility of heating and air conditioning units. Other industrial activity was confined to grain elevators along Broadway and industrial uses along 29th Street North from Broadway to Saint Francis. By 1983 (documented through an aerial photograph), the residences had been removed and the property was being redeveloped in industrial park types of uses.

**Analysis:** At the District VI Advisory Board meeting held September 15, 2010, the District Advisory Board voted (5-0) to recommend approval subject to the staff recommendation. A member of the Bridgeport Area Business Association was present to provide information and spoke to the need the BABA members see to protect their investment. One citizen was present to speak in support and two were present to speak in opposition. At the MAPC meeting held September 23, 2010, the MAPC voted (11-0) to approve subject to the modifications to allow property owners within the proposed overlay to opt out up to the time of the City Council hearing. Many citizens spoke in favor and in opposition. A courtesy hearing was held at the District I Advisory Board meeting on September 13, 2010, but the item was postponed due to lack of a quorum and reheard on October 7, 2010. At that meeting, DAB I recommended not to establish the protective overlay. Protests have been received from property owners, in conjunction with opt out requests, representing 26.1 percent of property within the proposed overlay. Those property owners who have opted out and / or who have protested indicated they: a) did not get mailed notice of the proposed overlay and object to the premise that they have to take an action to opt out instead of opting in; b) did not want to lose land use rights that they currently have; and c) object to the fact the proposal will make it difficult to expand existing uses proposed to be prohibited by the overlay. Maps are attached showing the properties who have requested to establish the protective overlay and the properties that have requested to opt out.

**Financial Considerations:** None.

**Goal Impact:** Promote Economic Vitality

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

**Recommendation/Actions:**

1. Adopt the findings of the MAPC and approve the overlay district for the entire Bridgeport area except those properties that have chosen to "opt out" prior to the City Council hearing the case, authorize the Mayor to sign the ordinance and place the ordinance on first reading (requires a three-fourths majority vote); or
2. Override the recommendation of the MAPC and deny the request (requires a two-thirds majority vote); or
3. Return the application to the MAPC for reconsideration (simple majority).

**Attachments:**

- Ordinance
- Area Maps
- Protest Map
- MAPC Minutes
- DAB VI report
- Handout provided by opponent

(150004) Published in the Wichita Eagle on November 12, 2010

**ORDINANCE NO. 48-896**

AN ORDINANCE AMENDING SECTION III-A.2 AND AMENDING SECTION III-C BY ADDING SECTION III-C.13AS SET FORTH BELOW TO THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE (JULY 9, 2009 EDITION), AS ADOPTED BY REFERENCE IN THE CITY OF WICHITA CODE SEC. 28.04.010 BY ORDINANCE NO. 48-451.

WHEREAS, under the authority of K.S.A. 12-741, et seq., the City of Wichita desires to adopt amendments to the Wichita-Sedgwick County Unified Zoning Code to amend regulations for certain districts, including BIAP-O Bridgeport Industrial Area Protective Overlay District ("BIAP-O"); and

WHEREAS, by K.S.A. 12-770, the City of Wichita may adopt reasonable regulations for the development and operation of land uses within special purpose areas; and

WHEREAS, the governing body of the City of Wichita finds and determines that the regulations set forth in this ordinance are reasonable regulations for the development of the area;

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

SECTION 1. Section III-A.2 of the Wichita-Sedgwick County Unified Zoning Code (July 9, 2009 Edition) as adopted by reference in Code Section 28.04.010 by Ordinance No. 48-451, is hereby amended to read:

2. **Zoning Districts established**. The following base zoning Districts special purpose zoning Districts and overlay zoning Districts are hereby established:

| **MAP CODE** | **DISTRICT NAME** |
|---|---|
| **Residential Base Districts** | |
| RR | Rural Residential |
| SF-20 | Single-Family Residential |
| SF-10 | Single-Family Residential |
| SF-5 | Single-Family Residential |
| TF-3 | Two-Family Residential |
| MF-18 | Multi-Family Residential |
| MF-29 | Multi-Family Residential |
| B | Multi-Family Residential |
| MH | Manufactured Housing |
| **Commercial/Industrial Base Districts** | |
| NO | Neighborhood Office |
| GO | General Office |
| NR | Neighborhood Retail |
| LC | Limited Commercial |
| OW | Office Warehouse |

| | |
|---|---|
| GC | General Commercial |
| IP-A | Industrial Park – Airport |
| IP | Industrial Park |
| CBD | Central Business District |
| LI | Limited Industrial |
| GI | General Industrial |
| AFB | Air Force Base |

**Special Purpose and Overlay Districts**

| | |
|---|---|
| PUD | Planned Unit Development |
| CUP | Community Unit Plan Overlay |
| U | University (base and Overlay) |
| OT-O | Old town Overlay |
| A-O | Airport Overlay |
| P-O | Protective Overlay |
| H-O | Historic District Overlay |
| DO-O | Delano Neighborhood Overlay |
| AFBP-O | Air Force Base Protection Overlay |
| CP-O | Corridor Preservation Plan Overlay |
| CBS, General | Construction Burn Site, General |
| CBS, Limited | Construction Burn Site, General |
| BIAP-O | Bridgeport Industrial Area Protective Overlay |
| (Reserved) | |

Zoning Districts may be referred to throughout this Code by their map code designations.

SECTION 2. Section III-C of the Wichita-Sedgwick County Unified Zoning Code (July 9, 2009 Edition) as adopted by reference in Code Section 28.04.010 by Ordinance No. 48-451, is hereby amended to add SECTION III-C.13 as follows:

**C. SPECIAL PURPOSE AND OVERLAY ZONING DISTRICTS**

**13. BIAP-O Bridgeport Industrial Area Protective Overlay ("BIAP-O")**

**a.** **Purpose**. The BIAP-O Bridgeport Industrial Area Protective Overlay District is intended to preserve, enhance and promote the character of the Bridgeport Industrial Area as an industrial environment conducive to industrial activity and concentrations of employment common to manufacturing and fabrication, warehouse, wholesale, and similar businesses, and accessory uses such as parking and storage of equipment that are part of the principal use located on the same site as the accessory activity. The District is designed to limit conflicts from more intensive industrial uses associated with generating noise, hazardous emissions, visual blight or odor such as primary extraction, outdoor processing or refinement of natural resources or recycling of waste materials. In addition, the District is designed to avoid institutional uses associated with residential types of occupancy and commercial or retail uses associated with shopping districts and entertainment venues. The BIAP-O District is generally compatible with the

"Employment/Industry Center" designation of the *Wichita-Sedgwick County Comprehensive Plan.*

**b.** **BIAP-O District boundaries and Official Map**. The location and boundaries of the BIAP-O District shall be shown on the Official Zoning District Map, being bounded on the north by the Middle Fork Chisholm Creek, on the east by I-135, on the south by 29t Street North and on the west by Broadway Avenue, excepting those areas shown as excluded on the map attached to this adopting ordinance.

**c.** **Use regulations**. The Use regulations of this Overlay District shall control over the Underlying zoning District. The following Uses shall be explicitly prohibited in the BIAP-O District, regardless if said Uses are stated as permitted or Conditional Uses in the Underlying Districts.

**(1) Prohibited Public and Civic Use**

Correctional Facility
Correctional Placement Residence
Day Care
Day Reporting Center
Nursing Facility
Parks and Recreation for public use
Recycling Collection Station, Public
Recycling Processing Center, conducted as an outdoor activity

**(2) Prohibited Commercial Uses**

Entertainment Establishment in the City
Event Center in the City
Nightclub in the City
Personal Care Service
Personal Improvement Service
Recreation and Entertainment, Indoor and Outdoor
Rodeo in the City
Sexually Oriented Business in the City
Tattooing and Body Piercing
Tavern and Drinking Establishment

**(3) Prohibited Industrial Manufacturing and Extractive Uses**

Construction Burn Site
Landfill
Mining or Quarrying
Rock Crushing
Solid Waste Incinerator
Storage, Outdoor, as a Principal Use
Transfer Station
Wrecking/Salvage Yard

**(4) Other Uses Prohibited**
Rendering facility

SECTION 3. This ordinance shall be included in the Code of the City of Wichita and shall be effective upon its adoption and publication once in the official City newspaper.

PASSED AND ADOPTED by the governing body at Wichita, Kansas,
This 9th day of November , 2010.

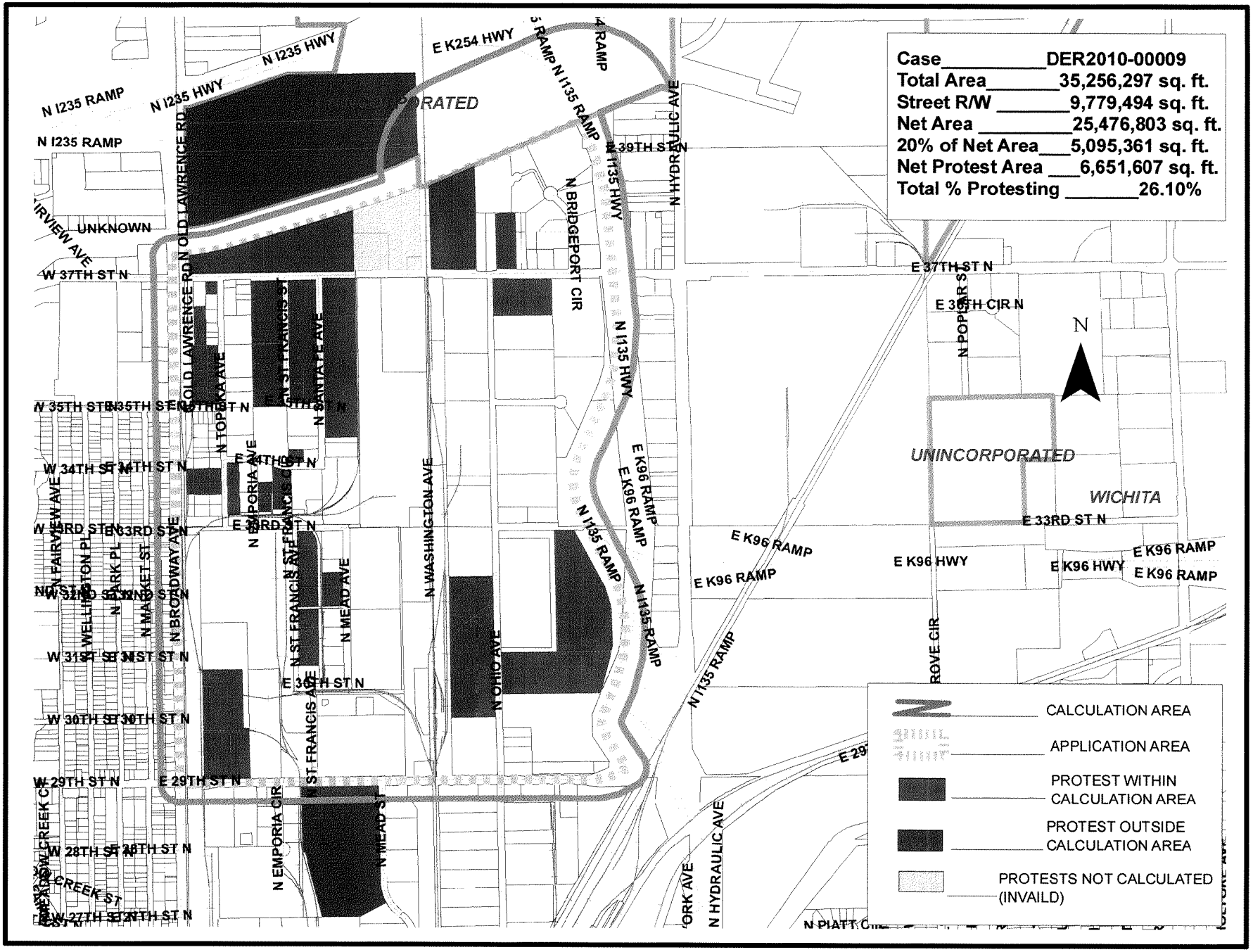
_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublet, City Clerk

_____
Gary E. Rebenstorf, City Attorney

(SEAL)


Case DER2010-00009
Total Area 35,256,297 sq. ft.
Street R/W 9,779,494 sq. ft.
Net Area 25,476,803 sq. ft.
20% of Net Area 5,095,361 sq. ft.
Net Protest Area 6,651,607 sq. ft.
Total % Protesting 26.10%
CALCULATION AREA
APPLICATION AREA
PROTEST WITHIN CALCULATION AREA
PROTEST OUTSIDE CALCULATION AREA
PROTESTS NOT CALCULATED (INVAILD)
N
UNINCORPORATED
WICHITA
N I235 HWY
N I235 RAMP
E K254 HWY
N I135 RAMP
N I135 HWY
E K96 RAMP
E K96 HWY
E 37TH ST N
E 33RD ST N
E 29TH ST N
W 37TH ST N
W 35TH ST N
W 34TH ST N
W 30TH ST N
W 29TH ST N
W 28TH ST N
W 27TH ST N
N OLD LAWRENCE RD
N BRIDGEPORT CIR
N HYDRAULIC AVE
N WASHINGTON AVE
N OHIO AVE
N EMPORIA CIR
N MEAD AVE
N ST FRANCIS AVE
N BROADWAY AVE
N MARKET ST
N PARK PL
N WELLINGTON PL
N FAIRVIEW AVE
N TOPEKA AVE
N SANTA FE AVE
N POPLAR ST
E 39TH ST N
E 36TH CIR N
E 36TH ST N
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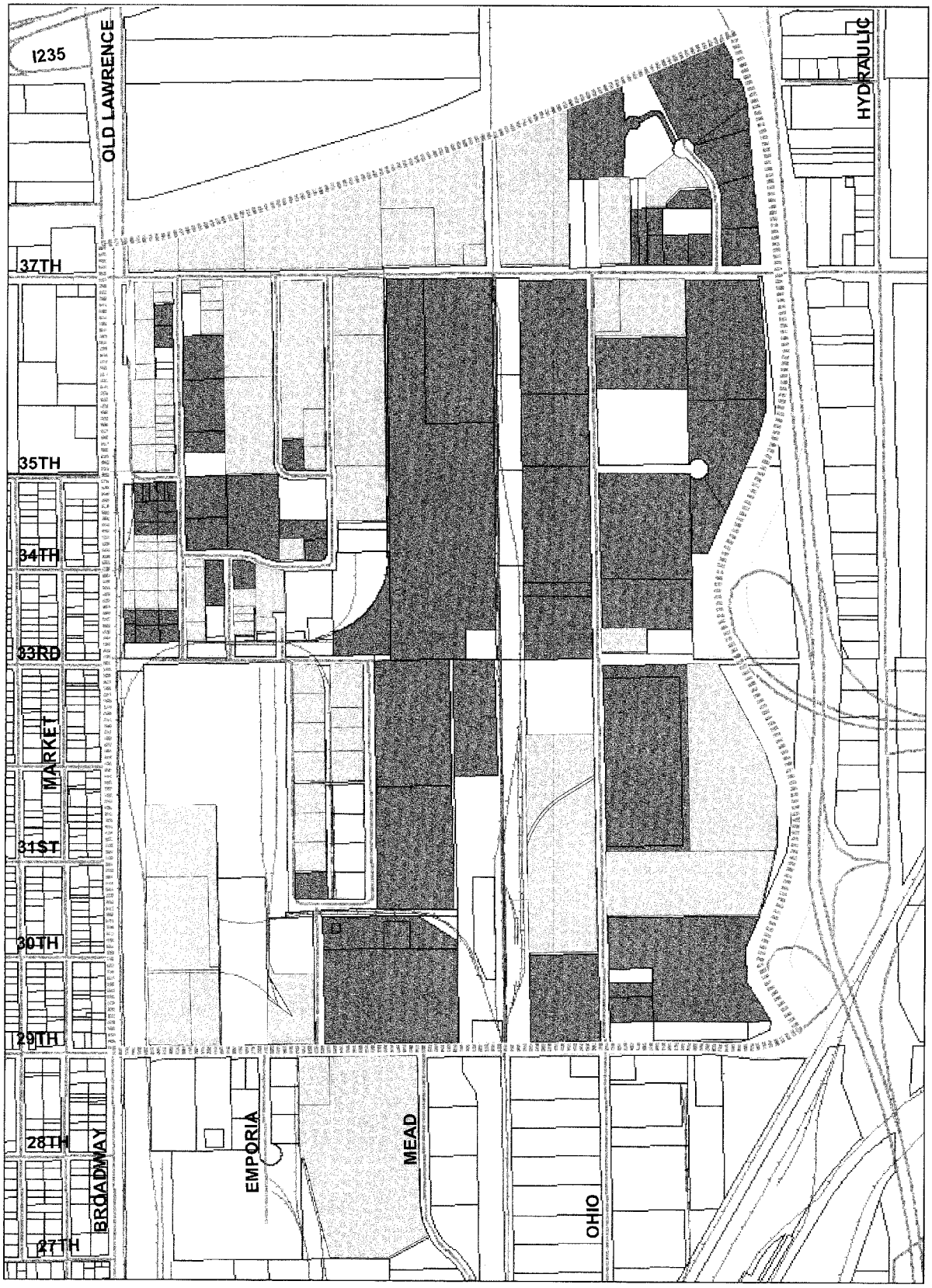
# North Industrial Corridor / Bridgeport Zoning Overlay




N

Request for Exemption

Agreement signed by owners

mapdGraphicsJDS10182010

0 145 290 580 870 1,160 Feet

9-23-10 MAPC HANDOUT ITEM #4

file

CITY OF WICHITA

**INTEROFFICE MEMORANDUM**

**TO:** MAPC Members

**FROM:** Terri Dozal, Neighborhood Assistant, District VI

**SUBJECT:** **DER2010-00009**
Request to establish the Bridgeport Protective overlay on property zoned GI General Industrial, generally located in an area bounded by 29th Street North, Broadway, I-235 and I-135.

**DATE:** September 20, 2010

On Wednesday, September 15, 2010 the District VI Advisory Board (DAB) considered a request to establish the Bridgeport Protective overlay on property zoned GI General Industrial, generally located in an area bounded by 29th Street North, Broadway, I-235 and I-135.

The members were provided the MAPD staff report for review prior to the meeting. *Donna Goltry,* Planner presented the case background, reviewed the staff recommendation and answered questions of members and the public.

The Board asked the following questions/comments:

- The City of Wichita will stay neutral about this case.
- Will residents be allowed to opt out of the protective overlay?
- What percentage of area business owners were in favor of the overlay?
- Who determines the businesses can opt out?
- Do you know the percentage of the area's assessed value?
- Would this affect the soccer fields in this area?
- Can there be accessory use, such as work-out facilities, day-care, etc.?

Two business owners from the area spoke in opposition of the request stating:

- I don't believe in having restriction on my property.
- This will keep other large businesses from coming to the area.
- I have a problem with you wanting to prohibit recycling.

One business owner wanted to know if this would keep him from using a facility he bought for private functions.

One business owner stated she felt this was a positive move for the area at it would reinforce property value.

****Action:** The District VI Advisory Board members made a motion to recommend to City Council Approval (**5-0**) of the request based on staff recommendation.

Please review this information when **DER2010-00009** is considered.

mtd

**SECTIONS**

## A. GENERAL

### 2. Zoning Districts established.

**Special Purpose and Overlay Districts**
**Add:**
BIAP-O Bridgeport Industrial Area Protective Overlay

## C. SPECIAL PURPOSE AND OVERLAY ZONING DISTRICTS

### 13. BIAP-O Bridgeport Industrial Area Protective Overlay ("BIAP-O")

**a. Purpose**. The BIAP-O Bridgeport Industrial Area Protective Overlay District is intended to preserve, enhance and promote the character of the Bridgeport Industrial Area as an industrial environment conducive to industrial activity and concentrations of employment common to manufacturing and fabrication, warehouse, wholesale, and similar businesses, and accessory uses such as parking and storage of equipment that are part of the principal use located on the same site as the accessory activity. The District is designed to limit conflicts from more intensive industrial uses associated with generating noise, hazardous emissions, visual blight or odor such as primary extraction, outdoor processing or refinement of natural resources or recycling of waste materials. In addition, the District is designed to avoid institutional uses associated with residential types of occupancy and commercial or retail uses associated with shopping districts and entertainment venues. The BIAP-O District is generally compatible with the "Employment/Industry Center" designation of the *Wichita-Sedgwick County Comprehensive Plan.*

**b. BIAP-O District boundaries and Official Map**. The location and boundaries of the BIAP-O District shall be shown on the Official Zoning District Map, being bounded on the north by the Middle Fork Chisholm Creek, on the east by I-135, on the south by 29t Street North and on the west by Broadway Avenue, excepting those areas shown as excluded on the map attached to this adopting ordinance.

**c. Use regulations**. The Use regulations of this Overlay District shall control over the Underlying zoning District. The following Uses shall be explicitly prohibited in the BIAP-O District, regardless if said Uses are stated as permitted or Conditional Uses in the Underlying Districts.

**(1) Prohibited Public and Civic Use**
Correctional Facility
Correctional Placement Residence
Day Care
Day Reporting Center

Nursing Facility
Parks and Recreation for public use
Recycling Collection Station, Public
Recycling Processing Center, conducted as an outdoor activity

**(2) Prohibited Commercial Uses**

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Rodeo in the City
Sexually Oriented Business in the City
Tattooing and Body Piercing
Tavern and Drinking Establishment

**(3) Prohibited Industrial Manufacturing and Extractive Uses**

Construction Burn Site
Landfill
Mining or Quarrying
Rock Crushing
Solid Waste Incinerator
Storage, Outdoor, as a Principal Use
Transfer Station
Wrecking/Salvage Yard

**(4) Other Uses Prohibited**

Rendering facility

DELINEATED

# EXCERPT OF THE AUGUST 5, 2010 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION HEARING

**DER2010-00009: Request to establish the Bridgeport Area Overlay and schedule a public hearing on September 23, 2010.**

**Background**: The Bridgeport Area Business Association ("BABA") represents businesses located in an industrial area east of Broadway, south of I-235, west of I-135 and north and south of 29th Street North, with the majority being north of 29th Street North. The area is zoned GI General Industrial ("GI"). Over the past decade, the area has experienced significant reinvestment and redevelopment as the business owners have sought to create a desirable business environment for industrial uses. Certain uses permitted in GI, particularly outdoor uses that generate offsite noise, odor, etc., are seen as affecting the character of the industrial neighborhood and deterring its continued revitalization.

To protect the long-term viability of the area as an industrial park, the business owners are seeking to establish a protective overlay. To this end, BABA has contacted businesses in the area and obtained signatures supporting the establishment of the protective overlay. An attached map shows the business owners supporting this initiative.

BABA has requested that the Metropolitan Area Planning Commission direct staff to prepare a protective overlay for this purpose and establish a public hearing on this matter on September 23, 2010.

**Recommended Action**: Direct staff to prepare a proposed protective overlay map and text amendment to the Unified Zoning Code and schedule a public hearing for September 23, 2010, pursuant to State Statute to receive formal public comment and consider adoption of the overlay.

**Attachments:**
Letter of request from Bridgeport Area Business Association
Petition and map of support for protective overlay

**DIRECTOR SCHLEGEL**, Planning Staff presented the Staff Report.

**MARNELL** asked if the overlay applied to all properties or only those indicated on the map.

**DIRECTOR SCHLEGEL** said he believed the intent was that the overlay would apply to all properties; however, the Planning Commission could address that issue.

**JOHN C. WADSWORTH, 14810 SPORT OF KINGS** said he was President and owner of Piping and Equipment Company, 1101 E. 37th Street North. He briefly reviewed the history of the Bridgeport Area Business Association (BABA) and said they had been working with Planning Staff for the last two years to establish a protective overlay. He said their vision is what the City's vision was when the Bridgeport area was developed back in the 70's which was to develop a quality industrial park that will promote industry and employment. He said over the last 5-10 years he has seen numerous companies move into the area and make significant investments. He referenced the list of businesses they feel are not appropriate for the area, even though it is zoned General Industrial. He said approximately 75% of the businesses in the area have signed the petition; however, he said several businesses have refused to participate. He said if this overlay is approved by the MAPC and City Council, it is their intent that it would apply to all businesses in the area.

**JOHNSON** clarified that there was no option to "opt out" of the overlay.

**WADSWORTH** said they have worked with Planning Staff who felt that was the only way this overlay could be approved. He commented that if property owners had the option to "opt out" why have the overlay. He added that several businesses are operating illegally in the area now, even with the less restrictive rules and regulations allowed in GI General Industrial zoning.

> **MOTION:** To schedule a public hearing on September 23, 2010 for establishment of the Bridgeport Area Overlay.
>
> **JOHNSON** moved, **DOWNING** seconded the motion, and it carried (8-0).

**MARNELL** suggested that this item go to the Advance Plans Committee before coming to the MAPC.

**DIRECTOR SCHLEGEL** agreed.

**EXCERPT OF THE SEPTEMBER 23, 2010 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION HEARING**

**Case No.: DER2010-09** - Establish the Bridgeport Protective Overlay on property zoned GI General Industrial.

**Background**: On August 19, 2010, the Metropolitan Area Planning Commission voted to direct staff to prepare a protective overlay for the industrial area located east of Broadway, south of I-235, west of I-135 and north of 29th Street North and to schedule a public hearing on this matter on September 23, 2010. This action followed nearly two years on the part of the Bridgeport Area Business Association ("BABA") to establish a protective overlay to protect the long-term viability of the area as an industrial park-like environment. BABA represents businesses within the Bridgeport area that provide substantial employment for the Wichita business community and were concerned that allowing certain types of businesses would stymie the continued growth and reinvestment of "employment/industry" type of development. The map below represents businesses in the Bridgeport area that have indicated support for the protective overlay. They represent the majority of the privately held land holdings in this area.

Problems with Current Zoning: The area is zoned GI General Industrial ("GI"). This is the most intensive industrial zoning district currently allowed by the Wichita-Sedgwick County Unified Zoning Code ("UZC"). GI allows by right-a full range of industrial activity from the typical manufacturing plant that employs large numbers of highly skilled workers and high caliber manufacturing jobs to outdoor storage activities not necessarily associated with any employment but with outdoor collection of used equipment, materials, etc.

The GI zoning district allows by Conditional Use a wide range of primary processing and extractive uses commonly associated with noise, odor and other nuisance factors. The presumption often is made that because the GI district is the most intensive industrial district, all locations may be suitable for these activities. Yet the impact of a landfill may be as damaging on a neighboring manufacturing facility as on other types of commercial use typical of lower intensity zoning. And, the burden typically falls on the existing manufacturing business to demonstrate why the extractive use is "inappropriate" as a neighbor rather than the extractive use demonstrating why it is "appropriate" as a Conditional Use next to the manufacturing plant. In addition, reducing nuisance factors is more difficult in the GI district because site development standards omit the customary screening from adjacent properties zoned GI or LI.

The result is an undermining of the redevelopment trend toward employment/industry center types of uses.

Where is GI zoning located within the Wichita-Sedgwick County area? The Bridgeport Area is part of a larger concentration of GI zoning, stretching from 17st Street North generally between Broadway and Hydraulic, through 45th Street North. The proposed Bridgeport Industrial Area Protective Overlay represents the area from 29th Street North to Chisholm Creek drainage area north of 37th Street North and east of Broadway to I-135.

GI zoned areas not included in the proposed overlay lie from 29th Street North south to 17th Street (one and one-half mile) and the area north of the I-235 to 45th Street North extending roughly east of Broadway to the UP rail line approximately along the K-96 eastbound ramp. The area north of the proposed overlay includes large amounts of vacant land, and some industrial park types of uses especially along Hydraulic between 37th and 45th Street North, plus a large fuel storage facility. The area south of 29th, especially the area south of 25th Street North, is a concentration of wrecking/salvage operations as well as land previously used as an oil refinery and for basic industry (the old stockyards area). Another major concentration of GI zoning is near 55th Street South and Ridge Road, near a large grain storage operation and several chemical companies. Scattered GI zoning is generally found associated with isolated wrecking and salvage, rock crusher uses or chemical and pipeline operations.

Establishment of the Bridgeport Industrial Area: In the 1970s, Wichita undertook the redevelopment of the Bridgeport area to change it from an underutilized, blighted area to a higher value manufacturing park type of setting. In order to make parcels salable for redevelopment, the City assumed some of the environmental risk from previous uses and packaged the Bridgeport property for sale. Several new firms were recruited to the area, and businesses grew. That approach spawned new small businesses, such as building supply firms, as well as attracted larger industrial manufacturing firms. The list of participants in the Bridgeport Area Business Association demonstrates this diversity in size and type of use.

The BABA businesses hold in common a need to conduct their manufacturing plants or wholesale and warehousing activities without undue nuisance factors from primary processing and outdoor storage types of uses. Some of the more objectionable uses are: Construction Burn Site, Landfill, Mining or Quarrying, Rock Crushing, Solid Waste Incinerator, Storage, Outdoor as a Principal Use, Transfer Station, Wrecking/Salvage Yard and rendering facility.

Personal entertainment activities typically associated with alcoholic consumption and / or with attracting high concentrations of people, could pose traffic conflicts or hazards with the high volumes of truck traffic generated by Bridgeport businesses. The protective overlay proposes to prohibit: Entertainment Establishment, Event Center, Nightclub, Personal Care Service, Personal Improvement Service, Recreation and Entertainment, Rodeo, Sexually Oriented Business, Tattooing and Body Piercing, and Tavern and Drinking Establishment.

Residential uses already are prohibited in the GI district because of the well-documented incompatibility between residential and industrial uses. However, a range of "quasi-residential" uses would be prohibited, including Correctional Facility, Correctional Placement Residence, Day Care, Day Reporting Center, Nursing Facility, Park and Recreation for public use, Recycling Collection Station, Public and Recycling Processing Center, conducted as an outdoor activity.

Past Development in the Bridgeport Area: The property was shown as zoned "F" Heavy Industry (today's GI district) in the 1958 zoning map. Prior to 1974, urban density residential housing was located between Topeka, 37th Street North, Santa Fe and 33rd Street North. All development east of Ohio Street was in residential use. The Burton Stock Car Company (listed on the Historic Register) was located between Santa Fe and Washington Avenue. Today this is the site of Johnson Controls, a major manufacturing facility of heating and air conditioning units. Other industrial activity was confined to grain elevators along Broadway and industrial uses along 29th Street North from Broadway to Saint Francis. By 1983 (documented through an aerial photograph), the residences had been removed and the property was being redeveloped in industrial park types of uses.

**CASE HISTORY:** The property includes at least 22 different plants, plus a large part un-platted. The original plats were for residential type lots in 1887, 1917 and 1922. After a long time, around the time of establishing the industrial zoning, three more plats were completed (1957, 166 and 1967). Platting activity resumed in 1980 and continues through the current time.

**ADJACENT ZONING AND LAND USE:**

| | | |
|---|---|---|
| NORTH: | GI | Vacant |
| SOUTH: | GI | Manufacturing, construction sales and service, wrecking/salvage, fuel storage |
| EAST: | GI | Truck terminal, vehicle rental, residential |
| WEST: | LI, LC | Mix of industrial, commercial, restaurants |

**PUBLIC SERVICES:** Broadway is a four-lane minor arterial street between 29th Street North and 37th Street North. 29th Street North is a four-lane minor arterial street from Broadway east to the I-135 interchange. Multiple rail lines cross 29th Street North immediately east of Broadway. 37th Street North is a two-lane minor arterial street from I-138 to Broadway, slated for widening in 2013. Ohio Street is a three-lane urban collector south of 37th Street North. Traffic counts (pre-2005) for Broadway at 29th Street North averaged 13,000 AADT (annual average daily traffic) and at 37th Street North averaged 8,000 AADT (2005). 29th Street North at Broadway averaged 7,000 AADT (2006 for eastbound and pre-2005 for westbound). 37th Street North at Broadway was 8,022 AADT for westbound (pre-2005) and averaged 5,500 AADT (2006) at Hydraulic. Counts for northbound Ohio at 29th Street North in 2008 were 1,478 vehicles and counts for eastbound 29th at Ohio were shown 3,900. The volume of traffic and the conflicts between vehicles and trucks led to installation of a traffic signal at 29th Street North and Ohio Street for safety reasons. Normal public services are available.

**CONFORMANCE TO PLANS/POLICIES:** The "2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "Employment/Industry Center" except for one small tract occupied by a grain elevator shown as "Processing Industry." The range of uses allowed by right in the GI district is not in conformance with the recommended development pattern of the *Comprehensive Plan.* In contrast, the proposed Bridgeport Overlay District is in conformance with the *Comprehensive Plan.*

"Employment/Industry Center" is described in the 2030 Wichita Functional land Use Guide Map of the *Comprehensive Plan* by the following:

> "This category encompasses areas with uses that constitute center or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices."

This is a very close fit to the majority of uses found in the Bridgeport Overlay area. In contrast, "Processing Industry" is described as follows:

> "This category encompasses uses associated areas with primary extraction, processing or refinement of natural resources or recycling of waste materials, having potential negative impacts associated with noise, hazardous emissions, visual blight, and odor. The range of uses includes aggregate and concrete plants, refineries, slaughterhouses, rendering and primary agricultural processing plants, salvage and recycling yards."

Uses aligned with "Processing Industry" in the overlay area include a recycling operation and asphalt and concrete plants.

**RECOMMENDATION:** Based on the information available prior to the public hearing, staff recommends the Bridgeport Industrial Area Protective Overlay District be Approved as attached.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Within the proposed Bridgeport Industrial Area Protective Overlay, the property is zoned GI and developed with warehouse-office, manufacturing, shipping terminals, construction sales and service firms, and steel fabrication facilities. Only a few outdoor storage uses are found (the outdoor storage site on the west side of Ohio Street, recycling processing north of 33rd Street North and Saint Francis, the cement manufacturing plant on the east side of Ohio Street and a concrete recycling plant along I-135) and all have been established since 1997. Grain storage and some fuel storage are located near 29th Street North or along Broadway. South of the proposed overlay, the property is zoned GI and developed with several manufacturing plants built in the 1970s, construction sales and service, a wrecking and salvage operation and a service station. West of Broadway the property is zoned LI for the half-block fronting onto Broadway, backed up by a half-block of LC Limited Commercial zoning, and then transitions into residential zoning and use. The LI and LC property has a wide mix of retail, restaurants, bars and clubs, industrial and vehicle-oriented uses. The character of the road was developed long ago when it served as US Highway 81. To the north of the proposed overlay, the property is zoned GI and is vacant. To the east of I-135, GI zoning with an assortment of truck terminal, offices, and residential uses is located along Hydraulic.

2. The suitability of the subject property for the uses to which it has been restricted: The property is not suited for the full range of uses which are allowed, because many of them are more intensive and involve primary processing or extractive activities that are not compatible with the majority of the employment center/industry types of uses.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The application of the overlay would cause certain uses to become nonconforming. The uses could be continued, but any expansion would have to be in conformance to nonconformity regulations of the UZC.

4. Length of time the subject property has remained vacant as zoned: The transition of the area from primarily residential with the Burton Stock Car Company in the middle of the tract and the industrial uses on the 29th Street and Broadway edges has occurred over the last 30 years. Many firms have relocated into this development within the last 10 to 15 years based on the understanding that it would be an industrial park-like development.

5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "2030 Wichita Functional Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "Employment/Industry Center" except for one small tract occupied by a grain elevator shown as "Processing Industry." The range of uses allowed by right in the GI district is not in conformance with the recommended development pattern of the *Comprehensive Plan*. In contrast, the proposed Bridgeport Overlay District is in conformance with the *Comprehensive Plan*.

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6. Impact of the proposed development on community facilities: The requested overlay will protect and enhance the long-term public investment that has spurred this industrial development, beginning with the addition of I-135 in the late 1960s that gave good interstate access to the site, and continuing with the public renewal activities of the 1970s.

**DONNA GOLTRY**, Planning Staff presented the Staff Report.

**SHERMAN** (In @1:40 p.m.)

**GOLTRY** reported that DAB VI recommended approval of the overlay.

**RICK LOWE, 1509 SOUTH SPRINGHOLLOWAY, PRESIDENT, BRIDGEPORT AREA BUSINESS ASSOCIATION (BABA)** said they have been working on this issue for two years. He said the most frequently asked question they receive when people look over the list of exclusions is what prompted them to pick those specific activities. He said for the most part they want to continue what the City of Wichita started in the area which was to create a high-class industrial park. He mentioned safety factors which were important because of the trucks and hazardous materials in the area. He mentioned a couple of examples of excluded uses which included public and civic uses, day care and nursing facilities. He mentioned that they are not against day care and nursing facilities; however, they do not think they belong in an industrial park because of safety issues related to the possible evacuation of children and the elderly. He continued by saying that some businesses allowed in General Industrial (GI) zoning are not compatible with the neighborhood, including those that evolve around alcohol such as bars and clubs. He said commercial uses in the industrial park bring high volumes of truck traffic which patrons of these types of establishments may not be aware of. He commented on the public meeting held by BABA on 9-9-10 and several conversations regarding the lack GI space in Wichita in general.

**SHERMAN** asked Mr. Lowe what company he was affiliated with.

**LOWE** said A&H Electric.

**THOMAS OLSEN, 1524 AMARADO COURT, HOC INDUSTRIES, INC**. said he was present to represent Bill and Jennifer Nath who own approximately 11 percent of the property in Bridgeport. He said they are 100 percent in favor of the proposed protective overlay. He said they are concerned with the protection of land values and investment property in the area. He said if certain industries come into the area, land values will drop. He said they are particularly afraid of wrecking and salvage operations. He mentioned City maps that indicate land values drop the closer the property is to 21st Street where wrecking and salvage operations currently exist. He suggested wrecking and salvage operations be located between 21st and 25th Streets where they already exist and have rail access. He said certain businesses will not buy property in Bridgeport if wrecking and salvage and scrap yards are located in the area.

**LOUIS EFTINK, 1330 EAST 37TH STREET NORTH** said he was present to speak in favor of the proposed protective overlay and said he saw no reason why it is not a good thing for all properties. He mentioned that this will not restrict property owners because they have an option to opt out.

**FRED WISE, JOHNSON CONTROLS, 3110 NORTH MEAD** said he supports the BABA group and the proposed protective overlay. He said they employee approximately 1,250 people on a seasonal basis and that there is potential for expansion of their factory. He said maintaining the area is conducive to business.

**DENISE GERBER, MORRIS COLLECTION, 128 SOUTH DELLROSE** said they own property at 3030 N. Ohio and are present to endorse the proposed protective overlay for safety reasons and the protection of land values. She said compatible businesses will attract other businesses so Bridgeport can grow into a good industrial park.

**JOHN PRATHER, 1833 RIDGE ROAD, EL DORADO, VICE PRESIDENT CORPORATE RELATIONS, GROENDYKE TRANSPORTATION, INC., 3550 NORTH OHIO STREET** said Groendyke originally bought six acres from the City at 37th and Ohio and currently have 17 acres at their present location. He said because they are a hazmat operation with petroleum and chemical products, GI zoning was a requirement. He said they also dispatch over 100 trucks a day transporting equipment serving the region. He said they are also concerned about the safety and security of the employees working at their terminal building. He concluded by saying that they would like to see like kinds of businesses in the area and are in support of the proposed protective overlay.

**JOHN C. WADSWORTH, 14810 SPORT OF KINGS, OWNER AND PRESIDENT OF PIPING AND EQUIPMENT** located at 37th and Ohio. He said they employee over 200 people and they are a member of BABA. He said they support the proposed protective overlay and want to create a first class industrial park for the City of Wichita. He said although GI zoning allows a lot of different activities, he believes the GI businesses located at 29th Street and further north are different than the GI businesses located between 21st and 25th Streets. He said he supports the proposed protective overlay.

**JOHNSON** asked if BABA thought about locating the overlay between 25th and 29th Streets only.

**WADSWORTH** said some businesses between 25th and 29th Streets would support and be a part of the overlay.

**BOB ALDRICH, 804 NORTH MAIN STREET** said he supports the Staff recommended action to approve the proposed protective overlay. He said this area was initially set up to clean up environmental issues. He said it was a dream of the then City Manager Chris Cherches to develop a high end industrial park that would grow and prosper, and create jobs, revenue and tax monies for the City. He referenced the 2030 Functional Land Use Guide which he said is exactly the intent of the Bridgeport area. He said the purpose of the overlay is so businesses and property owners can restrict certain types of businesses. He said just because GI zoning is a "catch all" for everything doesn't mean certain activities will fit in the area and be compatible with what is already located in Bridgeport. He said property values in the area have increased significantly since property owners have upgraded their property. He also mentioned that the City owns property in the Bridgeport area. He asked the Commission to take time to look at everything and support this overlay. He also mentioned that the City Council may direct staff to come up with a heavy industrial area located between 21st and 25th Streets. He also suggested staff work with the County Commission to locate approximately 300 acres or more and designate it specifically for heavy industrial use. He said that will eliminate arguments on proposed uses in this area coming back to the Planning Commission or governing bodies.

**MORGAN KOON, GENERAL COUNSEL, CORNEJO AND SONS 1441 E. 33RD STREET NORTH** provided a spread sheet hand out that provided information on the processes that would be excluded by the proposed protective overlay. He said there are 27 different uses listed in red which indicates they currently require conditional use permits to be located in GI zoning. He said 17 of those uses which would be excluded under the protective overlay are indicated in blue and would have some type of conditions (not a conditional use permit, but for example they cannot be located within a certain number of feet from schools, churches, etc. or they must be located along an arterial street, etc.) associated with them even within the GI district. He said the activities highlighted in yellow are currently allowed in the GI zoning district by-right. He commented that there seems to be a significant amount of outdoor storage in the area, and based on the proposed protective overlay, that activity would not be permitted. He said this information was provided so the Commission so they could have a little different perspective on what would and would not be allowed in the area. He mentioned that currently recycling and wrecking and salvaging operations are not allowed by right without a conditional use permit. He concluded by stating that there was less and less GI zoning areas available in the City, especially since rail access is a major factor in property acquisition. He said there are currently 8 GI areas in the City that would meet their needs, and right now it doesn't appear that any of them are available for acquisition.

**HENTZEN** asked if the company he represented had opted out.

**KOON** said yes.

**HENTZEN** asked if they can opt back in.

**KOON** said he didn't know if opting back in was an option.

**HENTZEN** asked if this goes through, will any of the restrictions hinder his client's use of his property.

**KOON** said the current business is allowed to continue to operate legally but those new businesses coming into the area would be subject to the protective overlay.

**MCKAY** asked staff to explain the opt out option again.

**GOLTRY** explained that if the Commission passed the protective overlay and included all properties within the boundaries the current activities that exist in the area and are no longer permitted uses under the overlay will be allowed to continue to operate as "non-conforming uses." She said if the Commission passes the protective overlay but excludes the properties that have asked to opt out so they are not a part of the protective overlay, those rules would not apply to those properties now or in the future if current property owners sold their property.

**MILLER** clarified that if a property owner opts out, none of the protective overlay regulations would apply to that property. He said if they decide they want to be included at a later date, they can file an application with the Planning Department and ask to be included

**MCKAY** said so if they sell their property, the opt out option automatically goes with it.

**MILLER** said yes, since zoning runs with the land.

**DOWNING** clarified if a property owner who has opted out sells that business or property, are the buyers obligated to become subject to the overlay.

**GOLTRY** said only if the Commission passes the protective overlay over the entire area. She said zoning runs with the land, unless the new owners ask to be included in the protective overlay.

**JOHNSON** said so if a property owner opts out and his property is surrounded by areas in the protective overlay, there is no way for them to expand their operation onto surrounding property.

**GOLTRY** said that is correct, if the operation is a non-conforming use and the surrounding areas are within the boundaries of the protective overlay.

**DIRECTOR SCHLEGEL** said an individual or company could request an amendment to the overlay district to exclude the property from the protective overlay.

**JOHNSON** clarified but they would have to file an application.

**LEFFEW** asked what the economic impact is if this is approved or disapproved.

**GOLTRY** commented that a presentation on assessed property values in the area associated with land uses was presented at a previous meeting. She mentioned that employment was higher in businesses requesting the protective overlay because industrial type businesses such as manufacturing, warehouse, office, trucking, and construction employ more people than the types of businesses that are requesting that they be excluded such as extraction type operations, which use more land but don't employ as many people. She said staff does not have a way to know what the economic impact of the overlay will be.

**LAURIE CAMPBELL, 2330 EAST GARY, PARK CITY OWNER OF 3423 NORTH ST. FRANCIS, 3428 NORTH EMPORIA, AND LOT 2, BLOCK 3 BRIDGEPORT INDSUTRIAL ADDITION** referred to a pictorial presentation of various locations throughout the Bridgeport area. She said she is against the proposed protective overlay and has opted out. She said she is not sure why any property owner would want to add further restrictions to their GI zoning and rights and options. She said don't have the mindset that you can opt out and this proposed protective overlay won't affect you, because it will affect all property owners that opt out. She said the Planning Commission's decision is going to affect her life in more ways than they know. She said it will affect her family's income, her children's education and future and their opportunity to expand their successful small business if the Commission votes in favor of the proposal. She asked the Commission to please not vote in favor of the proposal. She said she understands protective overlays in Old Town and other areas, but does not understand a protective overlay in a heavily saturated recycling, manufacturing, trucking and grain mill area. She said the proposed protective overlay does not suit the character of the neighborhood. She said the City should not allow the deterring and outright denial of heavy uses in this area because that is what the area was designated for years ago. She said there are businesses that have attempted to come into the area to provide job opportunities for Wichitans; however, BABA doesn't deem them desirable for the neighborhood. She mentioned the application by Autocraft Incorporated. She referenced an article in the Wichita Business Journal entitle "Impound and Tow Service a No Go in the Bridgeport Area." She commented that Autocraft wanted to have a tow yard in Bridgeport but the application was voted down she believed due to the opposition by BABA. She said the property was in turn purchased by a member of BABA who in turn leased it

for parking of over 300 buses. She said the difference between the two businesses is the one that was approved by BABA creates terrible traffic issues in the area but is generating income for the landlord, so she guesses that is okay for him. She said she has been told it is temporary, but asked what is going to be put there after the buses leave, if the buses leave. She mentioned several quotes from the article; one from a Commission member stating that BABA opposes anything in the area they don't think should be there; and another from a BABA member stating that people will say anything to get a permit. She said Wichita already has a system in place with the Office of Central Inspection (OCI), and Conditional Use permit hearings where people who oppose a permit can exercise their right to voice their concerns. She mentioned the vacant lots in the area and asked who was going to purchase them? She said not corporate offices, day care centers or call centers. She said on the contrary, if Wichita would welcome heavy uses in this area, it would grow by leaps and bounds and provide jobs to Wichitans. She mentioned the terrible bus traffic that has invaded the industrial park, as well as train traffic, which is essential to much GI zoning. She asked why Wichita would make it more difficult for businesses to be created or expand in Wichita. She said this is the perfect place for recycling centers, concrete plants, refineries, manufacturing and fabrication facilities, since the majority of the area is already operating as such. She said this does not portray Wichita as a business friendly City. She asked where does the dedication to the growth of the City belong to -- Wichita as a whole or to a handful of property owners who could have located their businesses in many other lighter zoned area. She said even though there is the opt out option, this proposed protective overlay detrimentally limits the growth of her currently successful business. She said it also reduces potential buyers if she chooses to sell her property in the future. She said the City needs to offer locations for heavy business to operate, she said she guesses BABA's idea is to create a whole new area and people who exist at this location can pick up their businesses and move. She said it is not that easy to move a business. She said Bridgeport was designed for this type of use 40 years ago; it should remain as is and the City should continue to utilize the system for zoning requests that they already have in place. She referenced the photos she had taken and said she didn't know how the Commission could come to any other conclusion. She concluded by respectfully asking the Commission not to support the proposed protective overlay

**JOHNNY STEVENS, 3400 NORTH TOPEKA** said he has opted out but has received no notification that his form was received by the Planning Department. He commented that the letter he got regarding this issue was not certified and looked like junk mail. He said he thinks the notification process was really lacking and that the information he received in the notice was not as comprehensive as what he has heard at today's meeting concerning the issues and the rights that property owners do and do not have in this area. He said he believes the notification was handled poorly and suggested re-notifying property owners, certainly when you are taking away these kinds of property rights from business owners. He said if this proposal passes, he will have no way to expand his building for his tenant in the future if neighboring property owners don't opt out of the proposed overlay. He said most of the businesses in the area moved in when the area was like it is today. He said if they don't like it, they can move to an area that fits their business instead of trying to tell him what he can do with his property. He said this proposal would take away his rights as a property owner. He said certain types of businesses need to obtain a special use permit to operate and asked if everyone was against them, how did they get their permits to operate.

**RON CORNEJO, 2080 EAST TULSA** said he owns property in Bridgeport and he has also opted out of the proposed protective overlay. He said they knew how the property was zoned when they bought it. He said he doesn't understand how the City can try and change the zoning at this time, after the fact. He concluded by saying that there was a great shortage of GI property in Wichita and added that he didn't the City should be adding other restrictions to property that is already zoned GI.

**KEITH HOWELL, WICHITA BRASS AND ALUMINUM FOUNDRY, 412 EAST 29TH STREET NORTH** said they never did receive notification of the opt out option. He said they heard about this meeting from an e-mail from BABA. He said they are definitely against this proposed protective overlay. He said they own property south of 29th Street where the explosions occur. He said they have molten metal on the floor all the time and when the explosions occur, everyone jumps. He admitted that it is a dangerous situation but that they have safety measures in place. He said the business was started in 1939 and moved to their current location in 1945. He said they are looking at various options of expanding the business besides just doing the foundry work that they currently do. He said he just wanted to make sure that they don't have to comply with all the regulations and if they choose to sell the land at some point in the future, the people who buy it won't have to comply with the restrictions. He said BABA has stated that more GI space is needed in the City, but just not where they are located. He said he does not agree with that opinion and has had that conversation with several BABA members. He said he thinks the City needs to leave things as they are and if someone wants to object to something, they can do that through the conditional use permit process.

**TED BRANSON, 2876 WEDGWOOD** said he was a real estate broker and several of his clients have properties in these areas, especially several pieces of property west of Ohio. He said the properties fit the character of what might be restricted if this overlay is passed. He said this area was designed for GI and heavy industrial uses because it was at the north end of a refinery area. He said people bought property in this area because it was zoned GI. He mentioned property rights and that when people make a decision to buy property, they want to be able to use that property for the business they are allowed to put there. He said if there has ever been an objection, people can come to the Planning Commission to voice their concerns. He said the proposed overlay tends to remove people's voices and their opportunity to say anything. He said this overlay just decides ahead of time. He said he believed the current process very is effective. He said if enough people speak up about a proposed use in the area, obviously they can effect decisions made by the Planning Commission. He mentioned the Autocraft case which he felt was a business that very much fit into the character of the neighborhood, especially since they were willing to adhere to whatever restrictions the Commission wanted to put on them. He said the service they provide is an industry that the City needs. He said a lot of the activities restricted by the proposed overlay are industries that Cities need so they have to have a place to put them and Bridgeport Industrial Park is the place in Wichita. He said several people mentioned to him that when they came to the City several years ago and asked where they should locate heavy industrial types of f businesses, the City responded Bridgeport. He said this change is taking away the rights of people that have gone into the Bridgeport area. He concluded by saying that he didn't see day care or nursing homes wanting to be located in this area.

**FARNEY** asked if storage of school busses outside would be a prohibited use under the proposed protective overlay.

**GOLTRY** responded that the Office of Central Inspection has indicated that parked buses would be allowed with or without the proposed protective overlay.

**MILLER** explained that since the buses are moved every 72 hours, OCI is viewing the use as parking of buses versus storage of busses.

**FARNEY** asked what about in the summer time?

**MILLER** said they were informed that schools have summer programs and the majority of buses move every 72 hours in the summertime also.

**DOWNING** indicated that he was concerned about the notification process and asked if everyone in the area was notified.

**GOLTRY** explained that all property owners within the boundaries of the proposed protective overlay, as well as an area around the outside of the boundaries, were notified.

**DOWNING** asked if property owners were notified by registered letter or First Class Mail.

**GOLTRY** explained that state statutes require that property owners be notified about cases at the "tax mail address" and by First Class Mail.

**FOSTER** asked about the appropriateness of notifying owners by Registered or Certified Mail?

**MILLER** said filing fees would have to be increased to cover those costs. He added that state statute only requires First Class Mail.

**FOSTER** said he would like to visit with staff after the meeting to discuss the issue. He asked how long businesses had to opt out.

**GOLTRY** said the public hearing notice said today (9-23-10) by 1:30 p.m.

**DIRECTOR SCHLEGEL** suggested the City could continue to honor opt out requests until this issue was heard by the City Council.

**FOSTER** asked about facilities used for private functions.

**GOLTRY** explained that accessory and/or ancillary uses associated with a business activity such as a workout room (gym) within a factory or a day care center provided for employees would continue to be allowed as they are today.

**JOHNSON** asked Planning Staff to address the comments about there being a shortage of GI zoning throughout the City.

**DIRECTOR SCHLEGEL** commented that assertion has been made previously; however, no facts or data have been provided to convince planning staff that there is a shortage. He said right now the statement is simply an assertion.

**GOLTRY** briefly reviewed the options available to the Planning Commission which were to apply the proposed protective overlay to all properties within the boundaries or apply the proposed protective overlay only to those properties that have not opted out and exempt all people who have requested an opt out. She commented that the Planning Commission's recommendation will be presented to the City Council who as the governing body will make the final determination.

**DIRECTOR SCHLEGEL** added that the Planning Commission also had the option of not approving the proposed protective overlay at all.

**FOSTER** requested clarification that if the Commission approves the entire overlay district with the opt out option that runs with the land, if the land use changes will the provisions of the protective overlay become active.

**GOLTRY** said those properties that requested to opt out they will not be considered a non-conforming use.

**JOHNSON** said personally he would like to see the overlay opt out condition preserved so that existing businesses have the right to expand onto property that has not opted out in the future.

**DIRECTOR SCHLEGEL** responded that he doesn't know how staff would administer that type of option.

**GOLTRY** commented that there are only a couple of land uses in the area that don't conform to the requested overlay. She said a parallel situation would be if she owned a duplex but it was next door to a single-family residence, she said she could not expand the duplex without coming back to the Planning Commission and having the property rezoned.

**JOHNSON** asked if staff could make that part of the overlay without individuals having to come back to get property removed from the protective overlay.

**GOLTRY** responded no.

> **MOTION:** To apply the overlay district to the entire Bridgeport area except those properties that have chosen to "opt out" prior to the City Council hearing the case.
>
> **DOWNING** moved, **DENNIS** seconded the motion.

**KLAUSMEYER** mentioned that some of the things he has heard at today's meeting about restrictions of the businesses located in Bridgeport concern him. He said zoning is put in place for a reason and the Commission has gone through the process of denying certain businesses in that area. He said he believes this proposed overlay will just complicate things even further. He said he was not sure that the opt out provision isn't just a band aid to appease people and accomplish very little.

**RICK LOWE, PRESIDENT, BABA** commented that he did not know if the list of BABA members the Commissioners had was current since a couple of businesses outside the overlay area south of 29th Street joined the organization since the last list was published.

**SHERMAN** requested clarification that approval of this protective overlay was unanimous by all members of the BABA organization

**LOWE** said it was a unanimous vote of the members present at the meeting when the vote was taken.

**SHERMAN** said so it was 100% of the members of the BABA membership.

**LOWE** mentioned that Mr. Howell spoke in opposition of the proposal.

**KEITH HOWELL, WICHITA BRASS AND ALUMINUM, 412 EAST 29TH STREET NORTH** commented that they are not a member of BABA and he did not know what percent of the companies in Bridgeport were members of BABA. He also added that they did not get the public hearing notice with the information on the opt out option.

**SHERMAN** clarified so 100% of the BABA membership is in favor of the recommended action today which was to restrict the zoning of their property.

**LOWE** said yes, and added that is it unprecedented that a group of land owners would voluntarily restrict their rights related to their property. He mentioned the Nath's who he said have multiple developed and undeveloped parcels inside the overlay boundaries.

**SHERMAN** said so 100% of the BABA members are in favor of this action whether they attended the BABA meeting where the vote was taken or not.

**LOWE** said he didn't know if he could make that statement

**SHERMAN** asked what percent of the BABA membership was in favor and what percent of the BABA membership was opposed to the proposed action.

**LOWE** said he didn't know; however, he said he did not know of anyone who was opposed. He said Landowners on the south and west boundaries said if they are offered the opt out option, they would opt out. He said they did not hear from multiple parcel owners and mentioned one company with a headquarters in Oklahoma and he also mentioned that they did not hear from the railroad.

**SHERMAN** asked how many BABA members have not been heard from period.

**LOWE** said all members in support of the overlay have been heard from.

**SHERMAN** clarified that 100% of BABA members, whether they were at the meeting or not, are in support of the overlay.

**LOWE** said one member said they would opt out if the opportunity was afforded.

**MCKAY** asked if the City was staying in or opting out of the overlay.

**MILLER** said the City property Manager has been notified and is aware of the issue. He said there has been some discussion that if the City submitted an opt out form someone may interpret that to mean that they prejudiced the action of the City Council if it occurs before the public hearing.

**GOLTRY** briefly reviewed the updated opt out map.

**FOSTER** said he believes the motion was missing the point of the whole overlay district and that is that the nonconforming uses would go away over time. He mentioned the Delano and Old Town Overlay Districts.

**GOLTRY** mentioned that the Delano Overlay was slightly different and added that only one company asked that their property be removed from that district. She said there have been several rezoning cases that have occurred in the area since that overlay was approved. She said opting not to change zoning of property is very parallel to the proposed Bridgeport protective overlay.

**FOSTER** said so the proposed overlay will still be over the existing zoning.

**GOLTRY** said the Delano Overlay regulates more than just strictly zoning issues. It also designates design characteristics.

**JOHNSON** requested that **LAURIE CAMPBELL** be allowed to response to a previous question.

**LAURIE CAMPBELL** said she has spoken with two people who were originally members of BABA that have withdrawn from the organization and are no longer active members. She said they will file protest petitions if the Planning Commission votes for the proposed protective overlay.

**KLAUSMEYER** clarified that the opt out time frame was up until the item is heard by the City Council.

**VAN FLEET** requested that the motion maker accept a small change and that is to request that City Staff be instructed to send a First Class Mailing reporting the results of this hearing and notifying them that the opt out option has been extended until the issue is heard by the City Commission.

**DOWNING** said he didn't have a particular problem with that concept but thought it might be a waste of time to notify all those folks.

**DIRECTOR SCHLEGEL** suggested that the notice be sent to all people on the ownership list.

**CHAIR MILLER STEVENS** suggested that the request be dealt with as a separate motion.

**FARNEY** asked if the City Council would conduct a public hearing on the matter.

**DIRECTOR SCHLEGEL** responded that this meeting is the public hearing and that the City Council does not hold public hearings on planning items. He said the Planning Commission makes recommendations to the City Council on planning items.

**JOHNSON** commented that this is an important issue and that the entire Bridgeport area should be notified what the Commission is recommending and that there is still an opportunity to opt out.

> **MOTION AMENDMENT:** To send a letter to each property owner in the overlay district explaining the Commission's motion and indicate that property owners still have the choice to opt out of the proposed overlay.
>
> **DOWNING** moved, and **DENNIS** seconded the amendment.
>
> **SUBSTITUTE MOTION:** To approve the proposed overlay district with the opt out provision and recognize that there will be non-conforming uses within the district.
>
> **FOSTER** moved.

**KLAUSMEYER** asked how does that work if someone chooses to opt out.

The **SUBSTITUTE MOTION** failed due to lack of a second.

**JOHNSON** requested that the question be called.

The **ORIGINAL MOTION, AS AMENDED** passed (11-1). **LEFFEW** – No.

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| USE | Permitted in GI | Subject to Conditions | Conditions |
|---|---|---|---|
| Correctional Facility | Yes | D.6.h | Although listed as permitted uses in certain districts, correctional facilities and correction placement residences (limited and general) shall always be considered Conditional Uses and subject to Sec. V-D (Conditional Use review procedures) when located within 750 feet (measured from property line to property line) of a residential zoning district, unless separated by a major barrier. Correctional placement residences shall comply with all applicable federal, state and local regulatory requirements, and if such facilities are not directly operated by a unit of government they shall meet licensure requirements that further specify minimum service standards. |
| Correctional Placement Residence | Yes | D.6.h | See above |
| Day Care | Conditional Use | D.6.i | |
| Day Reporting Center | Conditional Use | D.6.jl | Day reporting centers as defined by this Code shall always be considered Conditional Uses and subject to Sec. V-D (Conditional Use review procedures). Day reporting centers shall be subject to the following standards: (1) Compliance with all applicable federal, state and local regulatory requirements, and if such facilities are not directly operated by a unit of government they shall meet licensure requirements that further specify minimum service standards. |
| Nursing Facility | Conditional Use | | |
| Parks and Recreation for public use | Yes | D.6.ll | In the IP-A District, Parks and Recreation shall not be permitted if the Use would attract more than 25 spectators and/or participants per acre at any one time. |

| | | | |
|---|---|---|---|
| Recycling Collection Station, Public | Yes | D.6.r | Public recycling collection stations shall be subject to all of the following standards when located in the LC district. When located in any other permitted district, they shall be subject only to the standard of Sec. III-D.6.r(9). (9) Prior to establishing a public recycling collection station, the operator shall obtain a location or building permit, as applicable, from the Zoning Administrator. Operation of the station shall be subject to approval of the health officer. |
| Recycling Processing Center, conducted as an outdoor activity | Yes | D.6.s | Recycling processing centers shall be subject to the following standards. (1) The operation of Recycling Processing Centers shall be subject to approval by appropriate local health codes. (2) Recycling Processing Centers shall be permitted as an indoor Use in the GC, CBD, LI and GI Districts. Such uses may be allowed as an outdoor Use in the LI District if first reviewed and approved as a Conditional Use pursuant to Sec. V-D. (3) Recycling Processing Centers shall be permitted also as an outdoor Use in the GI District. |
| Entertainment Establishment in the City | Yes | D.6.w | Conditional uses if located within 300 feet of a Church or Place of Worship, public park, public or parochial School or residential zoning district if considered a Nightclub in the City. If not considered a Nightclub in the City, then 200 feet. Distances are measured from the nearest Lot Lines. |
| Event Center in the City | Yes | D.6.w | See above |
| Nightclub in the City | Yes | D.6.w | See above |
| Personal Care Service | Yes | | |
| Personal Improvement Service | Yes | | |
| Recreation and Entertainment, Indoor and Outdoor | Yes | D.6.o | Property shall be contiguous to an arterial or expressway. |

| | | | |
|---|---|---|---|
| Rodeo in the City | Yes | D.6.kk | Outdoor sound must be approved under the Community Events Ordinance. Lighting shall be in compliance with the lighting requirements. Hours shall be 7:00 a.m. to 10:00 p.m. Su-Th and 7:00 a.m. to 12:00 midnight Fri-Sa. Conditional Use if Outdoor Storage or Penning for more than 2 days per calendar year, except temporary penning for no longer than 12 continuous hours. For Outdoor Storage or penning, a minimum of 5 acres is required. |
| Sexually Oriented Business in the City | Yes | D.6.ff | Located more than 500 feet from a church, school, public park, licensed Day Car center, the boundary of any residential District, the boundary of the OT-O District and from any other adult entertainment establishment defined in Chapter 3.05 of the Code of the City of Wichita. |
| Tattooing and Body Piercing | Yes | D.6.ee | Located a minimum of 200 feet from a school, park or residential zoning District. Must be within an enclosed building. |
| Tavern and Drinking Establishment | Yes | D.6.w | See above |
| Construction Burn Site | Conditional Use | C.11 | Separate district for this. |
| Landfill | Conditional Use | | |
| Mining or Quarrying | Conditional Use | D.6.gg | Sand and gravel extraction operations shall be subject to the following conditions: |
| Rock Crushing | Conditional Use | | |
| Solid Waste Incinerator | Conditional Use | D.6.v | Any Solid Waste Incinerator, except those located in the GI District, shall comply with the "Standards for Development of Resource Recovery Facilities," as published in June 1984 by the Metropolitan Area Planning Department. |
| Storage, Outdoor as a Principal Use | Yes | D.6.dd | In LC through LI, the Outdoor Storage and/or bailing of junk, scrap, paper, bottles, rags or similar materials is prohibited. See Sec. III-B.14.e, III-B.15.3, III-B.17.e and III-B.18.e for limitations on other Outdoor Storage in LC, OW, IP-A and IP. |
| Transfer Station | Conditional Use | | |

| | | | |
|---|---|---|---|
| Wrecking/Salvage Yard | Conditional Use | D.6.c + D.6.dd | Wrecking/Salvage Yards may be approved as a Conditional Use in the LI and GI Districts, provided that such operations: (1) is not Abutting an arterial Street, expressway or freeway; (2) in the opinion of the Planning Commission, will not adversely affect the character of the neighborhood; and (3) is enclosed by a Fence or wall not less than eight feet in height and having cracks and openings not in excess of five percent of the area of such fence. |
| Rendering Facility | | | |

| | | | |
|---|---|---|---|
| Conditional Use Required in GI District | | 10 | 37.04% |
| Allowed in GI District but contains conditions | | 11 | 40.74% |
| Allowed in GI District as a right | | 6 | 22.22% |
| | | 27 | 100.00% |

SECTIONS

## A. GENERAL

### 2. Zoning Districts established.

**Special Purpose and Overlay Districts**
**Add:**
BIAP-O Bridgeport Industrial Area Protective Overlay

## C. SPECIAL PURPOSE AND OVERLAY ZONING DISTRICTS

### 13. BIAP-O Bridgeport Industrial Area Protective Overlay ("BIAP-O")

**a. Purpose**. The BIAP-O Bridgeport Industrial Area Protective Overlay District is intended to preserve, enhance and promote the character of the Bridgeport Industrial Area as an industrial environment conducive to industrial activity and concentrations of employment common to manufacturing and fabrication, warehouse, wholesale, and similar businesses, and accessory uses such as parking and storage of equipment that are part of the principal use located on the same site as the accessory activity. The District is designed to limit conflicts from more intensive industrial uses associated with generating noise, hazardous emissions, visual blight or odor such as primary extraction, outdoor processing or refinement of natural resources or recycling of waste materials. In addition, the District is designed to avoid institutional uses associated with residential types of occupancy and commercial or retail uses associated with shopping districts and entertainment venues. The BIAP-O District is generally compatible with the "Employment/Industry Center" designation of the *Wichita-Sedgwick County Comprehensive Plan.*

**b. BIAP-O District boundaries and Official Map**. The location and boundaries of the BIAP-O District shall be shown on the Official Zoning District Map, being bounded on the north by the Middle Fork Chisholm Creek, on the east by I-135, on the south by 29t Street North and on the west by Broadway Avenue, excepting those areas shown as excluded on the map attached to this adopting ordinance.

**c. Use regulations**. The Use regulations of this Overlay District shall control over the Underlying zoning District. The following Uses shall be explicitly prohibited in the BIAP-O District, regardless if said Uses are stated as permitted or Conditional Uses in the Underlying Districts.

**(1) Prohibited Public and Civic Use**
Correctional Facility
Correctional Placement Residence
Day Care
Day Reporting Center

Nursing Facility
Parks and Recreation for public use
Recycling Collection Station, Public
Recycling Processing Center, conducted as an outdoor activity

**(2) Prohibited Commercial Uses**

Entertainment Establishment in the City
Event Center in the City
Nightclub in the City
Personal Care Service
Personal Improvement Service
Recreation and Entertainment, Indoor and Outdoor
Rodeo in the City
Sexually Oriented Business in the City
Tattooing and Body Piercing
Tavern and Drinking Establishment

**(3) Prohibited Industrial Manufacturing and Extractive Uses**

Construction Burn Site
Landfill
Mining or Quarrying
Rock Crushing
Solid Waste Incinerator
Storage, Outdoor, as a Principal Use
Transfer Station
Wrecking/Salvage Yard

**(4) Other Uses Prohibited**

Rendering facility

**Agenda Item No. V-1.**

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council Members

**SUBJECT:** Street Improvement Agreement for ZON2010-30 located west of Osage Street and South of Maple Street (District IV)

**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA ACTION:** Planning (Consent)

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**Staff Recommendation:** Approve the Agreement.

**Background:** This No Protest Agreement for future road paving is required for the approval of zone case ZON2010-00030. The zone case is rezoning a piece of property from B Multi-family Residential ("B") to LC Limited Commercial ("LC"). This Agreement assures the City of Wichita that this property will be included in the improvement district for the paving of the alleyway which fronts this property and that the owners have waived their right to protest said construction.

**Analysis:** None.

**Financial Considerations:** None.

**Goal Impact**: Ensure Efficient Infrastructure.

**Legal Considerations:** The No Protest Agreement has been approved as to form by the Department of Law and will be recorded with the Register of Deeds.

**Recommendations/Actions:** It is recommended that the City Council accept the No Protest Agreement.

**Attachment:** No Protest Petition

**NO PROTEST PETITION**

THIS AGREEMENT made and entered into this 19 day of October, 2010, by and between the City of Wichita, Kansas, party of the first part (hereinafter "City"), and Kathleen Bagwell, party of the second part (hereinafter "Owner").

WITNESSETH:

WHEREAS, City, at some undetermined time in the future, intends to construct certain public improvements to serve property owned by Owner and property owned by others; and

WHEREAS, Owner is the owner of real property legally described as see attached page in back; and

WHEREAS, Owner wishes to build a greenhouse west of current warehouse and re zone that area from Multi-family to LC.

WHEREAS, City wishes to insure that the said real property owned by Owner will be included in the improvement district responsible for that portion of the costs of said future improvement that are to be assessed pursuant to the provisions of K.S.A. 12-6a01 et seq..

NOW, THEREFORE, the parties hereto agree as follows:

1. City shall grant Owner's zoning change to said real property, notwithstanding the fact that not all the public improvements normally required to be constructed prior to the zoning change have been constructed.

2. Owner, on his own behalf and on behalf of his heirs, assigns and successors in interest, irrevocably waives his right, pursuant to K.S.A. 12-6a06, to protest the commencement of the construction of Paving the alley by City, but nothing contained herein shall be deemed to be a waiver by Owner of his right to challenge, pursuant to K.S.A. 12-6a11, the reasonableness of the portion of the cost of said construction assessed against Owner's said real property.

3. A copy of this agreement shall be recorded with the Register of Deeds and the promises herein made by Owner shall constitute covenants running with the land described herein.

IN WITNESS WHEREOF, said parties have set their hand this 19th day of October, 2010.

Owner(s) please sign, then type or print name below signature:

Kathleen Bagwell

KATHLEEN BAGWELL

CITY OF WICHITA

By _____
MAYOR

STATE OF KANSAS)
SEDGWICK COUNTY) SS

BE IT REMEMBERED that on this 19th day of October, came Kathleen Bagwell to me personally known to be the same person who executed the foregoing instrument of writing, and said person duly acknowledged the execution thereof.

Dated at Wichita, Kansas, this 19th day of October, 2010.

Maryann Crockett
Notary Public

MARYANN CROCKETT
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 5-22-2011

My Commission expires:

**Legal Description of 419 S Osage, Wichita, KS:**

Reserve D and the East half of Reserve C, in Campbell's Subdivision in Lawrence's Addition to Wichita, Sedgwick County, Kansas, TOGETHER WITH that part of Lot 4, Block 2, Lawrence Addition to West Wichita, Sedgwick County, Kansas described as beginning at a point 152 feet West of the Northeast corner of Lot 4; thence West 50 feet; thence South 7 feet; thence East 50 feet; thence North 7 feet to the point of beginning.

**Agenda Item No. V-2.**

**City of Wichita**
**City Council Meeting**
November 2, 2010

**TO:** Mayor and City Council

**SUBJECT:** ZON2010-00033 – City zone change from LI Limited Industrial ("LI") to GO General Office ("GO"); generally located on the north side of 13th Street North, approximately 1/4-mile west of Greenwich Road. (District II)

**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Consent)

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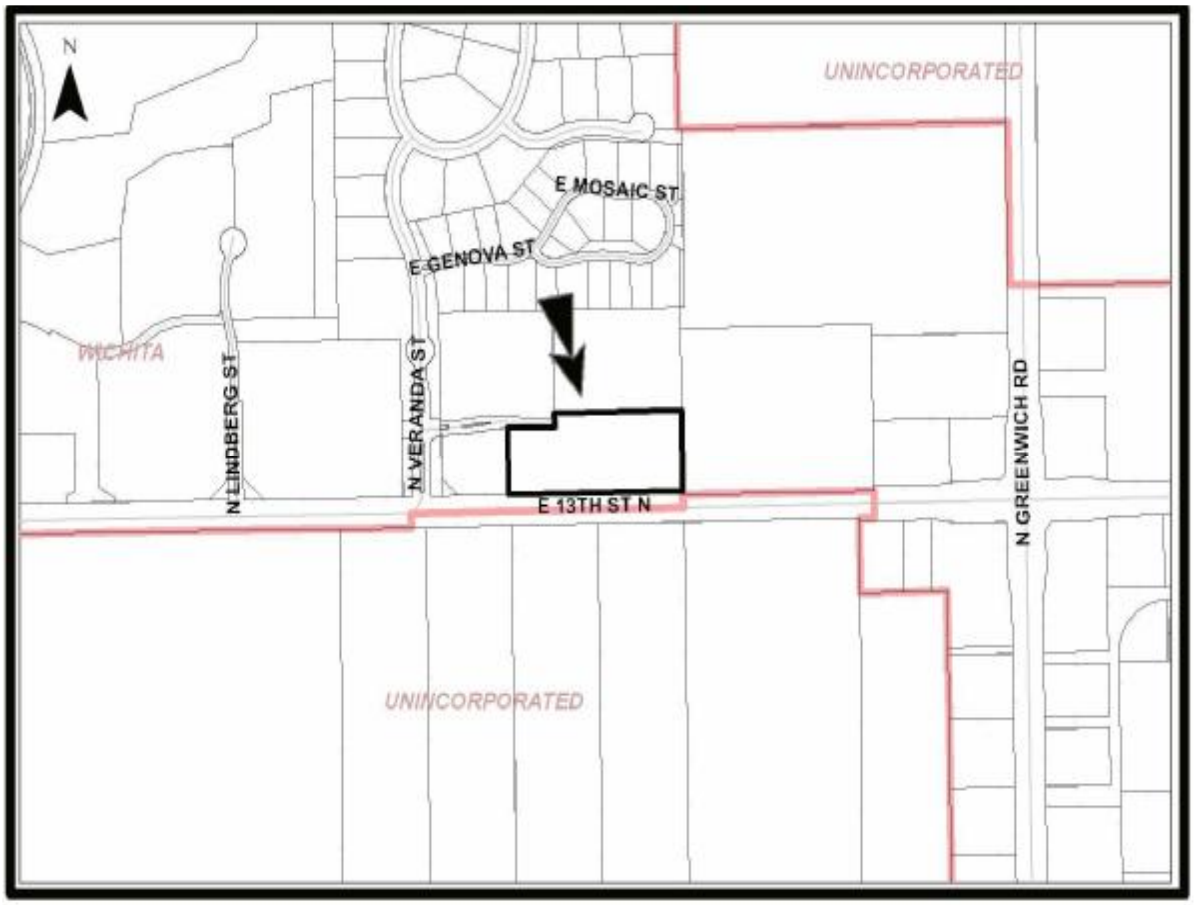
**MAPC Recommendation:** Approve unanimously (13-0).

**MAPD Staff Recommendation:** Approve.



**Background:** The applicant is requesting GO General Office ("GO") zoning on the platted approximately 4.2 acre LI Limited Industrial ("LI") zoned site. The proposed GO zoning would allow the applicant to build an assisted living facility; assisted living is not permitted in the LI zoning district.

The site is located in an area that has a mix of predominately LI zoning with some SF-5 Single-Family Residential ("SF-5"), GI General Industrial ("GI"), SF-20 Single-Family Residential ("SF-20") and LC Limited Commercial ("LC") zoning. The site abuts unplatted and undeveloped SF-5 zoned property on its east side. Undeveloped LI zoned land abuts a portion of its north side, as does LI zoned property developed as a multi-story office building. The LI zoned Hawker-Beechcraft aircraft company airstrip is located south of the site, across 13th Street North. Hawker-Beechcraft is one of the four major aircraft manufacturing companies in Wichita and is the dominant and perhaps the oldest development in the area. Undeveloped LI zoned property abuts the west side of the site. Other development located further from the site, includes a LC zoned bank, (east, at the intersection of 13th and Greenwich), a LI zoned carpet store (southeast), a SF-5 zoned single-family residential subdivision, which is still developing (northwest) and extensive LI zoned retail, restaurant, office development along the 13th Street and Webb Road intersection. There is also a LI zoned Hawker-Beechcraft employee park (recently sold to another party) located southwest of the site. The park and the retail, restaurant, office development along the 13th Street and Webb Rd. intersection are built around retired sand pits. The area's GI zoned property is partially developed as a concrete plant with the remainder being undeveloped.

The site's proximity to the Hawker-Beechcraft aircraft company airstrip places it in Airport Hazard Zone A. An Airport Hazard Zone is defined as "…an area of land or water where man-made structures, trees or use of land can obstruct the airspace required for the flight of aircraft landing and taking off at any airport, as regulated by Appendix H of Sedgwick County Code and Chapter 28.08 of the Code of the City of Wichita." Buildings located on land covered by the Zone A designation are limited to 25 feet in height, unless a more detailed review is conducted and an increased height is approved. All of this area (development) between Greenwich and Webb Roads, north of 13th (and south of 13th) up past Jabara Airport is in either Airport Hazard Zone A or B.

**Analysis:** At the MAPC meeting held September 9, 2010, the MAPC voted (13-0) to recommend approval of the request for GO zoning. The case was approved by consent, and there was not anyone from the public to speak for or against the application. There have not been any protests received.

**Financial Considerations:** None.

**Goal Impact:** Promote economic vitality

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

**Recommendation/Actions:**

1. Adopt the findings of the MAPC, approve the zone change, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required).

**Attachments:**
- Ordinance
- MAPC Minutes

OCA 150004

ORDINANCE NO. 48-897

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

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

**SECTION 1.** That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

**Case No. ZON2010-00033**

Zone change from LI Limited Industrial ("LI") to GO General Office ("GO") on property described as:

Lot 3, Block 1, Greenwich Office Park Addition, Wichita, Sedgwick County, Kansas, generally located on the north side of 13th Street North, approximately 1/4-mile west of Greenwich Road.

**SECTION 2.** That upon the taking effect of this ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita -Sedgwick County Unified Zoning Code as amended.

**SECTION 3.** That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

_____
Carl Brewer - Mayor

**ATTEST:**

_____
Karen Sublett, City Clerk

(SEAL)

Approved as to form: _____
Gary E. Rebenstorf, City Attorney

**WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION**
**September 9, 2010**

**Case No.: ZON2010-33** – Greenwich 13, LLC (owner/applicant) and MKEC (agent) request a City zone change from LI Limited Industrial to GO General Office on property described as;

Lot 3, Block 1, Greenwich Office Park Addition an Addition to Wichita, Sedgwick County, Kansas, EXCEPT the North 360 feet thereof.

**BACKGROUND:** The applicant is requesting GO General Office ("GO") zoning on the platted approximately 4.2-acre LI Limited Industrial ("LI") zoned site. The proposed GO zoning would allow the applicant to build an assisted living facility; assisted living is not permitted in the LI zoning district.

The site is located in an area that has a mix of predominately LI zoning, with some SF-5 Single-Family Residential ("SF-5"), GI General Industrial ("GI"), SF-20 Single-Family Residential ("SF-20"), and LC Limited Commercial ("LC") zoning. The site abuts unplatted and undeveloped SF-5 zoned property on its east side. Undeveloped LI zoned land abuts a portion of its north side, as does LI zoned property developed as a multi-story office. The LI zoned Hawker–Beechcraft aircraft company airstrip is located south of the site, across 13th Street North. Hawker–Beechcraft is one of the four major aircraft manufacturing companies in Wichita and the dominant, and perhaps the oldest, development in the area. Undeveloped LI zoned property abuts the west side of the site. Other development located further from the site, includes an LC zoned bank, (east, on the intersection of 13th and Greenwich), an LI zoned carpet store (southeast), an SF-5 zoned single-family residential subdivision, which is still developing (northwest), and extensive LI zoned retail, restaurant, office development along the Webb Road – 13th intersection. There is also an LI zoned Hawker–Beechcraft employee park (recently sold to another party) located southwest of the site. The park and the retail, restaurant, office development along the Webb – 13th intersections are built around retired sand pits. The area's GI zoned property is partially developed as a concrete plant, with the remainder being undeveloped.

The site's proximity to the Hawker–Beechcraft aircraft company airstrip places it in Airport Hazard Zone A. An Airport Hazard Zone is defined as "...an area of land or water where man-made structures, trees or use of land can obstruct the airspace required for the flight of aircraft landing and taking off at any airport, as regulated by Appendix H of Sedgwick County Code and Chapter 28.08 of the Code of the City of Wichita." Buildings located on land covered by the Zone A designation are limited to 25 feet in height, unless a more detailed review is conducted and an increased height is approved. All of this area (development) between Greenwich and Webb Roads, north of 13th (and south of 13th) up past Jabara Airport is in either Airport Hazard Zone A or B.

**CASE HISTORY:** The site is part of Lot 3, Block 1, Greenwich Office Park Addition, which was recorded with the Register of Deeds November 13, 2007.

**ADJACENT ZONING AND LAND USE:**

| | | |
|---|---|---|
| NORTH: | LI, SF-5 | Undeveloped land, office, developing single-family residential subdivision |
| SOUTH: | LI, SF-20 | Hawker–Beechcraft aircraft company airstrip and facilities |
| EAST: | LI, SF-5, GI, LC | Undeveloped land, bank |
| WEST: | LI | Undeveloped land, retail, restaurants, offices |

**PUBLIC SERVICES:** The subject site has access onto 13th Street North, a four-lane paved and curbed minor arterial, with a 60-foot half-street right-of-way (ROW). All utilities are available to this site. There are no Capital Improvement Projects scheduled for this area.

**CONFORMANCE TO PLANS/POLICIES:** The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan categorizes the subject site's area as appropriate for "Employment/ Industry Center" development. This category's range of uses includes manufacturing and fabrication facilities, warehouse and shipping centers, call centers and corporate offices. The area's and the site's current LI zoning allows this range of uses. The past and current dominant presence of Hawker–Beechcraft probably established the area as being appropriate for the Employment/ Industry Center category. However, the more recent retail, restaurant, office and single-family residential development located north of 13th and Hawker–Beechcraft, more closely resembles the "Regional Commercial" and "Urban Development Mix" categories. Assisted living is classified as a moderate to high density residential use in the Unified Zoning Code (UZC). Assisted living fits into both the Regional Commercial and Urban Development Mix categories' range of uses. The requested GO down zoning of the site and the development it allows is not at odds with the area's recent development trends, which would seem to make the request less suspected of being spot zoning.

The Comprehensive Plan's "Residential Locational Guidelines" for medium and high density residential uses states that such uses should be directly accessible to arterial or collector streets in order to avoid high traffic volumes in lower density residential neighborhoods. The site has direct access onto 13th Street North and no access to single-family residential development. Medium and high density residential development should serve as a transitional land use between commercial and low-density residential uses. The area's current predominant LI zoning and current (retail, restaurants, offices, one single-family residential subdivision) and past (Hawker–Beechcraft) development trends makes this consideration less critical. The proposed assisted living facility is unlikely to overload or create congestion in existing and planned facilities/utilities. Commercial activity is within walking distance of the site, but it is unknown how critical this is for the residents of an assisted living facility.

Safety concerns are present given the site's proximity to the northern flight path taken by aircraft using Hawker-Beechcraft's runway. The site's eastern boundary is located within 500 feet of the center line of the approach to the runway's northern end. However, zoning requests permitting similar or higher concentrations of people have, in the past, been approved for properties located to the east on both sides of 13th Street.

**RECOMMENDATION:** Based upon these factors and the information available prior to the public hearings, planning staff recommends that the requested GO General Office be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is located in an area that has a mix of predominately LI zoning, with some SF-5 Single-Family Residential ("SF-5"), GI General Industrial ("GI"), SF-20 Single-Family Residential ("SF-20"), and LC Limited Commercial ("LC") zoning. The site abuts unplatted and undeveloped SF-5 zoned property on its east side. Undeveloped LI zoned abuts a portion of its north side, as does LI zoned property developed as multi-story office. The LI zoned Hawker–Beechcraft aircraft company airstrip is located south of the site, across 13th Street North. Hawker–Beechcraft is one of the four major aircraft manufacturing companies in Wichita and the dominant, and perhaps the oldest, development in the area. Undeveloped LI zoned property abuts the west side of the site. Other development located further from the site, includes an LC zoned bank, (east, on the intersection of 13th and Greenwich), an LI zoned carpet store (southeast), an SF-5 zoned single-family residential subdivision, which is still developing (northwest), and extensive LI zoned retail, restaurant, office development along the Webb Road – 13th intersection. There is also an LI zoned Hawker–Beechcraft employee park (recently sold for development) located southwest of the site. The park and the retail, restaurant, office development along the Webb – 13th intersections are built around retired sand pits. The area's GI zoned property is partially developed as a concrete plant, with the remainder being undeveloped.

2. The suitability of the subject property for the uses to which it has been restricted: The current LI zoning would allow development similar to what is in the area, with the exception of not allowing any residential types of development. There is a SF-5 zoned single-family residential subdivision being developed approximately 370 feet north of the site. The proposed GO zoning would allow another residential use in the area, as well as being more compatible with the SF-5 zoned property abutting its east side. However it is possible that this abutting SF-5 zoned property will not remain SF-5, because of its location on 13th Street North and close proximity to the Hawker–Beechcraft facilities.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed down zoning at the mid-mile point is a zoning pattern that is generally encouraged, if the uses it allows are not incompatible with the development trends of the area. As stated, there is a SF-5 zoned single-family residential subdivision being developed approximately 370 feet north of the site and the proposed GO zoning would allow another residential use in the area. As stated the proposed GO zoning is more compatible with the eastern abutting undeveloped SF-5 zoned property, although it is reasonable to speculate that it will not remain SF-5, because of its location on 13th Street North and close proximity to the Hawker–Beechcraft facilities.

4. Conformance of the requested change to the adopted or recognized Plans: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan categorizes the subject site's area as appropriate for "Employment/ Industry Center" development. This category's range of uses includes manufacturing and fabrication facilities, warehouse and shipping centers, call centers and corporate offices. The area's and the site's current LI zoning allows this range of uses. The past and current dominant presence of Hawker – Beechcraft probably established the area as being appropriate for the Employment/ Industry Center category. However, the more recent retail, restaurant, office and single-family residential development located north of 13th and Hawker–Beechcraft, more closely resembles the "Regional Commercial" and "Urban Development Mix" categories. Assisted living is classified as a moderate to high density residential use in the Unified Zoning Code (UZC). Assisted living fits into both the Regional Commercial and Urban Development Mix categories' range of uses. The requested GO down zoning of the site and the development it allows is not at odds with the area's recent development trends, which would seem to make the request less suspected of being spot zoning.

   The Comprehensive Plan's "Residential Locational Guidelines" for medium and high density residential uses states that such uses should be directly accessible to arterial or collector streets in order to avoid high traffic volumes in lower density residential neighborhoods. The site has direct access onto 13th Street North and no access to single-family residential development. Medium and high density residential development should serve as a transitional land uses between commercial and low-density residential uses. The area's current predominant LI zoning and current (retail, restaurants, offices, one single-family residential subdivision) and past (Hawker–Beechcraft) development trends makes this consideration less critical. The proposed assisted living facility is unlikely to overload or create congestion in existing and planned facilities/utilities. Commercial activity is within walking distance of the site, but it is unknown how critical this is for the residence of an assisted living facility.

5. Impact of the proposed development on community facilities: Impact will be minimal.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.
**JOHNSON** moved, **HILLMAN** seconded the motion, and it carried (13-0).

**Agenda Item No. V-3.**

**City of Wichita**
**City Council Meeting**
November 2, 2010

**To:** Mayor and City Council

**Subject:** VAC2010-00026 - Request to vacate a portion of a platted setback; generally located west of Maize Road, north of Kellogg/US-54. (District V)

**Initiated By:** Metropolitan Area Planning Department

**Agenda:** Planning (Consent)

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**Staff Recommendation:** Approve.

**MAPC Recommendation:** Approve (unanimously).

**Background:** The applicants propose to vacate the east 10 feet of the platted 30-foot street side yard setback on the southeast corner of Lynndale and Fieldcrest Streets property. The Unified Zoning Code's minimum street side yard setback for the SF-5 Single-Family Residential ("SF-5") zoning district is 15 feet. If approved, the vacation will result in a street side yard setback of 20 feet. The vacation will remove an addition to the site's single-family residence from the platted street side yard setback. There are no platted easements within the platted setback. There are no utilities within the described portion of the platted setback. The Fieldcrest Addition was recorded with the Register of Deeds on May 25, 1965.

**Analysis:** The MAPC voted (12-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

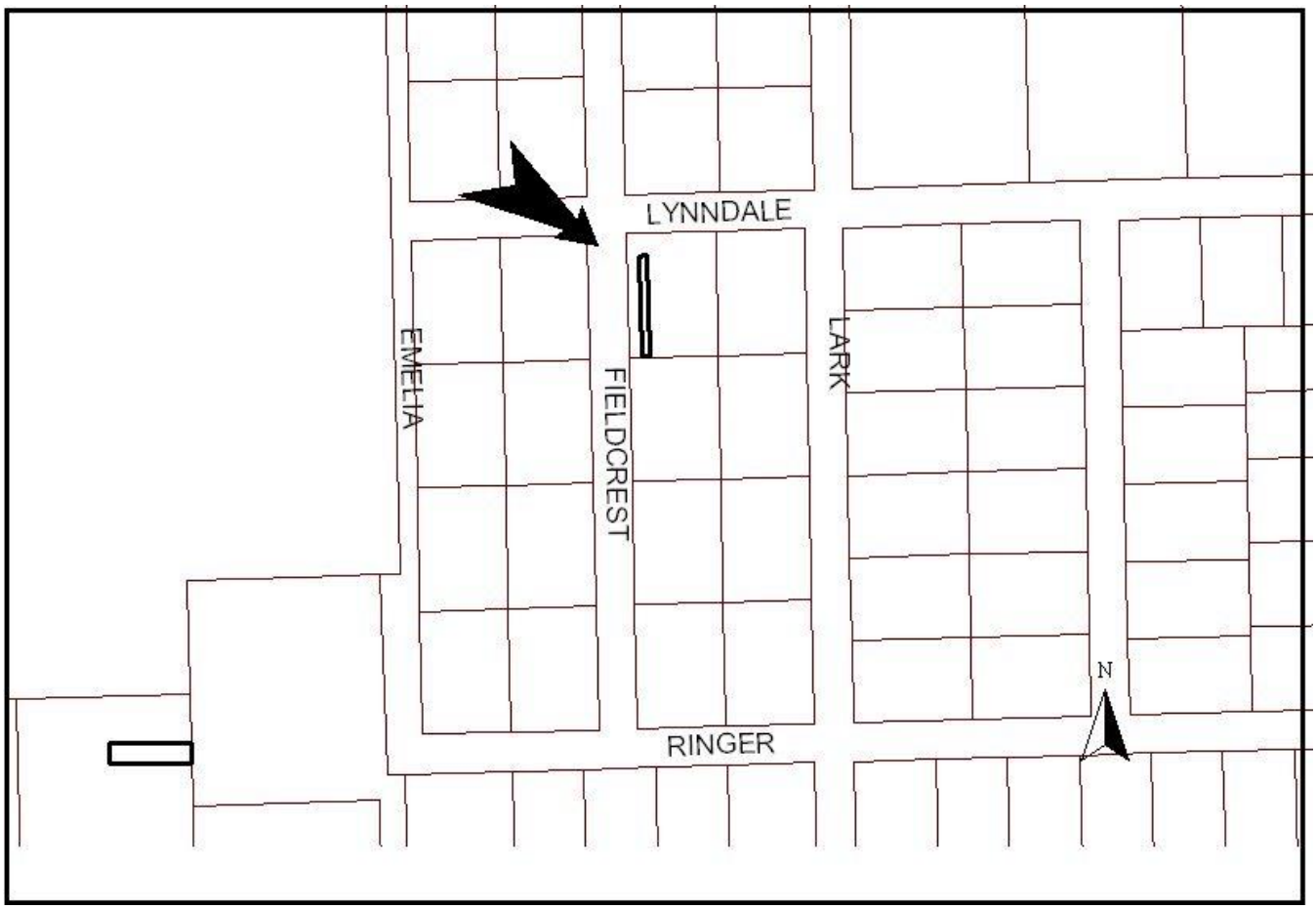
**Financial Considerations:** None.

**Goal Impact:** Ensure efficient infrastructure.

**Legal Considerations:** A certified copy of the Vacation Order has been approved as to form by the Department of Law and will be recorded with the Register of Deeds.

**Recommendation/Actions:** Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

**Attachments:** None.


LYNNDALE
EMELIA
FIELDCREST
LARK
RINGER
N

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

**PRELIMINARY ESTIMATES**
**FOR CITY COUNCIL NOVEMBER 2, 2010**

a. Water Distribution System to serve Davis Gardens Addition (north of Central, west of Sheridan) (448-90482/735450/470123) Traffic to be maintained using flagpersons and barricades. (District VI) - $26,250.00

b. Pavement on the N-S alley between Cleveland and Indiana from the south line of 2nd Street North to the north line of 1st Street North & Sanitary Sewer Replacement to serve Matthewson's 3rd Addition (east of Washington, north of Douglas) (472-84905/766255/620560/490273/660677) Traffic maintained using flagpersons and barricades. (District I) - $193,600.00

**Agenda Item No. XII-4a.**

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Community Events – Intrust Bank Arena (Barney)
(District I)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closures.

**Background:** In accordance with the Community Events procedure, the event promoter Tenille Matzek, Intrust Bank Arena Event Coordinator is coordinating with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure requests have been submitted:

**Barney December 18, 2010 7:00 am – December 20, 2010 2:00 am**

- William Street, St. Francis Street to Commerce Street
- Waterman Street, St. Francis Street to Emporia Street – West bound lane

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

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

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

**Legal Consideration:** None

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

**Agenda Item No. XII-4b.**

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Community Events – Intrust Bank Arena (Cirque De Soleil) (District I)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closures.

**Background:** In accordance with the Community Events procedure, the event promoter Tenille Matzek, Intrust Bank Arena Event Coordinator is coordinating with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure requests have been submitted:

**Cirque De Soleil December 28, 2010 7:00 am – January 3, 2011 2:00 am**

- William Street, St. Francis Street to Commerce Street
- Waterman Street, St. Francis Street to Emporia Street – West bound lane

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

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

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

**Legal Consideration:** None

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

**Agenda Item No. XII-4c.**

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Community Events – Intrust Bank Arena (Dane Cook) (District I)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closures.

**Background:** In accordance with the Community Events procedure, the event promoter Tenille Matzek, Intrust Bank Arena Event Coordinator is coordinating with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure requests have been submitted:

**Dane Cook November 16, 2010 7:00 am – November 17, 2010 2:00 am**

- William Street, St. Francis Street to Commerce Street
- Waterman Street, St. Francis Street to Emporia Street – West bound lane

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

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

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

**Legal Consideration:** None

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

**Agenda Item No. XII-4d.**

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Community Events – Intrust Bank Arena (Radio City Rockettes) (District I)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closures.

**Background:** In accordance with the Community Events procedure, the event promoter Tenille Matzek, Intrust Bank Arena Event Coordinator is coordinating with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure requests have been submitted:

**Radio City Rockettes November 20, 2010 7:00 am – November 22, 2010 2:00 am**

- William Street, St. Francis Street to Commerce Street
- Waterman Street, St. Francis Street to Emporia Street – West bound lane

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

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

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

**Legal Consideration:** None

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

**Agenda Item No. XII-4e**

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Community Events – Intrust Bank Arena (Zac Brown Band) (District I)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closures.

**Background:** In accordance with the Community Events procedure, the event promoter Tenille Matzek, Intrust Bank Arena Event Coordinator is coordinating with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure requests have been submitted:

**Zac Brown Band November 6, 2010 7:00 am – November 7, 2010 2:00 am**

- William Street, St. Francis Street to Commerce Street
- Waterman Street, St. Francis Street to Emporia Street – West bound lane

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

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

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

**Legal Consideration:** None

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

**Agenda Item No. XII-4f.**

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Community Events – Intrust Bank Arena (Trans Siberian Orchestra) (District I)

**INITIATED BY:** Division of Arts & Cultural Services

**AGENDA:** Consent

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**Recommendation:** Approve the request for temporary street closures.

**Background:** In accordance with the Community Events procedure, the event promoter Tenille Matzek, Intrust Bank Arena Event Coordinator is coordinating with City of Wichita staff, subject to final approval by the City Council.

**Analysis:** The following street closure requests have been submitted:

**Trans Siberian Orchestra December 15, 2010 7:00 am – December 16, 2010 2:00 am**

- William Street, St. Francis Street to Commerce Street
- Waterman Street, St. Francis Street to Emporia Street – West bound lane

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

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

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

**Legal Consideration:** None

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

**CITY OF WICHITA**
**City Council Meeting**
November 2, 2010

**TO:** Mayor and City Council

**SUBJECT:** Acquisition of 3011 East 13th Street North for the East 13th Street, Hydraulic to Oliver Road Improvement Project (District I)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

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**Recommendation:** Approve the acquisition.

**Background:** On November 6, 2007, the City Council approved the design concept and proposed project to widen East 13th Street North between Hydraulic to Oliver. The project will require the acquisition of all or part of 79 tracts. The improvements include adding a center turn lane, relocating the sidewalks away from the back of the curb, improving the storm sewer system and landscaping. The single-family residential property at 3011 East 13th Street will be impacted by the project. It is necessary to acquire the parcel in its entirety and raze the improvements.

**Analysis:** The owner agreed to accept the county appraised value of $15,000, or $19 per square foot for the 792 square foot structure.

**Financial Considerations:** The funding source for the project is General Obligation Bonds. A budget of $16,000 is requested. This includes $15,000 for the acquisition and $1,000 for title work and other administrative fees.

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

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

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

**Attachments:** Real estate purchase agreement, tract map and aerial map.

**PROJECT:** 13th Street North **DATE:** October 6, 2010

**COUNTY:** Sedgwick **TRACT NO.:** 55

**THE CITY OF WICHITA, KANSAS**

# CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 18th day of October, 2010., by and between

Mr. Allen Torske

A & T Rentals #2, LLC

7200 S Chautauqua

Wichita, KS 67216

(Name and Address)

landowner(s), and the City of Wichita of the State of Kansas.

**WITNESSETH**, For consideration as hereinafter set forth, the landowner(s) hereby agree(s) to convey fee title to the City of Wichita by Warranty Deed to the following described real estate in the County of Sedgwick, State of Kansas, to wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

It is understood and agreed that landowner(s) is/are responsible for all property taxes on the above described property accrued prior to the conveyance of title to the City of Wichita. In the event of relocation, landowner(s) hereby expressly agrees and covenants that they will hold and save harmless and indemnify the City of Wichita and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever which may occur during the time the City becomes legally entitled to the property and the date of relocation. In no event will the landowner(s) be required to move until the City becomes legally entitled to the property.

The City of Wichita agrees to purchase the above described real estate, and to pay therefore, the following amount within sixty days after the warranty deed conveying said property free of encumbrance has been delivered.

Approximately 3,375 Sq. Ft. for Right of Way Damages including but not limited to all improvements and real property of the landowner: $ 15,000.00

**TOTAL:** $ 15,000.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

**IN WITNESS WHEREOF** The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS: A&T Rentals #2, LLC

By: _____
Allen Torske, Owner

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:

A&T Rentals #2, LLC

If mortgage or other liens, show names of holders:

Legacy Bank, unpaid taxes for 2008 & 2009

## REMARKS:

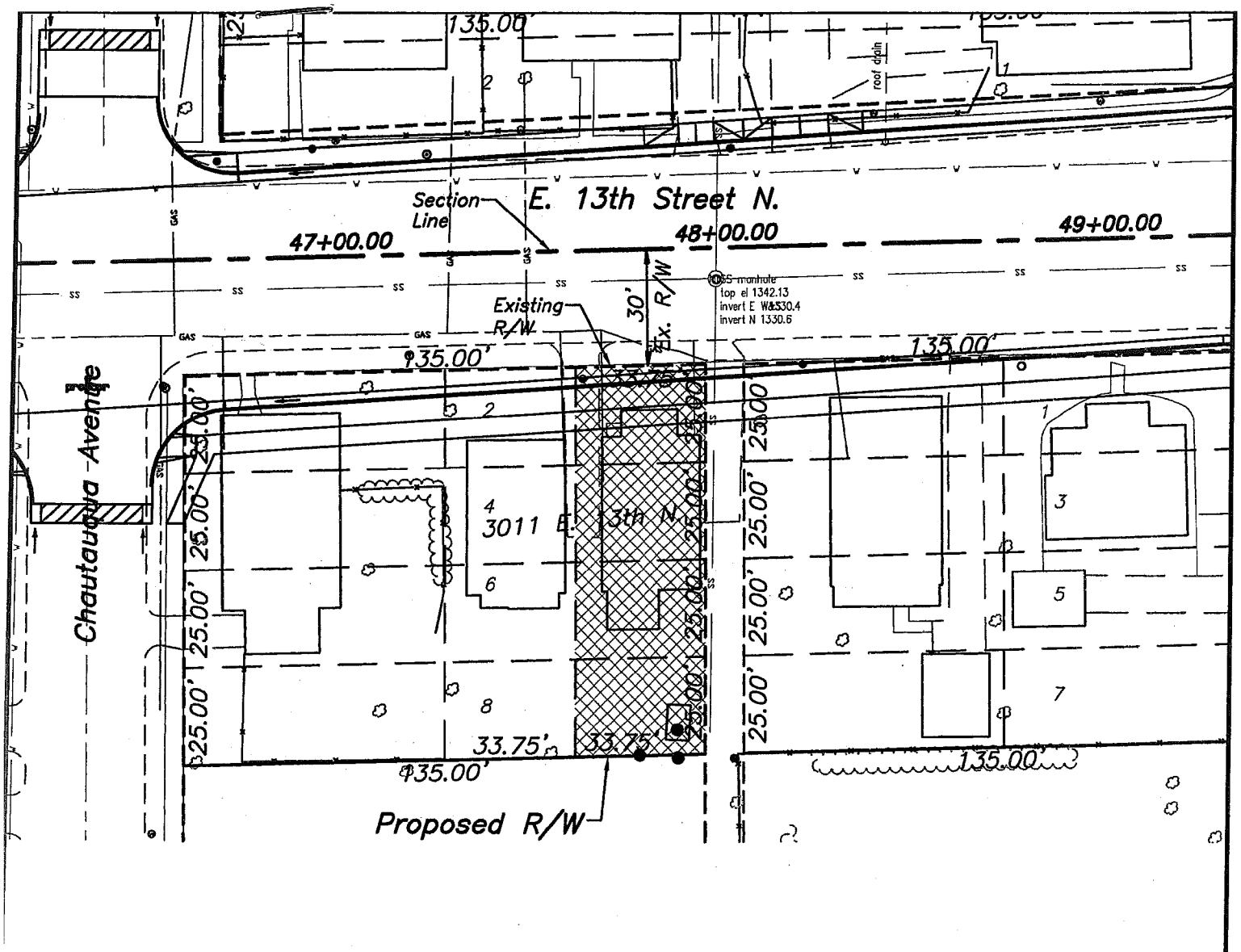
PIN/APN 125150110200300
Security Title File Number 1090462

APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Mia Warlick, Project Manager




***PROPOSED R/W ACQ. LEGAL:***

*Parts of Lots 2, 4, 6, & 8, on Mt. Olive (now Chautauqua Avenue) in Fairmount Park Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows.*

*All of the East half of the East half of Lots 2, 4, 6, & 8, on Mt. Olive (now Chautauqua Avenue) in Fairmount Park Addition.*

*TAX KEY #: C03004*

*R/W ACQUISITION SIZE: 3,375 sq. ft.*

*PROPOSED R/W ACQUISITION*

13th STREET
HYDRAULIC AVENUE TO OLIVER

# TRACT MAP

A&T RENTALS #2 LLC

SCALE: 1" = 40'

Tract No. 55

# 3011 East 13th Street

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.

**Agenda Item No. XII-5b**

**CITY OF WICHITA**
**City Council Meeting**
November 2, 2010

**TO:** Mayor and City Council

**SUBJECT:** Acquisition of 1355 North Madison together with Vacant Lots in the 2000 Block of East 13th Street for the East 13th Street, Hydraulic to Oliver Road Improvement Project (District I)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

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**Recommendation:** Approve the acquisition.

**Background:** On November 6, 2007, the City Council approved the design concept and proposed project to widen East 13th Street North between Hydraulic to Oliver. The project will require the acquisition of all or part of 79 tracts. The improvements include adding a center turn lane, relocating the sidewalks away from the back of the curb, improving the storm sewer system and landscaping. The parking lot at 1355 North Madison is owned by the church 1350 North Ash. The proposed road improvements consume half of the parking lot at 1355 North Madison and four vacant lots in the 2000 Block of East 13th Street, also owned by the church. Between the four vacant lots and the parking lot, it is necessary to acquire a 14,876 square feet.

**Analysis:** The owner rejected the appraised value of $47,000; an amount comprised of $1.50 per square foot for all 14,876 square feet and $24,675 as loss of parking. The owner did agree to settle at $52,000, or at $1.60 per square foot which is supported by other comparable data and an additional $3,525 in damages to the parking lot.

**Financial Considerations:** The funding source for the project is General Obligation Bonds. A budget of $53,500 is requested. This includes $52,000 for the acquisition and $1,500 for title work and other administrative fees.

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

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

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

**Attachments:** Real estate purchase agreement, tract map and aerial map.

**PROJECT:** 13th Street North **DATE:** October 18, 2010

**COUNTY:** Sedgwick **TRACT NO.:** 7, 9.10,11 & 130

**THE CITY OF WICHITA, KANSAS**

# CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 18th day of October, 2010., by and between

St. James Missionary Baptist Church, Inc.

1350 N. Ash

Wichita, KS 67214

(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 EXHIBITS "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.

| | |
|---|---|
| Approximately 14,876 Sq. Ft. for Right of Way Damages including but not limited to all improvements and real property of the landowner: | $ 52,000 |
| **TOTAL:** | $ 52,000 |

The City of Wichita agrees to install ingress/egress to the remaining tract 130, SW corner of Madison Avenue and 13th Street North. City further agrees to close existing ingress/egress on 13th St. North to said tract.

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: St. James Missionary Baptist Church, Inc. Board of Trustees

By: _____
Dr. J.P. Dennis, Jr., Pastor

By: _____
Jimmie Morgan, Trustee Chairman

By: _____
Larry Dennis, Deacon Board Chairman

By: _____
Donald Curtis, General Treasurer

By: _____
Louis Gray, Jr., Deacon

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:

St. James Missionary Baptist Church, Inc.

If mortgage or other liens, show names of holders:

n/a

## REMARKS:

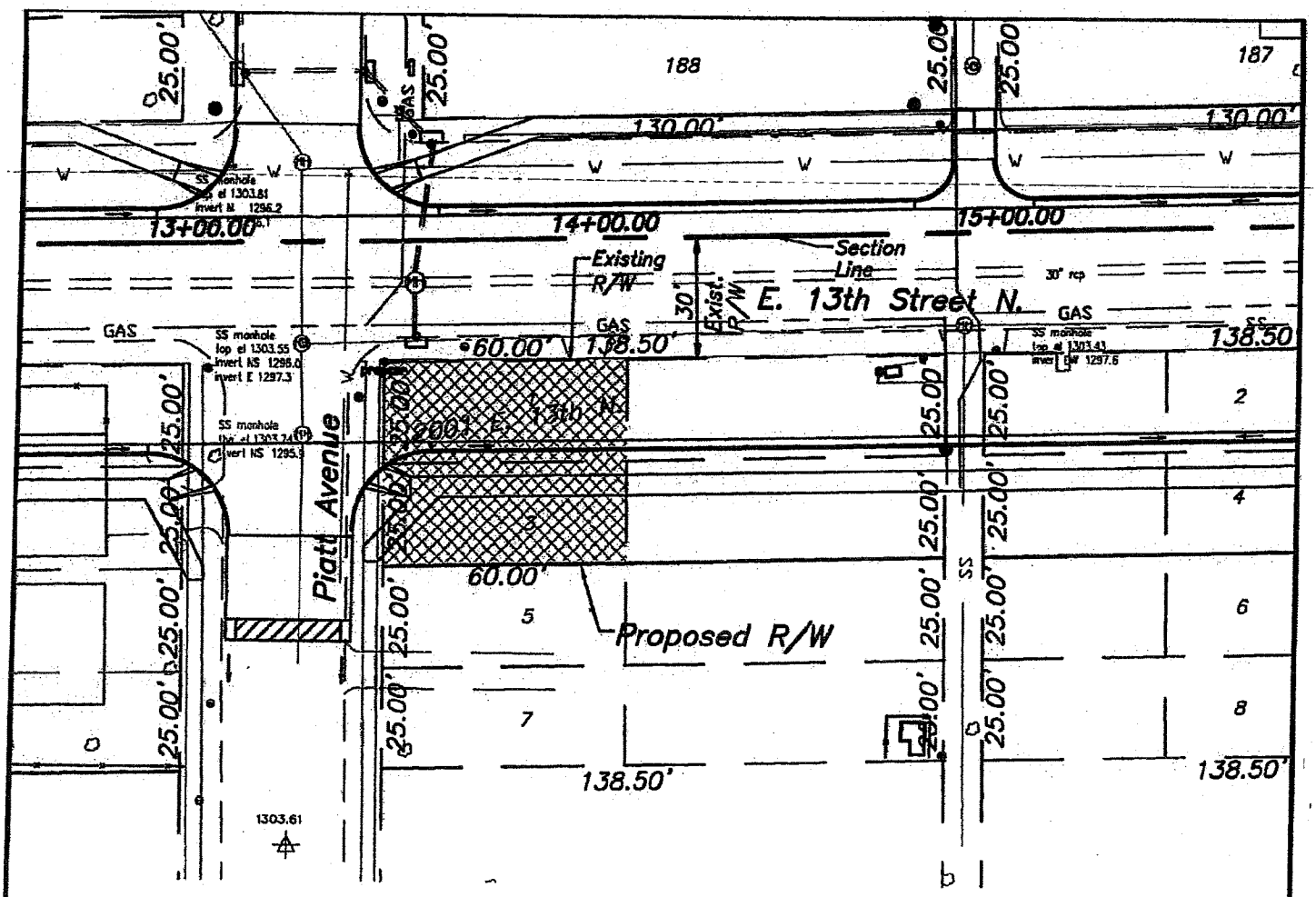
PIN/APN 125150210300100, 125150210400500A, 125150210400300, 125150210400200, 125150210400100
Security Title File Number 2000327, 1090219, 1090225, 1090224, 1090226

APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Mia Warlick, Project Manager




*PROPOSED R/W ACQ. LEGAL:*

*A tract of land in Lots 1,3,5, & 7, Eleventh Street Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:*

*All of the west 60.00 feet of said lots 1 & 3 as platted in Eleventh Street Addition.*

*TAX KEY #: C009190001*

*R/W ACQUISITION SIZE: 3,000 sq. ft.*

*PROPOSED R/W ACQUISITION*

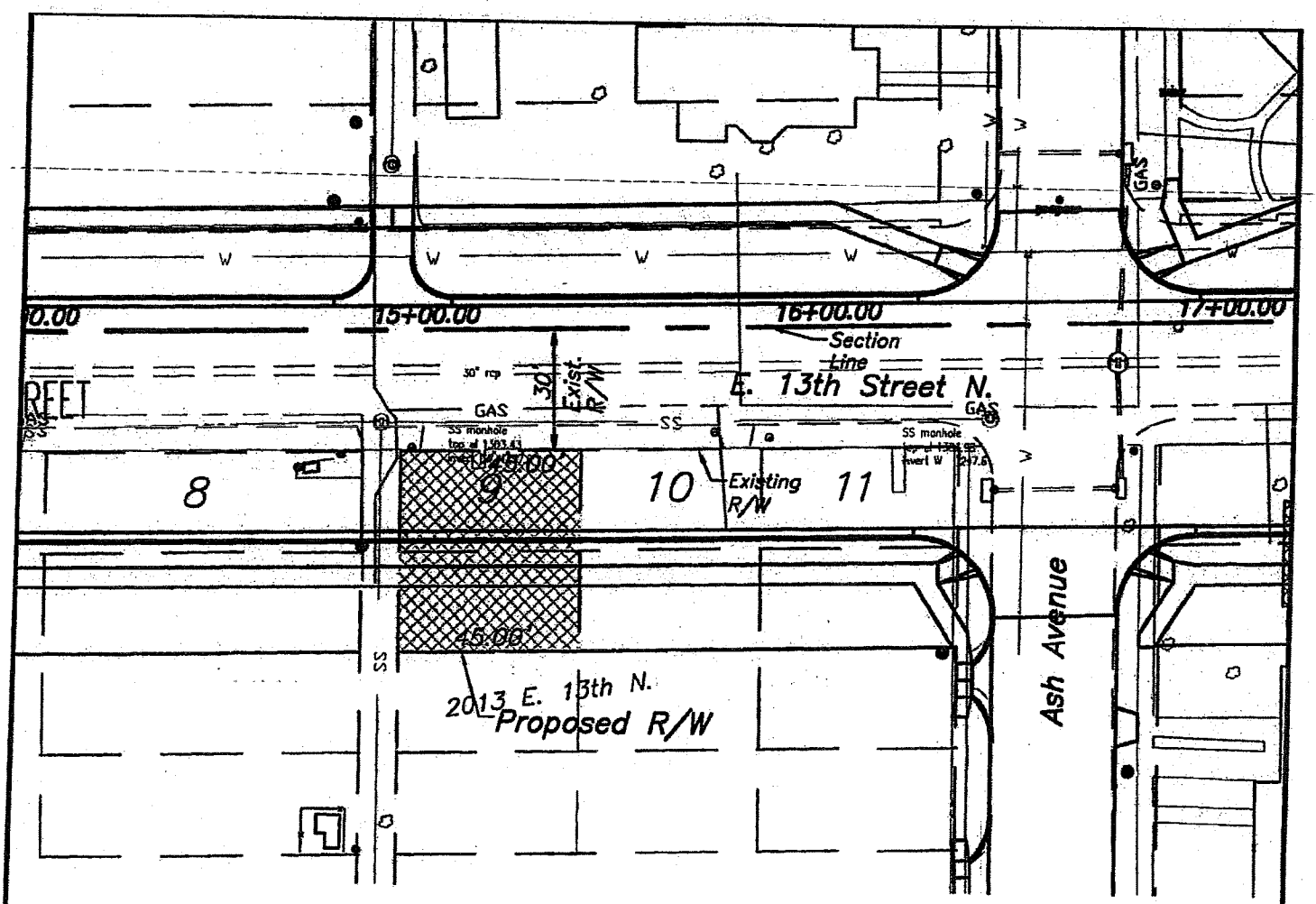
**13th STREET**
**HYDRAULIC AVENUE TO OLIVER**

# TRACT MAP

**BAPTIST CHURCH INC**
**SEC 15-T27-R1E**

SCALE: 1" = 40'

Tract No. 7




*PROPOSED R/W ACQ. LEGAL:*

*A tract of land in Lots 2, 4, 6, & 8, Eleventh Street Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:*

*All of the West 45 feet of Lots 2 and 4 as platted in the Eleventh Street Addition.*

*TAX KEY #: C00936*

*R/W ACQUISITION SIZE: 2,250 sq. ft.*

*PROPOSED R/W ACQUISITION*

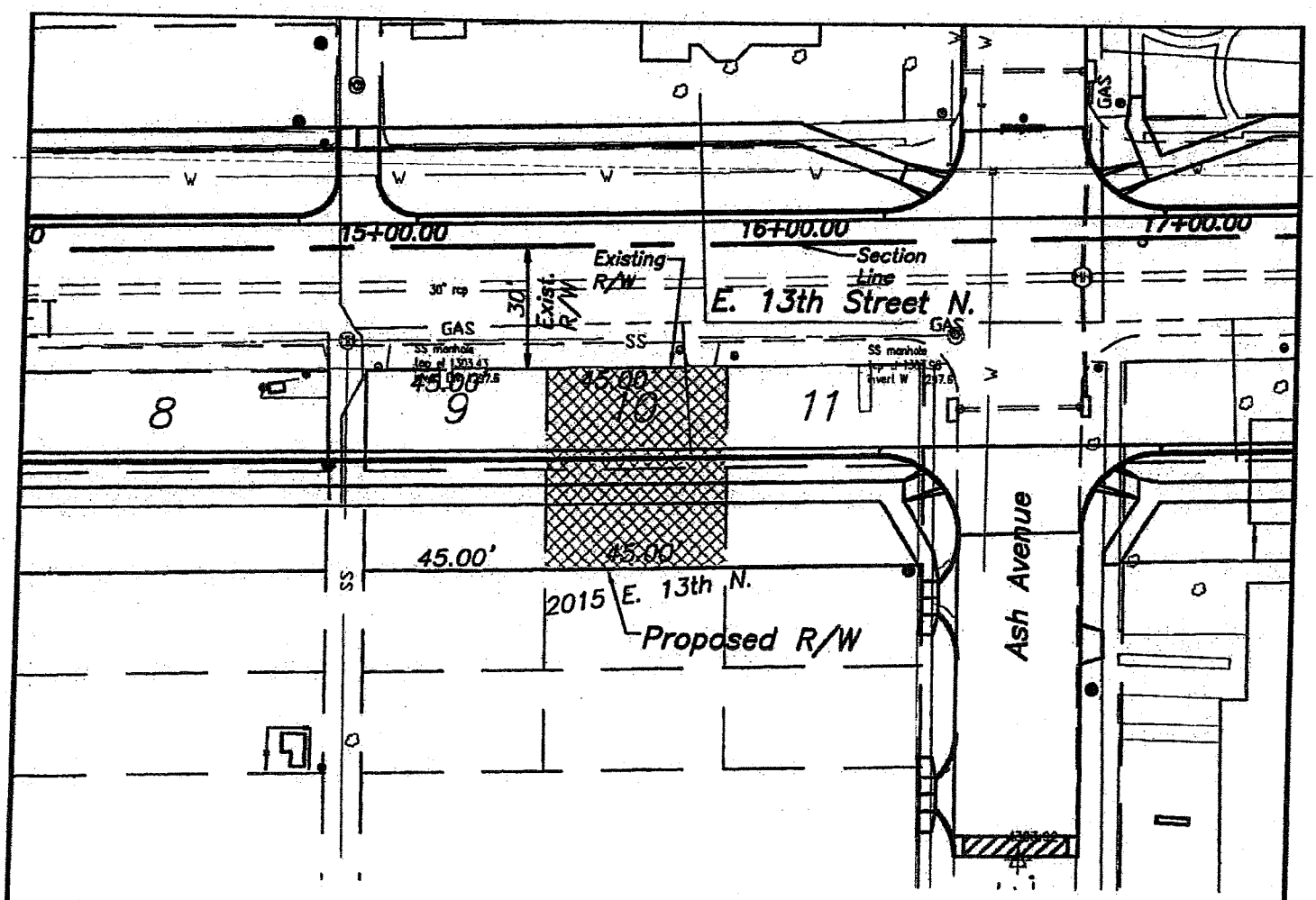
**13th STREET**
**HYDRAULIC AVENUE TO OLIVER**

# TRACT MAP

**BAPTIST CHURCH INC**
**SEC 15-T27-R1E**

SCALE: 1" = 40'

Tract No. 9




*PROPOSED R/W ACQ. LEGAL:*

*A tract of land in Lots 2, 4, 6, & 8, Eleventh Street Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:*

*All of the East 45 feet of the West 90 feet of Lots 2 and 4 as platted in the Eleventh Street Addition.*

*TAX KEY #: C00935*

*R/W ACQUISITION SIZE: 2,250 sq. ft.*

*PROPOSED R/W ACQUISITION*

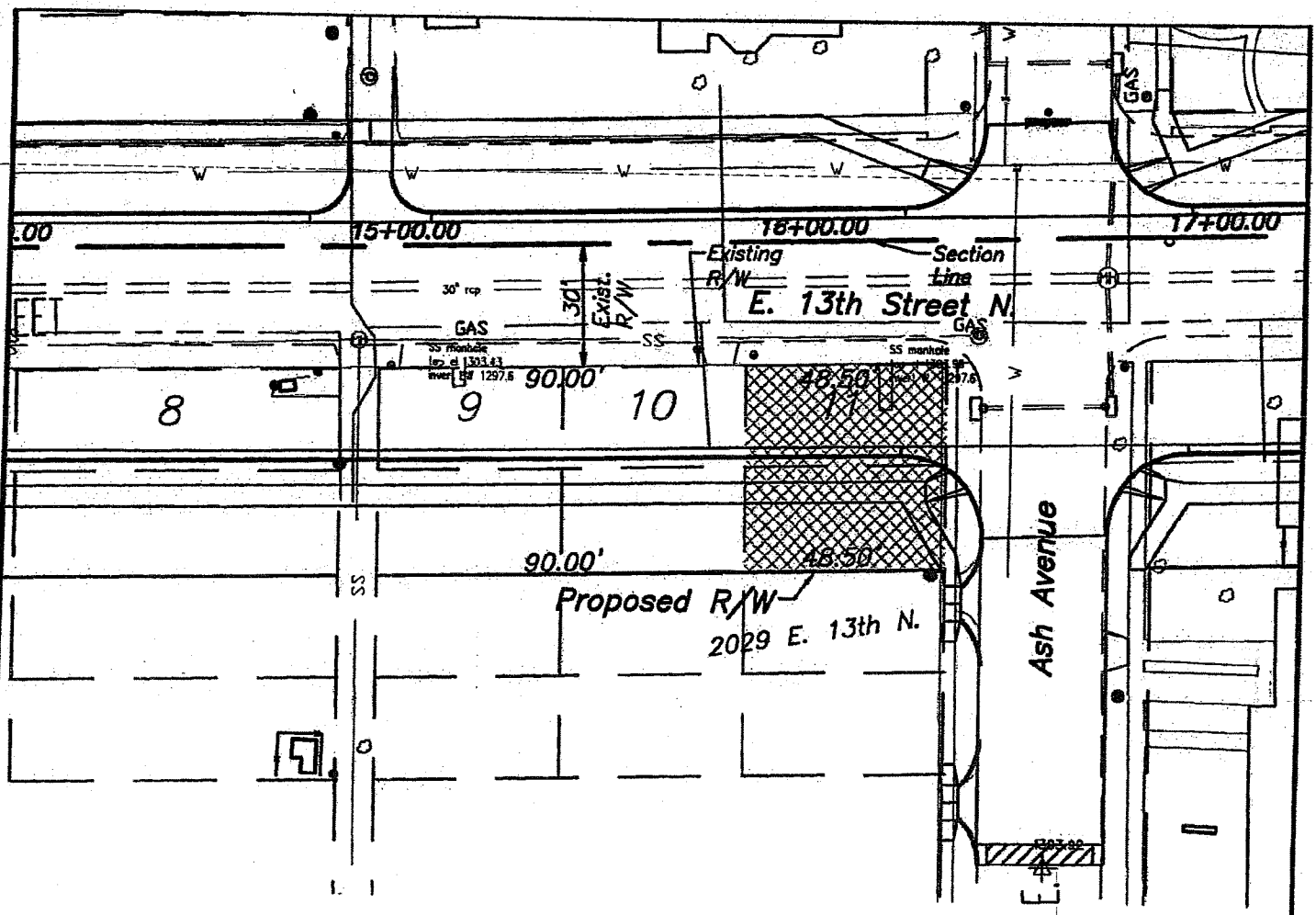
13th STREET
HYDRAULIC AVENUE TO OLIVER

# TRACT MAP

BAPTIST CHURCH INC
SEC 15-T27-R1E

SCALE: 1" = 40'

Tract No. 10




*PROPOSED R/W ACQ. LEGAL:*

*A tract of land in Lots 2, 4, 6, & 8, Eleventh Street Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:*

*All of Lots 2 and 4 except the West 90 feet thereof as platted in Eleventh Street Addition.*

*TAX KEY #: C00934*

*R/W ACQUISITION SIZE: 2,441 sq. ft.*

*PROPOSED R/W ACQUISITION*

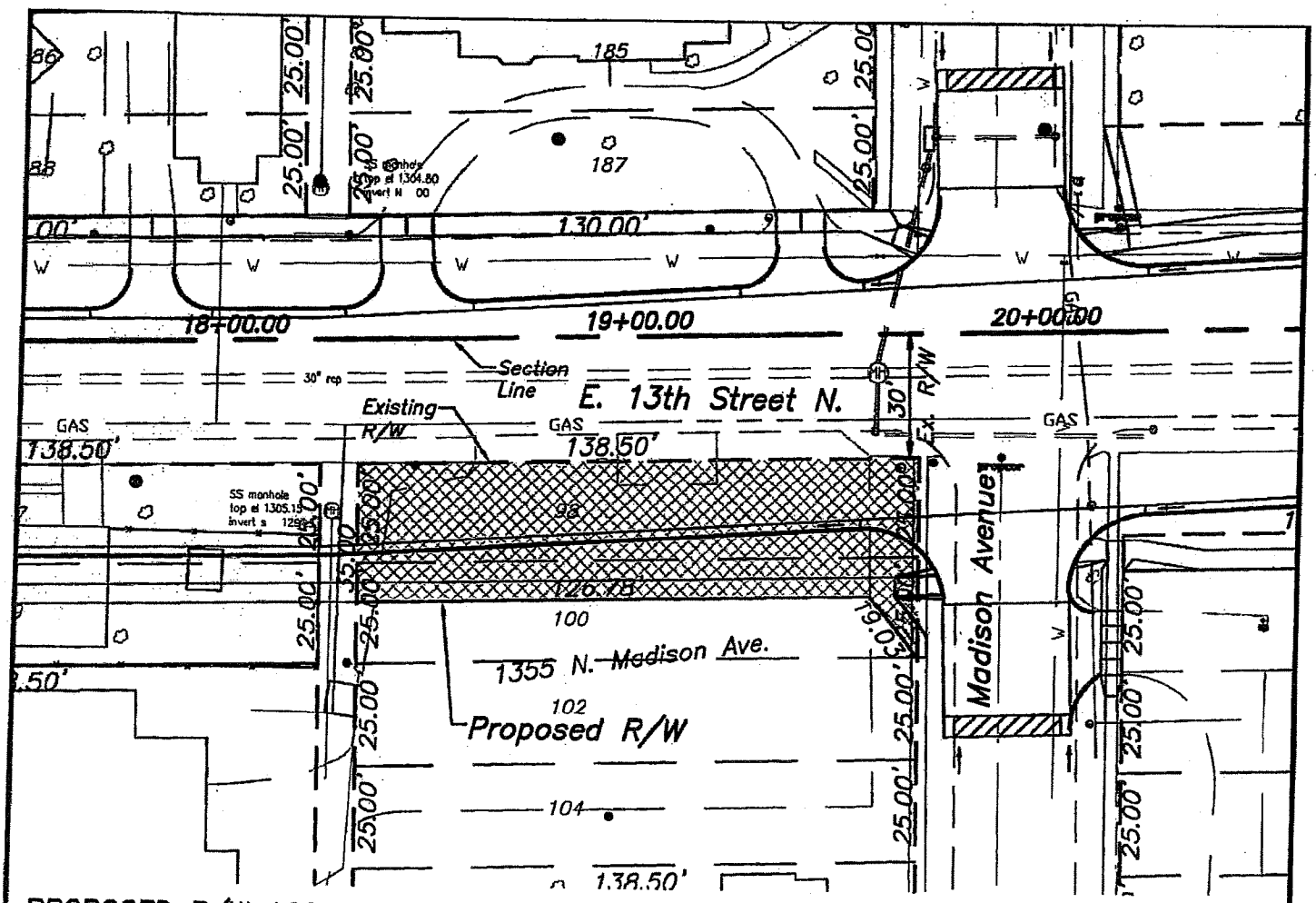
13th STREET
HYDRAULIC AVENUE TO OLIVER

# TRACT MAP

BAPTIST CHURCH INC
SEC 15-T27-R1E

SCALE: 1" = 40'

Tract No. 11




PROPOSED R/W ACQ. LEGAL:

*A tract of land in Lots 98,100,102, & 104, on Bering now Madison Avenue, Eleventh Street Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:*

*All of said Lot 98 and all of the north 10.00 feet of said Lot 100, also beginning at the southeast corner of said Lot 100, thence north along the east line of said Lot 100 for 15 feet to a point on the south line of the north 10 feet of said Lot 100, thence west along the south line of the north 10 feet of said Lot 100 for 11.71 feet to a point, thence southeast for 19.03 feet, more or less, to the point of beginning.*

TAX KEY #: C00967

R/W ACQUISITION SIZE: 4,935 sq. ft.

PROPOSED R/W ACQUISITION

13th STREET
HYDRAULIC AVENUE TO OLIVER

# TRACT MAP

ST. JAMES MISSIONARY BAPTIST CHURCH
SEC 15-T27-R1E

SCALE: 1" = 40'

Tract No. 130

# 1355 N Madison and vacant lots

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.

**Agenda Item No. 5c**

**CITY OF WICHITA**
**City Council Meeting**
November 2, 2010

**TO:** Mayor and City Council

**SUBJECT:** Acquisition of 2626 East 13th Street North for the East 13th Street, Hydraulic to Oliver Road Improvement Project (District I)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

---

**Recommendation:** Approve the acquisition.

**Background:** On November 6, 2007, the City Council approved the design concept and proposed project to widen East 13th Street North between Hydraulic to Oliver. The project will require the acquisition of all or part of 79 tracts. The improvements include adding a center turn lane, relocating the sidewalks away from the back of the curb, improving the storm sewer system and landscaping. The property at 2626 East 13th Street North is improved with 894 square foot, single-family residence. The improvements are removed from the proposed road project however; as a result of the project, mature landscaping separating the house from the roadway will be removed and the distance of the house will be reduced from 12 feet to seven feet once the project is constructed.

**Analysis:** The owner rejected the appraised value of $7,150, or $.45 per square foot for the 331 square foot acquisition area and $7,000 as proximity damages. The owner has agreed to accept $10,000 for the proposed acquisition. The additional $3,000 is comprised of an increase in land value to $1.00 per square foot and $2,850 for the loss of the mature landscaping. This is a reasonable and prudent settlement.

**Financial Considerations:** The funding source for the project is General Obligation Bonds. A budget of $10,800 is requested. This includes $10,000 for the acquisition and $800 for title work and other administrative fees.

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

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

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

**Attachments:** Real estate purchase agreement, tract map and aerial map.

**PROJECT:** 13th Street North **DATE:** October 18, 2010

**COUNTY:** Sedgwick **TRACT NO.:** 32

**THE CITY OF WICHITA, KANSAS**

# CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 18th day of October, 2010., by and between

Gerald L. Stuckey, a single person

2626 E. 13th Street North

Wichita, KS 67214

(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.

Approximately 331 Sq. Ft. for Right of Way Damages including but not limited to all improvements and real property of the landowner: $ 10,000.00

**TOTAL:** $ 10,000.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

**IN WITNESS WHEREOF** The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS:

By: Gerald L. Stuckey
Gerald L. Stuckey

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:

Gerald L. Stuckey

If mortgage or other liens, show names of holders:

n/a

## REMARKS:

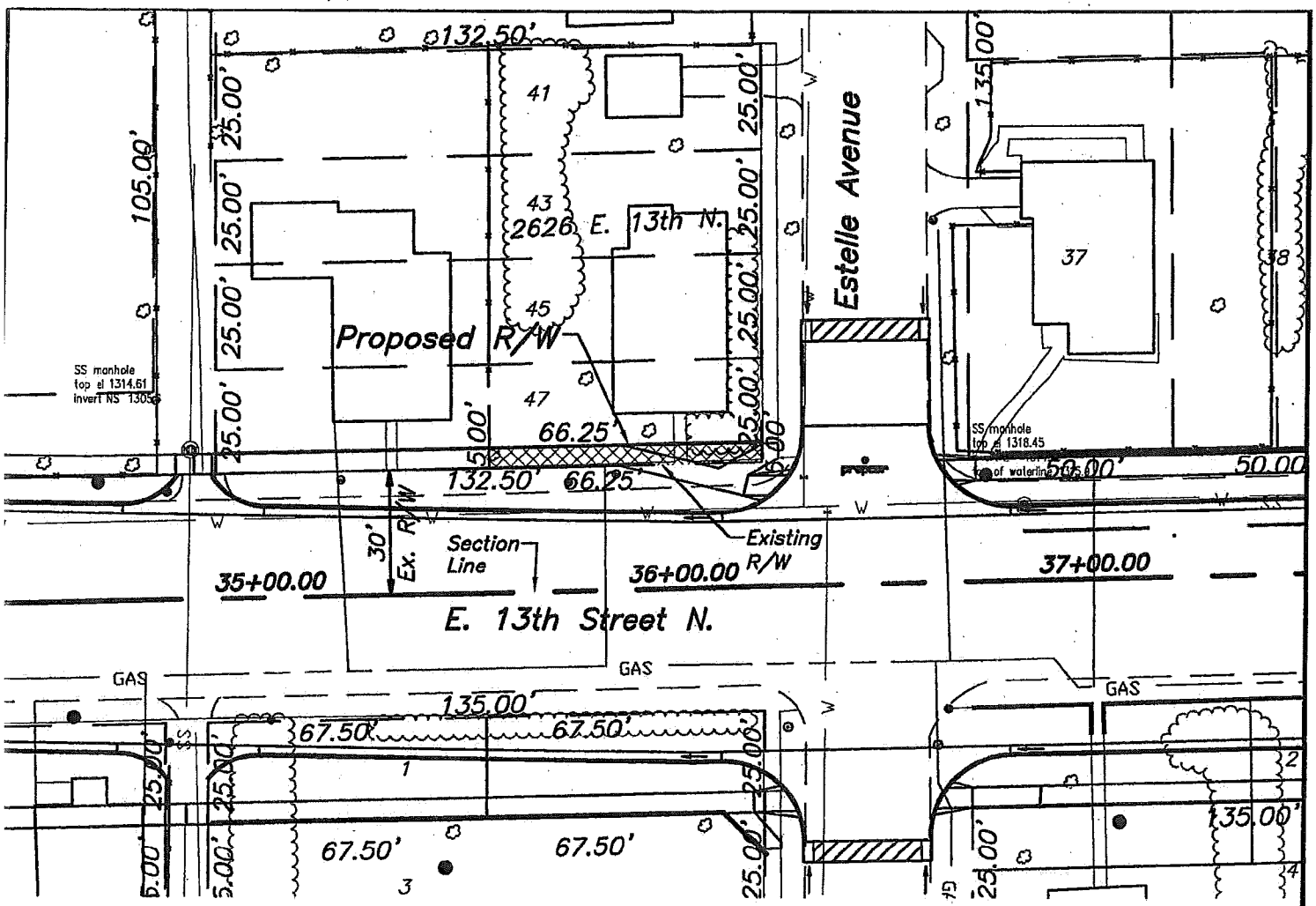
PIN/APN: C122100430901400
Security Title File Number 1090431

APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

Mia Warlick
Mia Warlick, Project Manager




***PROPOSED R/W ACQ. LEGAL:***

*A tract of land in Lots 41, 43, 45, & 47, on Goethe Avenue (now Estelle Avenue), Rose Hill Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:*

*All of the south 5.00 feet of the east half of said Lot 47 on Goethe Avenue (now Estelle Avenue), as platted in Rose Hill Addition.*

*TAX KEY #: C03527*

*R/W ACQUISITION SIZE: 331 sq. ft.*

*PROPOSED R/W ACQUISITION*

13th STREET
HYDRAULIC AVENUE TO OLIVER

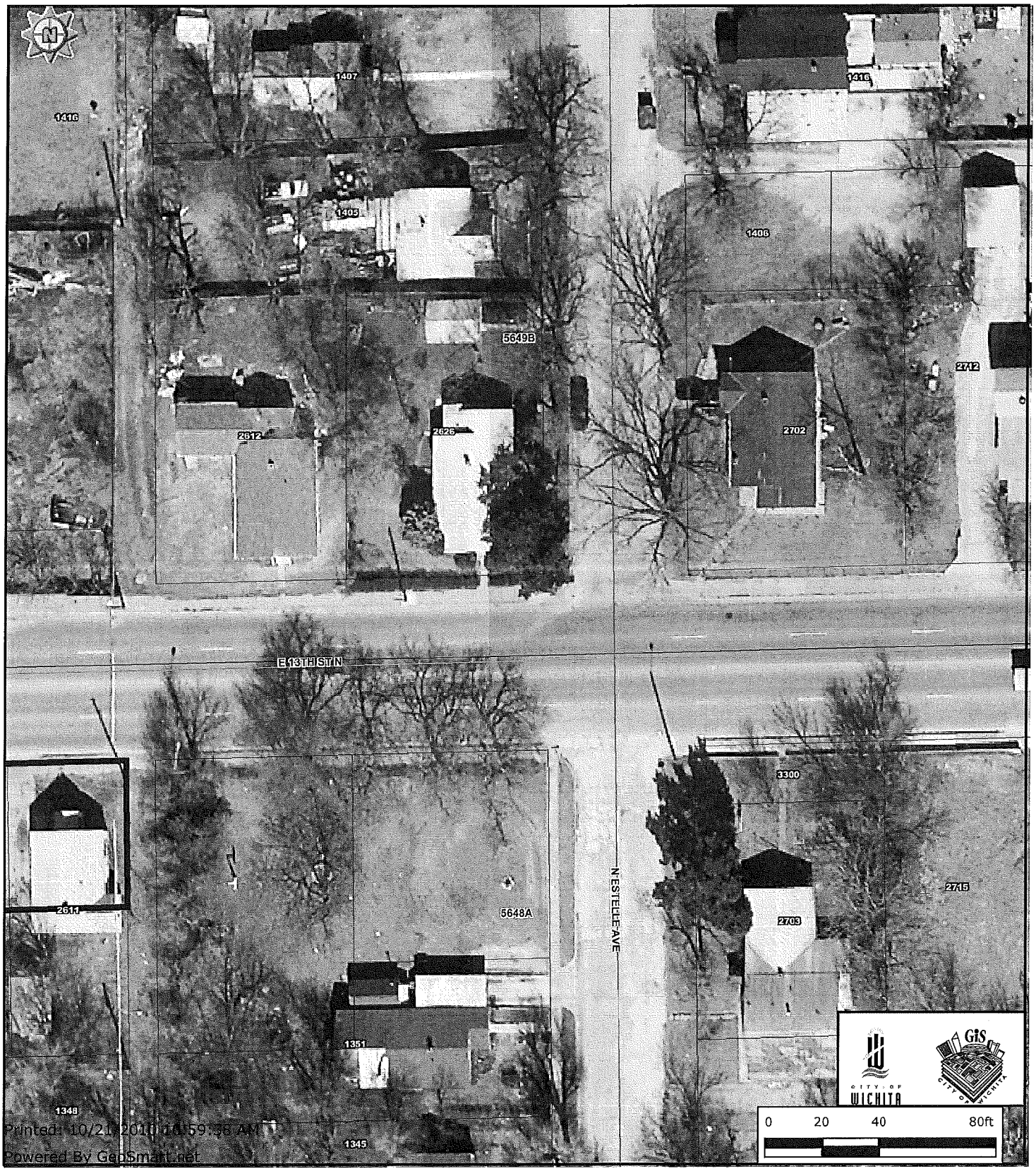
# TRACT MAP

GERALD STUCKEY
SEC 10-T27-R1E

SCALE: 1" = 40'

Tract No. 32

# 2626 East 13th Street North

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**CITY OF WICHITA**
**City Council Meeting**
November 2, 2010

**TO:** Mayor and City Council

**SUBJECT:** Acquisition of Land at the Southeast Corner of Golden Prairie Road and U.S. Highway 50 for the Integrated Local Water Supply Plan (Harvey County)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

---

**Recommendation:** Approve the acquisition.

**Background:** On August 3, 1993, the City Council approved the Water Supply Plan prepared by Burns & McDonnell/MKEC Engineering Consultants. The Plan identified cost-effective water resource projects to meet the City's future water needs. On October 10, 2000, City Council approved the projects and implementation of the plan. One portion of the Water Supply Plan is the groundwater recharge project. The groundwater recharge includes the capture of above base flow water (water which is generated from rainfall runoff above the base river flow) in the Little Arkansas River, transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita.

The property at the southeast corner of Golden Prairie and U.S. Highway 50 is in agricultural production. The most northwestern portion of the tract is required for a well site and said well site consists of 2.13 acres. A water pipeline will run south from the well site parallel to Golden Prairie. A temporary easement is required to facilitate pipeline construction. The temporary easement consists of 3 acres.

**Analysis:** The owner agreed to convey the necessary land for the estimated appraised value of $16,294. This value is comprised of $5,442 ($2,555 an acre for the 2.13 acre well site); $1,533 ($511 an acre for the three acre temporary easement); $5,000 as compensation to laser level the land; and $4,319 loss of crops.

**Financial Considerations:** A budget of $17,794 is requested; this includes $16,294 for the acquisition, $1,500 for title work, title insurance, closing costs and administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase II, which has sufficient funds for the proposed acquisition.

**Goal Impact:** The acquisition of this parcel is necessary to ensure Efficient Infrastructure.

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

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

**Attachments:** Real estate purchase agreement, tract map and area map.

# REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ___ day of _____, 2010 by and between Joseph H. and Joann A. Bergkamp, joint tenants, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

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

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Statutory Warranty Deed of the following described real property, situated in Harvey County, Kansas, to wit:

> The West 261 feet of the North 355 feet of the Northwest Quarter (NW/4) of Section Twenty-Nine (29), Township Twenty-three (23) South, Range Two (2) West of the 6th Principal Meridian in Harvey County, Kansas; containing 2.13 acres, including road right-of-way.

2. The Buyer agrees to purchase and pay to the Seller the sum of Five Thousand Four Hundred Forty-Two Dollars ($5,442.00) in the manner following, to wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, any and all damages including but not limited to severance crops exceeding current crop, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, 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 Property Management Division 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 after said Title Evidence has been examined in which to correct any defects in title.

4. The Buyer does hereby agree to sell and convey to the Seller by a good and sufficient Quit Claim Deed of the following described real property, situated in Harvey County, Kansas, to wit:

> A tract of land in the Northeast Quarter (NE/4) of Section Two (2), Township Twenty-four (24) South, Range Three (3) West of the 6th Principal Meridian in Harvey County, Kansas; Commencing at the Northeast corner of said Northeast Quarter; thence N90°00'00"W (assumed) along the North line of said Northeast Quarter (NE/4) for 935.55 feet to the Point of Beginning; thence S0°12'14"E for 1471.34 feet; thence S90°00'00"E for 136.52 feet; thence N00°12'14"W for 101.34 feet; thence N00°32'30"E for 1370.06 feet, more or less, to the North line of said Northeast Quarter; thence N90°00'00"W for 154.35 feet, more or less, to the Point of Beginning. Said tract contains 4.89 acres, including road right-of-way.

5. The Seller hereby agrees to purchase and pay to the Buyer the sum of Five Thousand Six Hundred Dollars and No Cents ($5,600.00) in the manner following to wit: cash at closing, which sum the Buyer agrees is adequate compensation for such conveyance to Seller of the above described real property, any and all damages including but not limited to severance crops exceeding current crop, drainage and fencing.

6. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Buyer, subject to easements and restrictions of record is required.

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

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 November 15, 2010.

9. The Seller and Buyer further agree to convey the above described premises with all the improvements located thereon and deliver possession of the same in the same condition as they are now, reasonable wear and tear excepted.

10. Possession of each property to be given to Buyer and Seller on date of closing.

11. 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. Buyer will pay 100% closing costs.

12. Seller hereby agrees that damages arising, if any, to the remainder property during construction are to be addressed by filing a claim with the Buyer, City of Wichita, Kansas, City Clerk's Office. 455 North Main, Wichita, KS 67202. (316)268-4529.

13. Site Assessment

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

B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.

C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.

14. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to closing shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

15. Buyer is claiming no interest in Water Right No. 15673.00.

16. Buyer shall remove and replace a gas line on said property to the center pivot irrigation system.

17. Paragraphs 9 and 11 shall survive the closing.

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

**SELLER:**

Joseph H Bergkamp
Joseph H. Bergkamp, joint tenant

Joann A. Bergkamp
Joann A. Bergkamp, joint tenant

**BUYER:**

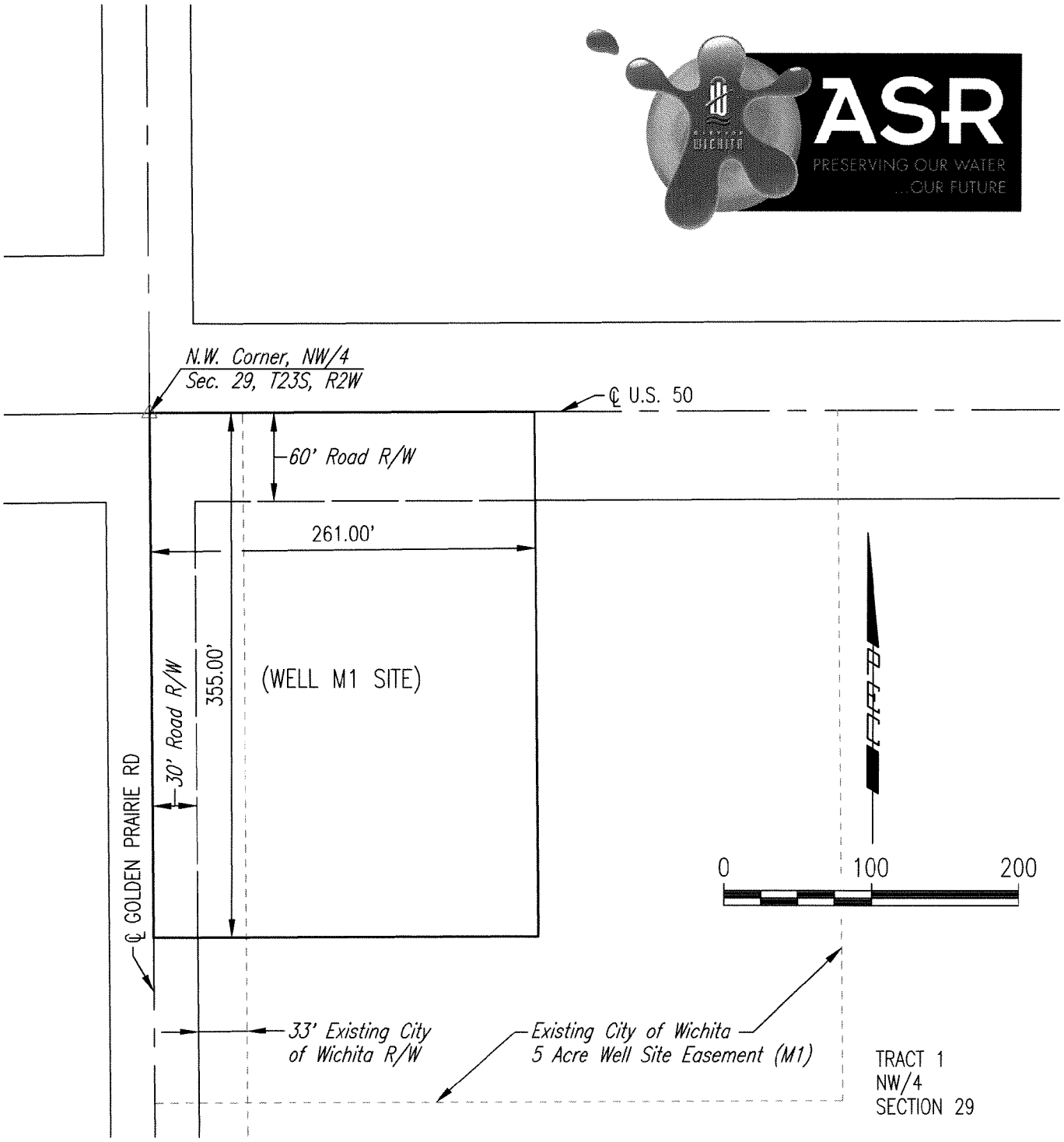
Carl Brewer, Mayor

**ATTEST:**

Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

Gary E. Rebenstorf, Director of Law




OWNER:
Bergkamp, Joseph and Joann

TRACT 1 (M1)

The West 261 feet of the North 355 feet of the Northwest Quarter (NW/4) of Section Twenty-nine (29), Township Twenty-three (23) South, Range Two (2) West of the 6th Principal Meridian in Harvey County, Kansas; containing 2.13 acres, including road right-of-way.

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Q:\2007\07685\004\TRACT DRAWINGS\07685-004-TRACT 1 FEE TITLE M1

# EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ___ day of_____, 2010 by and between Joseph H. Bergkamp and Joann A. Bergkamp (joint tenants), party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

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

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Permanent Easement and/or Temporary Construction Easement of the following described real property, situated in Harvey County, Kansas, to wit:

Temporary Easement (Construction – Parcel "B") A 50 foot wide easement, the Westerly line of which is coincident with the Easterly line of the existing Right-of-Way granted to the City of Wichita, Sedgwick County, Kansas, as recorded in Harvey County Miscellaneous Record Book 146 at page 289, near the West line of the Northwest Quarter of Section Twenty-nine, Township Twenty-three South, Range Two West of the Sixth Principal Meridian, Harvey County, Kansas. Said tract contains 3.0 acres, more or less, excluding road right-of-way.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Ten Thousand Eight Hundred Fifty-Two Dollars and No Cents ($10,852.00) in the manner following, to-wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, a temporary construction easement, any and all damages including but not limited to severance, crops at time of construction, crops for one year after initiation of construction, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, 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 Property Management Division 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 after said Title Evidence has been examined in which to correct any defects in title.

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

5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before November 15, 2010.

6. The Seller agrees to convey the above described premises with any and all personal property removed from within the easement area(s). Seller further agrees that any maintenance and use of said easement shall be in a manner that does not interfere with or endanger the construction, operations and maintenance of Buyer's improvements.

7. Possession to be given to Buyer on date of closing.

8. 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. Buyer will pay 100% closing costs.

9 . In the event there are crop damages outside the easement area during construction or, crop damages resulting from the Buyer's other maintenance, operation, replacement or repairs to the pipeline, the Seller hereby agrees to file a claim with the City of Wichita, KS, City Clerk's Office, 455 North Main, Wichita, KS 67202, (316)268-4529.

10. Buyer and Seller hereby agree that Buyer, contractors and assigns will remove, store and reinstall topsoil removed from the easement corridor as a result of construction. Said topsoil, separate from bedding soil, will be temporarily stored within a temporary construction easement.

11. Buyer hereby agrees that the finished grade will match the existing grade as it currently exists upon completion of the project.

12. Site Assessment

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

B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.

C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.

13. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to execution shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

14. Paragraphs 6, 9-11 and 13 shall survive the closing.

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

**SELLER:**

Joseph H. Bergkamp, joint tenant

Joann A. Bergkamp, joint tenant

**BUYER:**

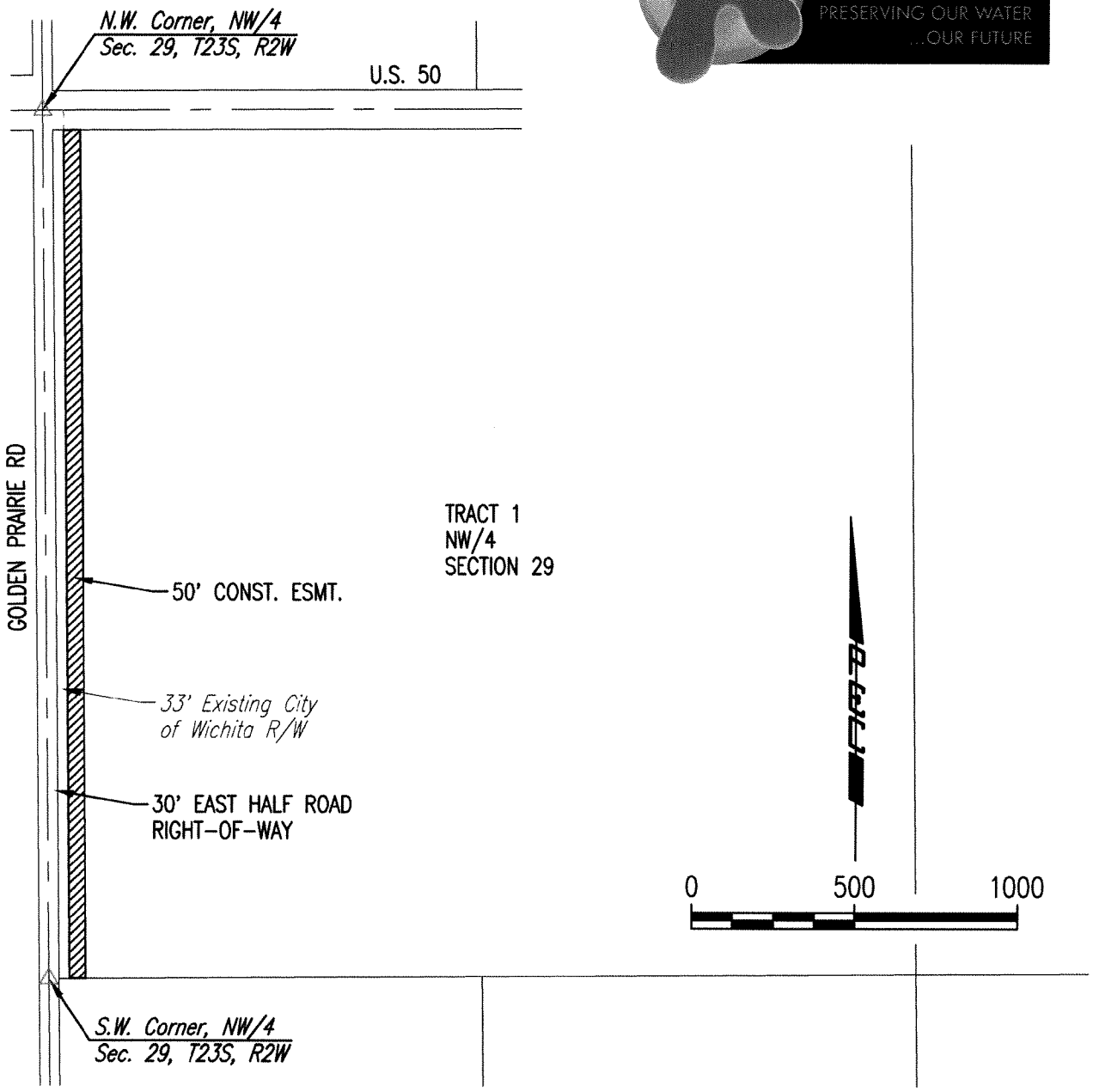
Carl Brewer, Mayor

**ATTEST:**

Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

Gary E. Rebenstorf, Director of Law




OWNER:
Bergkamp, Joseph and Joann

LEGEND:
CONSTRUCTION EASEMENT

TRACT 1
Construction Easement:
A 50 foot wide easement, the Westerly line of which is coincident with the Easterly line of the existing Right-of-Way granted to the City of Wichita, Sedgwick County, Kansas, as recorded in Harvey County Miscellaneous Record Book 146 at page 289, near the West line of the Northwest Quarter of Section Twenty-nine, Township Twenty-three South, Range Two West of the Sixth Principal Meridian, Harvey County, Kansas. Said tract contains 3.00 acres, more or less.

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C:\2007\07685\004\TRACT DRAWINGS\07685-004-TRACT 1 ESMT

ASR
PRESERVING OUR WATER
...OUR FUTURE

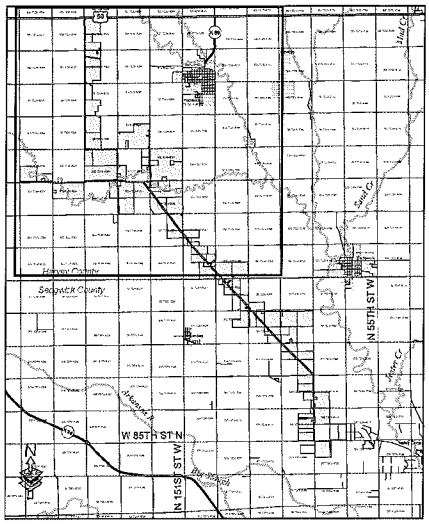
# BID PACKAGE 3
## Property Acquisition Map

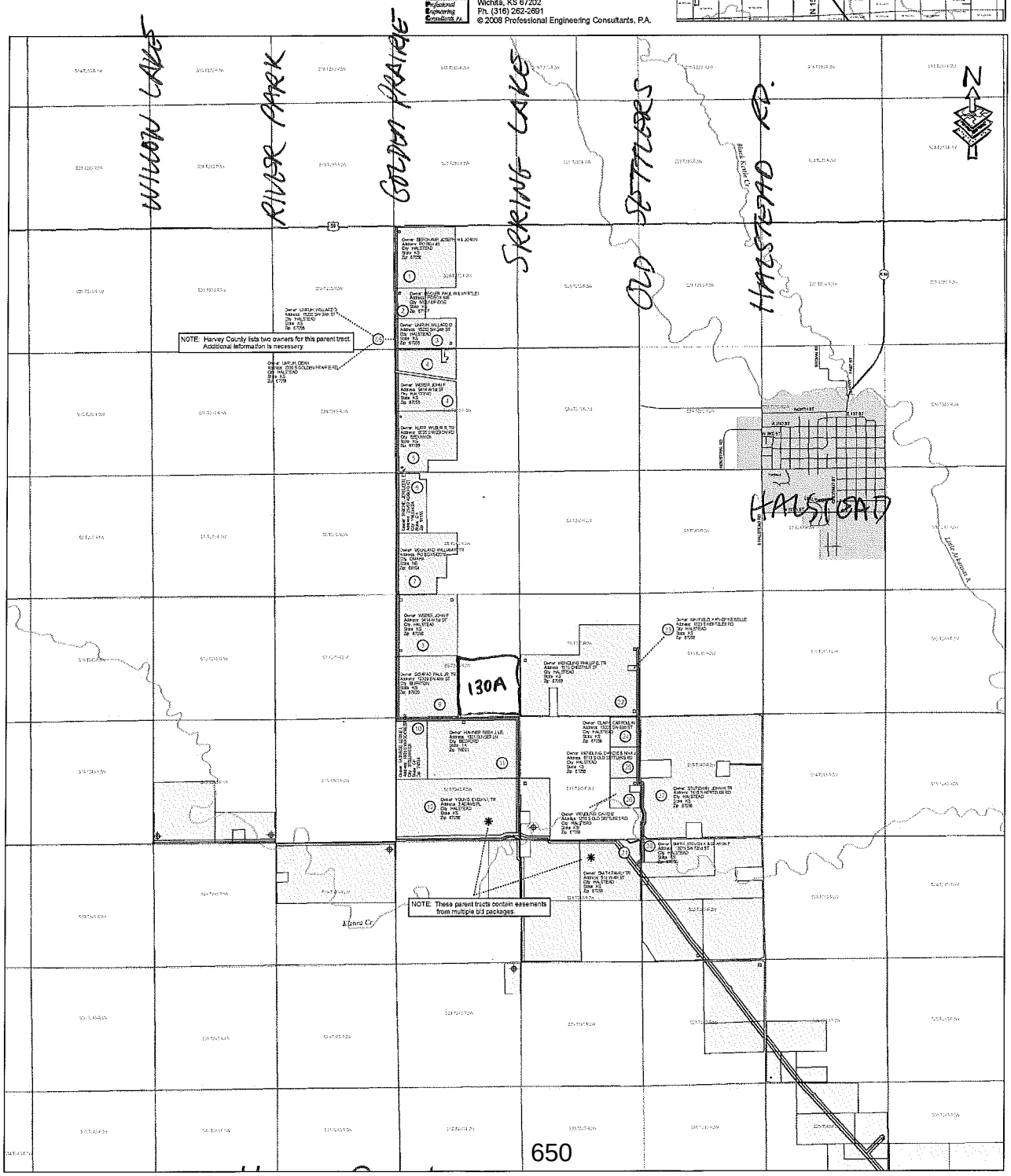
**Legend**

- Section Lines
- City Limits
- County Boundaries
- Streets and Roads
- Highways
- Rivers and Streams
- Parent Tracts
- Bid Package 1 Easements
- Bid Package 2 Easements
- Bid Package 3 Easements
- Well Location
- RR ## Well ID Number
- (#) Parent Tract ID Number

Q:\2007\07685\Brent\Project GIS\ASR Bid Package2 Easements.mxd
Last saved 2/2/2009 by SAD
NAD_1983_StatePlane_Kansas_South_FIPS_1502_Feet
Projection: Lambert_Conformal_Conic

Professional Engineering Consultants, P.A.
303 S. Topeka
Wichita, KS 67202
Ph. (316) 262-2691
© 2008 Professional Engineering Consultants, P.A.



**CITY OF WICHITA**
**City Council Meeting**
November 2, 2010

**TO:** Mayor and City Council

**SUBJECT:** Sale of Surplus Land at the Southwest Side of Willow Lake and SW 36th Street (Harvey County)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

---

**Recommendation:** Declare the property surplus and approve the sale.

**Background:** During Phase I of the Water Supply Plan, land was acquired for a well site at the southwest corner of Willow Lake and SW 36th Street. After the site was developed, a 4.89 acre, uneconomic remnant was created. The remnant is irregular in shape and is currently leased by an adjacent property owner for agricultural purposes. As an uneconomic remnant, the fair market value was estimated to be $5,600, or $1,145 an acre.

**Analysis:** The Lessee has agreed to pay $5,600 for the tract.

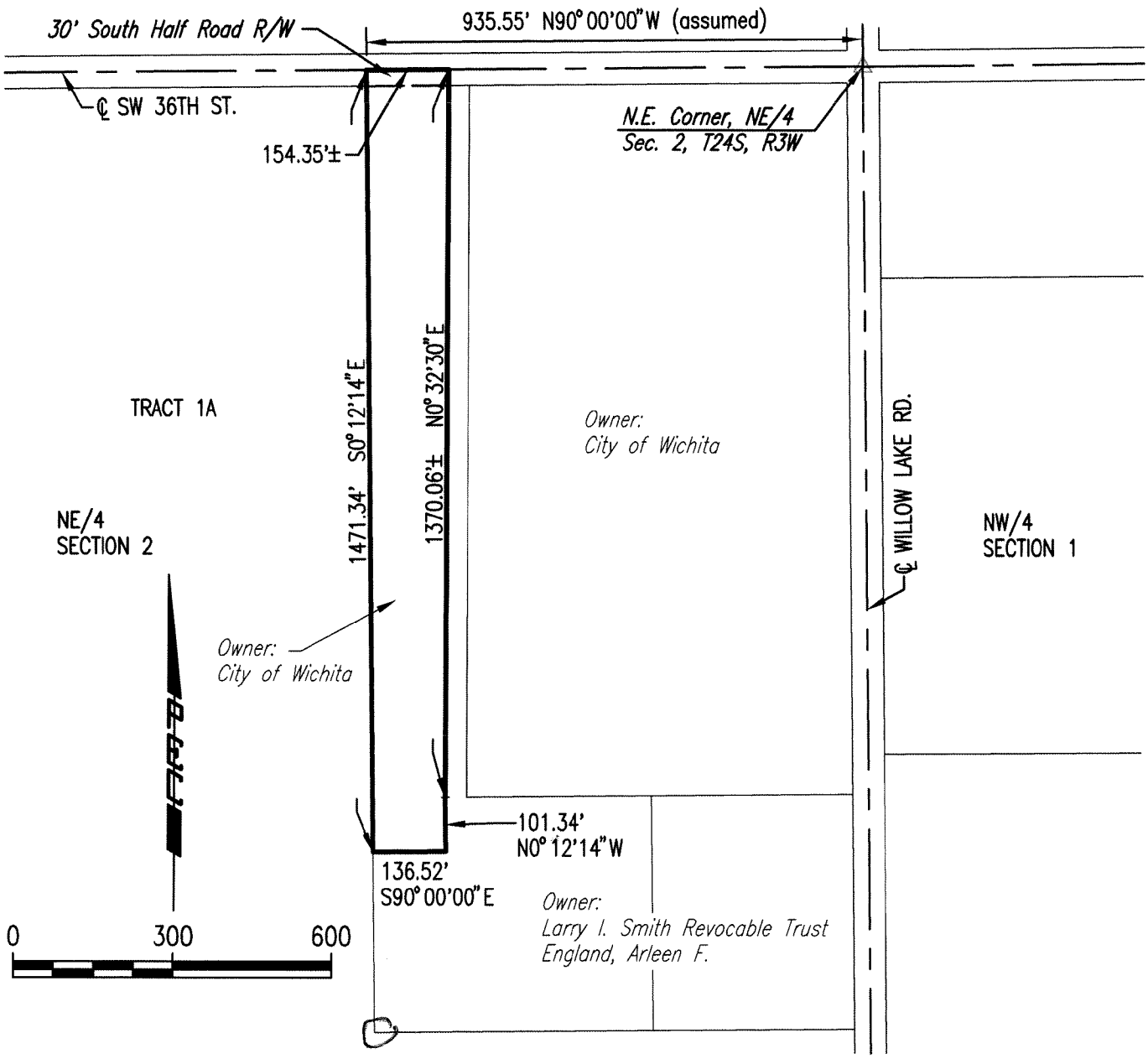
**Financial Considerations:** The City will receive cash consideration from the sale of the property, less closing costs. The funds will be returned to the Capital Improvement Plan (CIP) in W-549, Water Supply Project.

**Goal Impact:** Approving this sale will ensure Efficient Infrastructure by maintaining and optimizing public facilities and assets.

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

**Recommendation/Action:** It is recommended that the City Council declare the property surplus, approve the sale, and authorize any necessary signatures.

**Attachments:** Real estate purchase agreement and tract map.




A tract of land in the Northeast Quarter (NE/4) of Section Two (2), Township Twenty-four (24) South, Range Three (3) West of the 6th Principal Meridian in Harvey County, Kansas; Commencing at the Northeast corner of said Northeast Quarter; thence N90°00'00"W (assumed) along the North line of said Northeast Quarter (NE/4) for 935.55 feet to the Point of Beginning; thence S0°12'14"E for 1471.34 feet; thence S90°00'00"E for 136.52 feet; thence N00°12'14"W for 101.34 feet; thence N00°32'30"E for 1370.06 feet, more or less, to the North line of said Northeast Quarter; thence N90°00'00"W for 154.35 feet, more or less, to the Point of Beginning. Said tract contains 4.89 acres, including road right-of-way.

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Plot Scale 1:300 10-06-2010 10:35:11 AM by JOSH T. SULLARD
G:\2007\07685\004\TRACT DRAWINGS\07685-004-TRACT 1 MT NEGOTIATION PROPERTY

# REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ___ day of _____, 2010 by and between Joseph H. and Joann A. Bergkamp, joint tenants, party of the First Part, hereinafter referred to as "Seller," whether one or more, and City of Wichita, KS, a Municipal Corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

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

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient Statutory Warranty Deed of the following described real property, situated in Harvey County, Kansas, to wit:

> The West 261 feet of the North 355 feet of the Northwest Quarter (NW/4) of Section Twenty-Nine (29), Township Twenty-three (23) South, Range Two (2) West of the 6th Principal Meridian in Harvey County, Kansas; containing 2.13 acres, including road right-of-way.

2. The Buyer agrees to purchase and pay to the Seller the sum of Five Thousand Four Hundred Forty-Two Dollars ($5,442.00) in the manner following, to wit: cash at closing, which sum the Seller agrees is adequate compensation for such conveyance to Buyer of the above described real property, any and all damages including but not limited to severance crops exceeding current crop, drainage and fencing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, 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 Property Management Division 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 after said Title Evidence has been examined in which to correct any defects in title.

4. The Buyer does hereby agree to sell and convey to the Seller by a good and sufficient Quit Claim Deed of the following described real property, situated in Harvey County, Kansas, to wit:

> A tract of land in the Northeast Quarter (NE/4) of Section Two (2), Township Twenty-four (24) South, Range Three (3) West of the 6th Principal Meridian in Harvey County, Kansas; Commencing at the Northeast corner of said Northeast Quarter; thence N90°00'00"W (assumed) along the North line of said Northeast Quarter (NE/4) for 935.55 feet to the Point of Beginning; thence S0°12'14"E for 1471.34 feet; thence S90°00'00"E for 136.52 feet; thence N00°12'14"W for 101.34 feet; thence N00°32'30"E for 1370.06 feet, more or less, to the North line of said Northeast Quarter; thence N90°00'00"W for 154.35 feet, more or less, to the Point of Beginning. Said tract contains 4.89 acres, including road right-of-way.

5. The Seller hereby agrees to purchase and pay to the Buyer the sum of Five Thousand Six Hundred Dollars and No Cents ($5,600.00) in the manner following to wit: cash at closing, which sum the Buyer agrees is adequate compensation for such conveyance to Seller of the above described real property, any and all damages including but not limited to severance crops exceeding current crop, drainage and fencing.

6. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the Buyer, subject to easements and restrictions of record is required.

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

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 November 15, 2010.

9. The Seller and Buyer further agree to convey the above described premises with all the improvements located thereon and deliver possession of the same in the same condition as they are now, reasonable wear and tear excepted.

10. Possession of each property to be given to Buyer and Seller on date of closing.

11. 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. Buyer will pay 100% closing costs.

12. Seller hereby agrees that damages arising, if any, to the remainder property during construction are to be addressed by filing a claim with the Buyer, City of Wichita, Kansas, City Clerk's Office. 455 North Main, Wichita, KS 67202. (316)268-4529.

13. Site Assessment

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

B. The Buyer or its agents shall have the right, without the obligation, to enter upon the property prior to closing to undertake an environmental site assessment or any other inspection of the property at the Buyer's sole expense.

C. Provided, however, Buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to this paragraph. If a site assessment cannot be completed prior to the closing date set herein, then the Buyer and Seller shall, unless Buyer chooses to void this agreement, close within ten (10) days of the completion of such site assessment. The Buyer shall, if Buyer determines that a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment.

14. Buyer agrees to indemnify and hold harmless Seller from any and all claims for personal injury and/or property damage resulting from any and all claims, expenses, suits or other costs relating to Buyer's occupancy of the subject property prior to closing. Buyer's occupancy of the subject property prior to closing shall be completely at the risk of Buyer and Seller shall bear no responsibility whatsoever for the actions of Buyer and/or its contractors or subcontractors for matters related to such occupancy.

15. Buyer is claiming no interest in Water Right No. 15673.00.

16. Buyer shall remove and replace a gas line on said property to the center pivot irrigation system.

17. Paragraphs 9 and 11 shall survive the closing.

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

**SELLER:**

Joseph H Bergkamp
Joseph H. Bergkamp, joint tenant

Joann A. Bergkamp
Joann A. Bergkamp, joint tenant

**BUYER:**

Carl Brewer, Mayor

**ATTEST:**

Karen Sublett, City Clerk

**APPROVED AS TO FORM:**

Gary E. Rebenstorf, Director of Law

**Agenda Item No. XII-8**

**CITY OF WICHITA**
**City Council Meeting**
November 2, 2010

**TO:** Mayor and City Council

**SUBJECT:** Modification of an Easement Across City Owned Property at K-96 Lake in Conjunction with the Homeland Preparedness Project (District I)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

---

**Recommendation:** Approve the modification.

**Background:** The City of Wichita and Sedgwick County have entered into an agreement with the Federal government to develop a centralized facility for National Guard and Army Reserve use. The site is located on City owned land east of I-135 and south of the Union Pacific railroad rail line. The City's commitment to the project includes development of access to the site, along with a variety of other infrastructure improvements. As part of the project, sufficient access and utility service must be provided to the site. To accomplish this, a modification of an existing easement over City property is required.

**Analysis:** The project contemplates the exchange of a City-owned parcel for a parcel owned by the railroad to allow the construction of an access road for the facility. A portion of the City-owned parcel is subject to an easement with KG&E that prohibits any construction in the easement area. If the parcel is to be utilized by the railroad, the easement must be modified to allow improvement for rail purposes. To this end, an encroachment agreement to provide for the necessary modification of the easement has been drafted.

**Financial Considerations:** There is no cost to the City.

**Goal Impact:** Approving this modification assists in providing Efficient Infrastructure to support a major, new government development.

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

**Recommendation/Action:** It is recommended that the City Council approve the encroachment agreement and authorize all necessary signatures.

**Attachments:** Encroachment agreement and aerial

**Encroachment Agreement**

This Encroachment Agreement dated _____ between the City of Wichita, Kansas (City) and Kansa Gas and Electric Company, hereinafter referred to as KG&E, is to set out certain conditions under which KG&E agrees to allow the City, its successors, assigns, or subsequent owners of its currently existing fee interest to build, operate and maintain a railroad track and related facilities on KG&E's private easement.

The easement previously granted to KG&E is ten (10) feet in width and runs North and South adjacent to the West line of Grove Street across a part of the Southwest Quarter (SW1/4) of Section 34, Township 26 South, Range 1 East, Sedgwick County, Kansas. The easement to KG&E is filed in the public records of Sedgwick County, Kansas, in Miscellaneous Book 666 at Page 329. Encroachment Area is situated in SEDGWICK County, State of KANSAS, and described as:

> **COMMENCING** at the Southeast Corner of the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M.; Thence Bearing N01°35'27"W, along the east line of said Southwest Quarter, a distance of 648.83 feet to a point on the north right of way line of the Union Pacific Railroad (formerly Missouri Pacific Railroad); Thence Bearing S70°03'56"W, along said north right of way line, a distance of 26.34 feet to the **POINT OF BEGINNING (**said Point of Beginning being 25 feet east of the west line of said Southwest Quarter); Thence Bearing N01°35'27"W, parallel with and 25 feet west of the east line of said Southwest Quarter, a distance of 31.84 feet; Thence Bearing S70°03'56"W, a distance of 10.54 feet; Thence Bearing S01°35'27"E, parallel with and 35 feet west of the east line of said Southwest Quarter, a distance of 31.84 feet to a point on the aforesaid north right of way line of the Union Pacific Railroad; Thence Bearing N70°03'56"E, along said north right of way line, a distance of 10.54 feet to the **POINT OF BEGINNING**.
>
> (Said tract of land containing 0.007 acres, more or less)

Based on this information and, provided the proper safety clearances are maintained, KG&E will allow the encroachment of the additional railroad track across KG&E's private easement, subject to the following conditions:

**1. Encroachment Area.** KG&E will not place any structures on the surface of the Encroachment Area.

**2. Agreement.** If the encroachment of eh railroad track across the Encroachment Area makes it necessary at a future date to move, modify, or replace the line in said Encroachment Area or move, modify or replace any of the support structures located on adjacent land, the city, its successors and assigns agree to reimburse KG&E the cost of acquiring new easements, and relocating the lines, poles, anchors, and equipment, in each case solely to the extent the costs for such items were made necessary by the encroachment of the railroad track in the Encroachment Area.

**3. Power Line Safety.** All parties involved in any construction in the Encroachment Area shall comply with the Kansas Overhead Power Line Accident Prevention Act, at KSA 66-1709 *et seq.*, as amended, to the extent the Act applies to any work hereunder.

**4. Indemnification.** The City, its successors and assigns hereby agree to indemnify and hold harmless KG&E from liability for any accidents and damages that may occur to persons or property on account of any work or activities conducted on or near KG&E's easement or facilities, to the extent conducted by the City, its agents, employees, contractors or subcontractors or other person hired by or under its control. The City further agrees to indemnify, hold harmless and defend (including costs and attorney fees) KG&E, its affiliates, subsidiaries, successors and assigns and their offices, directors and employees from any and all costs, liabilities, expenses, suits, judgments, injuries or damage to persons or property, or claims of any nature whatsoever caused by the encroachment of the railroad track in the Encroachment Area or the work or activities conducted by City, its agents, employees, contractors, or subcontractors, or other persons hired by or under its control as contemplated herein, to the extent caused by the City, its agents, employees, contractors, or subcontractors or other persons hired by or under its control. The obligation to provide this indemnification will run with the land and apply to any and all subsequent owners of the fee interest of the Encroachment Area, currently held by the City.

All other rights in the easement are hereby specifically reaffirmed, including the right to prevent future encroachments. This agreement does not apply to any other KG&E easements.

**City of Wichita, Kansas**
**By Direction of the City Council**

_____
Carl Brewer
Mayor

Attest:

_____
Karen Sublett
City Clerk

**Kansas Gas and Electric Company**

_____
Janell E. Hutter
Senior Real Estate Representative

MUNICIPAL ACKNOWLEDGEMENT

**STATE OF KANSAS )**
) ss:
**SEDGWICK COUNTY )**

On this _____ day of _____, 2010 before me, a Notary Public in and for said County and State aforesaid, personally appeared Carl Brewer, Mayor of the City of Wichita, and Karen Sublett, City Clerk of the City of Wichita, Kansas, the municipality that executed the foregoing instrument, to me personally known, being by me duly sworn, did say that said instrument was signed and delivered in the name and on behalf of said Municipality by authority of its Council and they acknowledge said instrument to be the free and voluntary act and deed of said Municipality.

WITNESS my hand and seal the day and year above last written.

_____
Notary Public

My Commission Expires: _____

CORPORATE ACKNOWLEDGEMENT

**STATE OF KANSAS )**
) ss:
**SEDGWICK COUNTY )**

I, _____ do hereby certify that Janell E. Hutter, agent for Kansas Gas and Electric Company, the corporation that executed the foregoing instrument, personally known, being by me duly sworn, did say that the said instrument was signed and delivered in the name and on behalf of said Corporation by authority of its Board of Directors, and she acknowledges said instrument to be the free and voluntary act and deed of said Corporation.

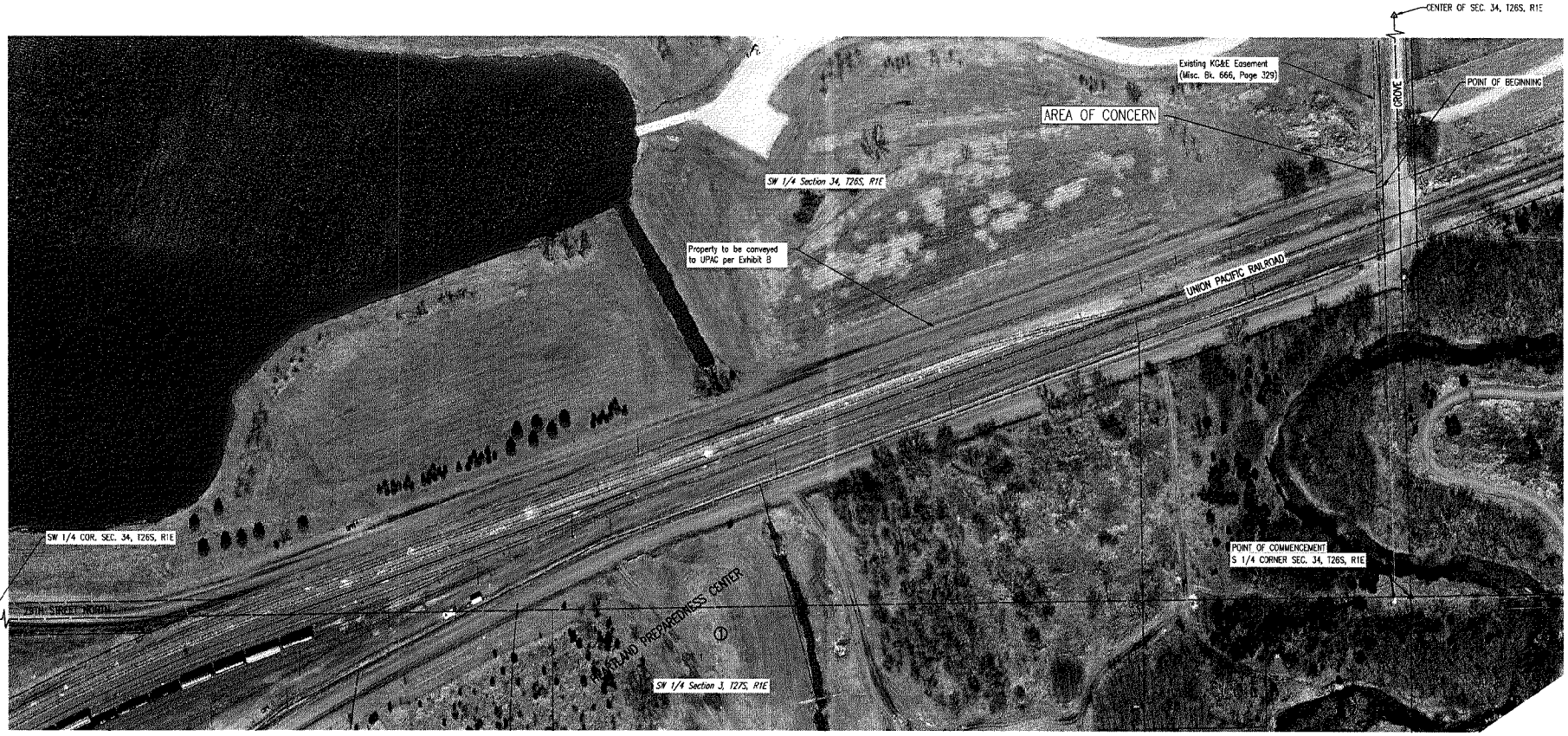
WITNESS my hand and seal the day and year above last written.

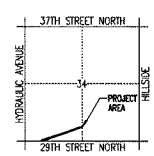
_____
Notary Public

My Commission Expires: _____

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law




VICINITY MAP

0 80 160

| No. | Revision | By | Date |
|---|---|---|---|

HEARTLAND PREPAREDNESS CENTER

# KG&E EASEMENT ENCROACHMENT AGREEMENT

**Professional Engineering Consultants, P.A.**
303 S. TOPEKA • WICHITA, KANSAS 67202
316-262-2691 • FAX 316-262-3003

| | | | |
|---|---|---|---|
| Surveyed by PEC | Job No. 35-09307-0259 | Sht. 1 of 1 |
| Drawn by RFJ | Date August 2010 | |

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Q:\2009\09307\Miscellaneous\09307-Portion of KGE Easement

660

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Equus Beds Aquifer Water Well Repair (All Districts)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

---

**Recommendation:** Approve the project.

**Background:** The City of Wichita has 61 water supply wells located in the Equus Beds Aquifer, approximately 25 miles northwest of Wichita. These wells are a critical component of the City's water supply.

**Analysis:** There is currently one water supply well, M-31 that has collapsed and is no longer able to produce water. In order to restore production from this well it must be redrilled. The Capital Improvement Program (CIP) includes $500,000 for M-Well repairs every three years, which generally entails the re-drilling of non-productive wells. While all other failed wells have been recently re-drilled and Wichita's needs are being met without this well, M-31 is one of four wells that will be critical to provide water for the start up operations of the Aquifer Storage and Recovery project.

**Financial Consideration:** It is estimated that re-drilling M-Well 31 will cost approximately $300,000. The 2009-2018 Adopted CIP includes $500,000 in 2010 for this project of which only $300,000 is being initiated.

**Goal Impact:** This project addresses the Ensure Efficient Infrastructure goal by assuring that the City is able to utilize all of its available water rights.

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

**Recommendations/Actions**: It is recommended that the City Council approve the project, approve Notice of Intent, adopt the resolution and authorize the necessary signatures.

**Attachments**: CIP sheet, Notice of Intent and resolution.

**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 | Water Utilities | 10/11/2010 | M Well Repairs |
| **5. CIP Project Number** | **6. Accounting Number** | **7. CIP Project Date (Year)** | **8. Approved by WCC Date** |
| W-21 | | 2010 | |
| **9. Estimated Start Date** | **10. Estimated Completion Date** | **11. Project Revised** | |
| Summer 2011 | Fall 2011 | | |

12. Project Cost Estimate

| ITEM | GO | SA | Water Utility | TOTAL |
|---|---|---|---|---|
| Right of Way | | | | |
| Paving, grading & const. | | | | |
| Bridge & Culverts | | | | |
| Drainage | | | | |
| Sanitary Sewer | | | | |
| Sidewalk | | | | |
| Water | | | $100,000 | $100,000 |
| Freeway | | | | |
| Totals | | | $100,000 | $100,000 |
| Total CIP Amount Budgeted | | | $300,000 | $300,000 |
| Total Proiect Estimate | | | | |

12A.

| | Yes | No |
|---|---|---|
| Platting Required | | X |
| Lot Split | | X |
| Petition | | X |
| Ordered by WCC | | X |

Remarks: This project will rehab M Well 21

**13. Recommendation:**

Approve the project and adopt the resolution

| Division Head | Department Head | Budget Officer | City Manager |
|---|---|---|---|
| | | Date | Date |

**RESOLUTION NO. 10-**

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 $300,000 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, M-Well Repairs (W-22) (the “Project”). The total costs of the Project are estimated to be three hundred thousand dollars ($300,000) in 2010 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 three hundred thousand dollars ($300,000) in 2010, 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 _____, 2010.**

(Seal)

_____

_

CARL BREWER, Mayor

ATTEST:

_____

KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

By_____

GARY E. REBENSTORF, Director of Law

***OCA: 633822***

(Published in the Wichita Eagle, on _____, 2010.)

**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 $ 300,000, 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. 10-_____, duly adopted _____, 2010, has found and determined it to be necessary and declared its intention to construct, reconstruct, alter, repair, improve, extend and enlarge the City of Wichita, Kansas Water and Sewer Utility which is owned and operated by the City, such construction, reconstruction, alterations, repairs, improvements, extensions and enlargements to include, but not be limited specifically to, M-Well Repairs (W-22) (called the "Project"). The total costs of the Project are estimated to be three hundred thousand dollars ($300,000). 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 $300,000 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 _____, 2010.

/s/ CARL BREWER, Mayor

ATTEST:
/s/ Karen Sublett, City Clerk

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Resolution Authorizing Transfer of five (5) Trolleys from Topeka Metropolitan Transit Authority (TMTA) to the City of Wichita (All Districts)

**INITIATED BY:** Wichita Transit

**AGENDA:** Consent

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**Recommendation:** Approve the resolution authorizing the transfer of five (5) trolleys.

**Background:** The Topeka Metropolitan Transit Authority (TMTA) contacted Wichita Transit about transferring five (5) streetcar trolleys to the City of Wichita. Wichita Transit agreed the trolleys would get better use in the Wichita Transit system and contacted the Federal Transit Administration about the transfer. The Federal Transit Administration (FTA) requires a resolution by the governing bodies of all transit agencies involved in the transfer of capital items that still have a federal interest. The purpose of the resolution is to authorize the City of Wichita to pay TMTA for the local share of the capital interest, and accept transfer of the federal interest from TMTA to City of Wichita.

**Analysis:** The proposed resolution authorizes the City of Wichita to pay TMTA $100,000 to acquire five (5) trolleys from TMTA. The federal interest in the trolleys is $941,420.71. The City of Wichita will receive five (5) trolleys with low mileage. The FTA will extend the useful life of the trolleys past the typical ten (10) years to twelve (12) years because the trolleys have such low mileage and are in good condition. The trolleys are as listed:

| | Bus # | Year | Make | Model | VIN | Useful Life (years) | Useful Life (Mileage) | Actual Service Life | Actual Mileage |
|---|---|---|---|---|---|---|---|---|---|
| 1 | 4 | 2004 | Optima | AH28 Streetcar | 1Z9S2HSS74W216295 | 10 yrs | 350,000 | 6 yrs | 73,888 |
| 2 | 5 | 2005 | Optima | AH28 Streetcar | 1Z9S2HSS55W216314 | 10 yrs | 350,000 | 5 yrs | 80,458 |
| 3 | 6 | 2005 | Optima | AH28 Streetcar | 1Z9S2HSS75W216315 | 10 yrs | 350,000 | 5 yrs | 57,451 |
| 4 | 7 | 2005 | Optima | AH28 Streetcar | 1Z9S2HSS95W216316 | 10 yrs | 350,000 | 5 yrs | 72,644 |
| 5 | 8 | 2002 | Chance | AH28 Streetcar | 1C9S2HFS32W535263 | 10 yrs | 350,000 | 8 yrs | 45,701 |

**Financial Consideration:** The City of Wichita will pay TMTA $100,000 for the local share of the remaining interest in the trolleys. FTA will transfer $941,420.71 in federal interest from TMTA to the City of Wichita.

**Goal Impact:** The trolleys acquired will be used 1) to replace older trolleys that are retired in the coming years; 2) for expanded Q-line routes proposed in the Downtown Master Plan and; 3) for Intrust Bank Arena services.

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

**Recommendation/Actions:** It is recommended that the City Council approve the resolution and authorize the necessary signatures.

**Attachments**: Resolution

**RESOLUTION NO. 10-282**

**A RESOLUTION AUTHORIZING TOPEKA METROPOLITAN TRANSIT AUTHORITY TO TRANSFER FIVE STREETCAR TROLLEYS TO THE CITY OF WICHITA WITH THE APPROVAL OF THE FEDERAL TRANSIT ADMINISTRATION, AN OPERATING ADMINISTRATION OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION**

**WHEREAS,** the Federal Transit Administration (FTA) has been delegated authority to authorize a transfer of the federal interest of five streetcar trolleys, which have not met their useful life, from the Topeka Metropolitan Transit Authority to the City of Wichita to be used for revenue service; and

**WHEREAS,** the City of Wichita will be acquiring the following five streetcar trolleys:
2004 Optima Trolley (VIN # 1Z9S2HSS74W216295) with six years of federal useful life left
2005 Optima Trolley (VIN # 1Z9S2HSS55W216314) with five years of federal useful life left
2005 Optima Trolley (VIN # 1Z9S2HSS75W216315) with five years of federal useful life left
2005 Optima Trolley (VIN # 1Z9S2HSS95W216316) with five years of federal useful life left
2002 Chance Trolley (VIN # 1C9S2HFS32W535263) with two years of federal useful life left; and

**WHEREAS,** the City of Wichita has or will provide all annual certifications and assurances to the FTA required for the project; and

**WHEREAS,** the City of Wichita will maintain the five acquired streetcar trolleys in accordance and in compliance with FTA requirements; and

**WHEREAS,** the City of Wichita will include the five streetcar trolleys in its equipment inventory report.

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

That the City of Wichita is authorized to acquire the federal interests of the vehicles to be transferred and agrees to pay Topeka Metropolitan Transit Authority $100,000 in exchange for their interests in the vehicles.

**CERTIFICATION**

The undersigned duly-qualified Mayor, acting on behalf of the City of Wichita, which is the Designated Recipient of Urbanized Area Formula Program assistance under the provisions of 49 U.S.C. §5307, certifies that the foregoing is a true and correct copy of a resolution adopted at a legally-convened meeting of the City of Wichita.

**ADOPTED** at Wichita, Kansas on November 2, 2010.

Carl Brewer, Mayor

Attest:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Major Bus Engine Replacement (All Districts)

**INITIATED BY:** Wichita Transit

**AGENDA:** Consent

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**Recommendation:** Approve purchase to replace engine.

**Background:** Transit Bus #2217, a 35' Gillig Phantom, had a major engine failure that caused extensive damage to the engine's block. The engine is beyond repair and needs replacement in order to continue running bus #2217.

**Analysis:** The vehicle is eight (8) years old and is still within its twelve (12) year useful life requirement before it can become eligible for replacement under Federal Transit Administration (FTA) guidelines. Maintenance staff reviewed the damage with an engine manufacturer and received the following options for repair of this engine.

Two options were presented:
1) Rebuild the existing engine by using a short block replacement reusing all other engine components. Based on no additional damage being found, option #1 would cost $25,224 with a 6 month warrantee on the new short block assembly only (no warrantee on reused parts), or

2) Replace the engine with a complete new engine less the starter motor. Option #2 would provide a one (1) year warrantee on all engine components and allow the City of Wichita to extend the service life of the bus three (3) additional years (from the normal twelve (12) years to fifteen (15) years). Option #2 would cost $41,199.

Transit recommends replacing the engine (option #2) as this option will extend the vehicle's useful life an additional three (3) years.

Detroit Diesel is the only engine model manufacturer that can be used for this repair. The only regional certified dealership for Detroit Diesel in the state of Kansas is Central Power Systems and Services. Bidding the engine work out to other Detroit Diesel suppliers (outside the state of Kansas) would be cost prohibitive. Transport costs incurred to get the bus back and forth from a remote supplier would be added into the bid. Wichita Transit considers this a sole source of supply procurement.

**Financial Consideration:** The replacement is considered a major bus improvement, eligible for capital repair funding under our existing grant with FTA that has an 80% Federal and 20% Local matching ratio. The cost for Option #2 is $41,199 (20% local match requirement of $8,240).

**Goal Impact:** Replacement and upgrading this equipment meets the City's goal of ensuring efficient infrastructure by maintaining and optimizing public facilities and assets.

**Legal Consideration:** This request complies with City Ordinance 35-856(b) Sole Source of Supply procurement.

**Recommendation/Actions:** It is recommended the City Council approve the new engine replacement purchase from Central Power Systems and Services with a cost of $41,199 as identified in Option #2 above.

**Attachments**: None.

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Roosevelt and Woodlawn Water Tower Rehabilitation (All Districts)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve the project.

**Background:** Wichita currently has three water towers to serve the distribution system. The oldest of the three are the Roosevelt and Woodlawn towers. The Roosevelt tower was constructed in 1951 and the Woodlawn tower was constructed in 1961.

**Analysis:** Water towers are subjected to the normal wear and tear that affects all facilities that are exposed to the elements. Water tower exteriors in general should be recoated every 15 to 20 years, and the interiors should be recoated every 20 years. The exteriors of the Roosevelt and Woodlawn towers have been repainted or recoated several times, with the latest in 1998 and 1999 and some spot repairs are required. However, the interiors of both towers have never been fully recoated and the cathodic protection has been depended on to protect the inside of the tanks. In 2007, an in-depth inspection of all water towers and underground storage reservoirs was performed and it was determined that the interiors of both tanks were in need of rehabilitation. It was also determined that the original structures used to provide access, including ladders, hatches, and walkways were not up to Occupational Safety and Health Administration and American Water Work Association requirements and must be replaced. This project will involve the replacement of all access structures and other appurtenances that must be brought up to code, installation of required signage, the adjustment of windage and riser stay rods as well as the cleaning and recoating of the interiors of both tanks. While it was necessary to delay Capital Improvement Program (CIP) projects, the interior degradation of both towers has continued and these repairs should not be delayed. To address the most critical issues first, the Water Tower rehabilitations cannot be completed as initially budgeted. The interior painting and sealing, and outside stair rehabilitation for both towers will need to be completed in 2010 as 'Phase I' with the final exterior rehabilitation for both completed in 'Phase II' during 2012.

**Financial Consideration:** Funding for the entire project is available in the CIP as Roosevelt Water Tower - WSU ($1,000,000 in 2010) and Woodlawn Water Tower ($1,000,000 in 2012). It is proposed that both CIP projects be re-named as "Water Tower Rehabilitation" to reflect the change in scope of the projects. The estimate for Phase I of the Water Tower Rehabilitation is $1,000,000 and currently available in the 2010 CIP.

**Goal Impact:** This project addresses the Efficient Infrastructure goal by providing reliable, compliant and secure utilities.

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

**Recommendations/Actions:** It is recommended that the City Council approve the project adopt the resolution and authorize the necessary signatures.

**Attachments:** CIP sheet, Notice of Intent and resolution.

**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 | Water Utilities | 10/6/2010 | Roosevelt and Woodlawn Water Tower Rehabilitation |
| **5. CIP Project Number** | **6. Accounting Number** | **7. CIP Project Date (Year)** | **8. Approved by WCC Date** |
| | | 2010 | |

| 9. Estimated Start Date | 10. Estimated Completion Date | 11. Project Revised |
|---|---|---|
| Winter 2011 | Spring 2011 | |

12. Project Cost Estimate

| ITEM | CO | SA | Water Utility | TOTAL |
|---|---|---|---|---|
| Right of Way | | | | |
| Paving, grading & const. | | | | |
| Bridge & Culverts | | | | |
| Drainage | | | | |
| Sanitary Sewer | | | | |
| Sidewalk | | | | |
| Water | | | $1,000,000 | $1,000,000 |
| Freeway | | | | |
| Totals | | | $1,000,000 | $1,000,000 |
| Total CIP Amount Budgeted | | | $1,000,000 | $1,000,000 |
| Total Proiect Estimate | | | | |

12A.

| | Yes | No |
|---|---|---|
| Platting Required | | X |
| Lot Split | | X |
| Petition | | X |
| Ordered by WCC | | X |

Remarks: This project will involve the replacement of all access structures and other appurtenances that must be brought up to code, installation of required signage, the adjustment of windage and and riser cray rails as well as the cleaning and recoating of the interiors of both tanks.

**13. Recommendation:**

Approve the project and adopt the resolution

| Division Head | Department Head | Budget Officer | City Manager |
|---|---|---|---|
| | | Date | Date |

**RESOLUTION NO. 10-283**

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 $1,000,000 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, Water Tower Rehabilitation (W-21) (the "Project"). The total costs of the Project are estimated to be one million dollars ($1,000,000) in 2010 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 one million dollars ($1,000,000) in 2010, 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 November 2, 2010.

(Seal)

_____
CARL BREWER, Mayor

ATTEST:

_____
KAREN SUBLETT, City Clerk

APPROVED AS TO FORM:

By_____
GARY E. REBENSTORF, Director of Law

*OCA: 633823*

Published in the Wichita Eagle on November 5, 2010

**NOTICE OF INTENTION TO CONSTRUCT, RECONSTRUCT, ALTER, REPAIR, IMPROVE, EXTEND AND ENLARGE THE WATER AND SEWER UTILITY OWNED AND OPERATED BY THE CITY OF WICHITA, KANSAS, AND TO ISSUE REVENUE BONDS, IN A TOTAL PRINCIPAL AMOUNT WHICH SHALL NOT EXCEED $ 1,000,000, 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. 10-283, duly adopted November 2, 2010, 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 Tower Rehabilitation (W-21) (called the "Project"). The total costs of the Project are estimated to be one million dollars ($1,000,000). The making of the Project will not cause duplication of any existing water or sewer utility service furnished by a private utility in the City.

You are hereby further notified that in order to provide financing for certain costs of the Project, the Governing Body has further found and determined it to be necessary and declared its intention to issue revenue bonds in a total principal amount which shall not exceed $1,000,000 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 November 2, 2010.

/s/ CARL BREWER, Mayor

ATTEST:
/s/ Karen Sublett, City Clerk

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** 2009 Street Rehabilitation Program (Districts I & III)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve the project revision.

**Background:** On April 28, 2009, the City Council approved the 2009 Street Rehabilitation Program with improvements to Hillside, between Bayley and Gilbert, and Kellogg, between 119th Street West and 111th Street West. The amount of work needed on Hillside was greater than anticipated. It is proposed that street maintenance funds be used for the cost of the additional work.

**Analysis:** The Hillside Street work consists of the removal and replacement of deteriorated concrete slabs.

**Financial Considerations:** The approved project budget is $600,000 with $400,000 paid by City General Obligation bonds and $200,000 by State transportation grants. The proposed revised budget is $638,525, with $400,000 paid by the City General Obligation bonds, $38,525 paid by City contract street maintenance operating funds and $200,000 paid by the State. It will be necessary to shift the budget authority for the street maintenance funding from a contractual expense to a transfer expense, in order to appropriately record the City's cost of the project. The transfer will occur this year.

**Goal Impact:** This project addresses the Efficient Infrastructure goal by providing needed street maintenance.

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

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

**Attachments:** CIP sheet and amending ordinance

**CAPITAL IMPROVEMENT**

**PROJECT AUTHORIZATION**

**CITY OF WICHITA**

USE

To Initiate Project

To Revise Project X

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

| 1. Initiating Department | 2. Initiating Division | 3. Date | 4. Project Description & Location |
|---|---|---|---|
| Public Works | Eng | 10/21/2010 | 2009 Street Rehab Program |

| 5. CIP Project Number | 6. Accounting Number | 7. CIP Project Date (Year) | 8. Approved by WCC Date |
|---|---|---|---|
| MS- | | 2009 | |

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

12. Project Cost Estimate

| ITEM | GO | KDOT | * | TOTAL |
|---|---|---|---|---|
| Right of Way | | | | |
| Paving, grading & const. | $901,000 | $500,000 | $38,525 | $938,525 |
| Bridge & Culverts | | | | |
| Drainage | | | | |
| Sanitary Sewer | | | | |
| Sidewalk | | | | |
| Water | | | | |
| Freeway | | | | |
| Totals | $5,000,000 | $200,000 | $38,525 | $638,525 |
| Total CIP Amount Budgeted | | | | |
| Total Prelim. Estimate | | | | |

12A.

| | Yes | No |
|---|---|---|
| Platting Required | | |
| Lot Split | | |
| Petition | | |
| Ordered by WCC | X | |

Remarks:

Contract Street Maintenance

$3,000,000

13. Recommendation:

Approve the project revision, budget adjustment and place the attending ordinance on 1st reading

| Division Head | Department Head | Budget Officer | City Manager |
|---|---|---|---|
| | | Date | Date |

**132019**

**Published in the Wichita Eagle on November 12th, 2010**

ORDINANCE NO. 48-898

AN ORDINANCE AMENDING ORDINANCE NO. **48-321** OF THE CITY OF WICHITA, KANSAS DECLARING **KELLOGG, BETWEEN 119TH ST. WEST AND 111TH ST. WEST; AND HILLSIDE, BETWEEN BAYLEY AND GILBERT (2009 STREET REHABILITATION PROGRAM) (472-84815)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF THE SAME.

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

SECTION 1. SECTION 3 of Ordinance **No. 48-321** is hereby amended to read as follows:

"SECTION 3. The cost of the construction of the above described improvements is estimated to be **Six Hundred Thirty-Eight Thousand Five Hundred Twenty-Five Dollars ($638,525)** exclusive of the cost of interest on borrowed money. To the extent the cost of such improvements is not paid by Federal Grants administered by the Kansas Department of Transportation, the City of Wichita, Kansas, is authorized to issue general obligation bonds to pay such costs under the authority of K.S.A. 12-689 up to a maximum amount of $638,525, exclusive of the cost of interest on borrowed money."

SECTION 2. The original SECTION 3 of Ordinance **No. 48-321** is hereby repealed.

SECTION 3. 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 9th day of November, 2010.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf
Director of Law

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Southeast Water Transmission Line between Wichita and Derby (District III)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve the payment for repairs.

**Background:** In 2001, the City Council approved a wholesale water agreement to provide water to the City of Derby. A 36" water line was constructed from Wichita to a point of connection for Derby at K-15 Highway and 63rd Street South. The water line crossed under the Kansas Turnpike near K-15. It has since been determined that a drainage culvert within the Kansas Department of Transportation (KDOT) right-of-way was damaged at some point during construction of the water line. KDOT selected Wildcat Construction Co., Inc. to repair the culvert. The repair work has been completed and an invoice has been submitted for the work.

**Analysis:** Prior to the completion of the transmission line, Derby relied on local water wells for its supply. Wichita owns and operates the transmission line, with the cost recovered through payments by Derby for water received. KDOT had granted the City of Wichita permission to place the water line within KDOT right-of-way, and thus avoid a more costly and lengthier route to Derby.

**Financial Considerations:** The repair cost was $15,000. The funding source is the Water Utility.

**Goal Impact:** The project addressed the Efficient Infrastructure goal by providing a new revenue source for the Water Utility.

**Legal Considerations:** None.

**Recommendation/Action:** It is recommended that the City Council approve the payment to Wildcat Construction Co., Inc. and authorize the necessary signatures.

**Attachments:** Wildcat Construction Co., Inc.invoice.

WILDCAT construction

# Invoice

Wildcat Construction Co., Inc.
4421 W. Harry, Wichita, KS 67209

Date: August 4, 2010
Invoice #: 6486-1
Customer ID: KDOT

To: **City of Wichita**
Jim Armour, City Engineer
455 N. Main, 7th Floor
Wichita, KS 67202
316-268-4501 Phone

Mail to: **Kansas Department of Transportation**
3200 E. 45th Streeet North
Wichita, KS 67220
316-744-1271 Phone
316-744-3064 FAX

| Qty | Description | Amount | Line Total |
|---|---|---|---|
| 1.00 | Installation of an 18.5' deep Inlet-Manhole Special over the Existing RCB at K-15 & the KTA overpass. Work performed July 19-22, 2010 | $15,000 | 15,000.00 |

| | |
|---|---|
| Subtotal | $ 15,000.00 |
| Sales Tax | incl. |
| Total | **$ 15,000.00** |

**Make checks payable to Wildcat Construction Co., Inc.**
Thank you for your business!

**City of Wichita**
**City Council Meeting**
November 2, 2010

**TO:** Mayor and City Council Members

**SUBJECT:** Educational Trust Scholarship

**INITIATED BY:** Wichita Police Department

**AGENDA:** Consent

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**Recommendation:** Accept the donation and approve the scholarship account.

**Background:** The Wichita Police Department is the recipient of an annual disbursement from the Doris V. Happy Revocable Trust which is administered by the Wichita Community Foundation. The funding received will be used to provide educational scholarships to the children of Police Department members who have been physically disabled or slain in the line of duty.

**Analysis:** Disbursement amounts are currently around $2,000 per year. The Chief of Police or his designee will determine scholarship eligibility and amount of awards.

**Financial Considerations:** The City of Wichita will not be obligated to any matching funds. There is no financial impact on the City.

**Goal Impact:** The Wichita Police Department is integral in achieving a Safe and Secure Community.

**Legal Considerations:** None.

**Recommendations/Actions:** It is recommended the City Council accept the annual donations and approve the establishment of an educational scholarship account.

**Attachments:** None.

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO:** Mayor and City Council

**SUBJECT:** Relocation of a Sanitary Sewer along I-135 Freeway, between Pawnee and English (Districts I & III)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve the easement restoration payment.

**Background:** On March 10, 2009, the City Council approved a construction contract that was the first phase of a project to relocate a sanitary sewer along the I-135 Freeway, between Pawnee and English. A part of the work was across the East High School campus. The USD 259 School Board provided an easement for the new pipeline, with the stipulation that the school district would be reimbursed for the cost of restoring part of an asphalt parking lot, resodding an area with fescue grass, replacing a chain link fence and replacing an irrigation system. Work is now complete and an invoice has been submitted by the school district for the work.

**Analysis:** The existing sanitary sewer is located directly along I-135 and is in need of replacement. The pipe line will remain active until all phases of the project are complete.

**Financial Considerations:** The easement restoration cost was $23,724.78. Funding is included in the project budget. The funding source is the Sanitary Sewer Utility.

**Goal Impact:** The project addresses the Efficient Infrastructure goal by improving reliability of the City's sanitary sewer system.

**Legal Considerations:** None.

**Recommendation/Action:** It is recommended that the City Council approve the payment to USD 259 School District and authorize the necessary signatures.

**Attachments:** USD 259 invoice.

**INVOICE REQUEST**

**UNIFIED SCHOOL DISTRICT #259**

**Wichita, KS 67202**

4-4

Date: September 24, 2010

Customer:
Mr. John Philbrick
City of Wichita - Property Management
455 North Main Street
Wichita, Kansas 67202
Contact: John Philbrick (Property Mgmt.)

Description of Charges: Easement agreement at East High School

| Qty | Description | Unit Price | Total Due |
|---|---|---|---|
| | Work Request: 09-28121<br>Dated: May 18, 2009 | | |
| | Sprinkler line replacement costs and temporary irrigation | | 4,157.78 |
| | Replace chain link fencing | | 9,917.00 |
| | Install sod at parking area east of track | | 9,650.00 |
| | Total Amount Due: | | $ 23,724.78 |

SPECIAL INSTRUCTIONS:
Receipt to 16.040000.120.41991.00.NA

Account Number to be Credited:
50310.474706.10318.52456.120

Please send an invoice to:
City of Wichita

Person Responsible: John Philbrick

Requestor's Signature: Jodie Gray

Requestor's Name: Jodie Gray Requestor's Phone #: 973-2033 Building: SSC - 865

**City of Wichita**
**City Council Meeting**
**November 2, 2010**

**TO**: Mayor and Members of the City Council

**SUBJECT:** September 15, 2010 Hail Storm Capital Project and Resolution

**INITIATED BY:** Finance Department

**AGENDA:** Consent

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**Recommendation:** Approve the bonding resolution.

**Background:** The City of Wichita suffered damage due to the September 15, 2010 hail storm. The City carries property insurance on assets valued in excess of $650,000,000 with a single loss limit totaling $200,000,000 per occurrence. The deductible for wind and hail damage is currently $2,000,000 per occurrence.

**Analysis**: The disaster that struck the City of Wichita will require staff to focus on clean up, debris removal efforts, temporary and permanent repairs for several months to come. City staff will aggregate and track all relevant costs. At this point, an exact estimate of projected expenditures is not available. It is anticipated, however that the expenditures will not exceed the $2,000,000 deductible.

A Special Project Account is needed to fund all storm related expenditures. When the project is closed out, a transfer from the Self Insurance Fund or bonds will be required.

**Financial Considerations**: A bonding resolution in the amount of $2,000,000 will be established to cover all expenses related to the September 15 hail storm. This project is not included in the current Capital Improvement Program. It is anticipated that permanent bonds will not be issued for this project, but only utilized as an interim financing tool, a transfer from the Self Insurance Fund will be required up to $2,000,000. As the expenses are finalized, a final revenue source will be determined. At this time, additional resources from the State or Federal government are not anticipated.

**Goal Impact:** The public health, safety and welfare are a primary task of the City of Wichita. Repair and replacement of public property damaged in the September 15, 2010 hail storm will directly address these goals.

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

**Recommendation/Action**: It is recommended the City Council approve the Resolution and budget transfers as required.

**Attachment:** Resolution

OCA036301

First published in The Wichita Eagle on November 5, 2010

RESOLUTION NO. 10-284

A RESOLUTION AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE CITY OF WICHITA TO PAY ALL OR A PORTION OF THE COSTS OF REPAIRS AND REPLACEMENTS OF HAIL DAMAGED ROOFS, HVAC EQUIPMENT, LIGHTING SYSTEMS AND VEHICLES.

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

SECTION 1. That it is necessary to obtain additional funding for repairs and replacements of hail damaged City facility roofs, HVAC equipment, lighting systems, and vehicles.

SECTION 2. The governing body hereby declares it to be its intention to issue and sell in the manner provided by Law, general obligation bonds under authority of K.S.A. 13-1024c, as amended by the City of Wichita Charter Ordinance No. 156, to pay all or a portion of the costs of obtaining additional funding for the repairs and replacements of hail damaged City facility roofs, HVAC equipment, lighting systems, and vehicles. These costs shall be paid by the issuance of general obligation bonds as aforesaid in an amount not to exceed $2,000,000.00 plus the costs of interest on borrowed money and other issuance costs.

SECTION 3. This Resolution shall take effect and be in force from and after its passage and shall be published in the official City paper

ADOPTED at Wichita, Kansas this 2nd day of November, 2010.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

**Second Reading Ordinances for November 2, 2010 (first read on October 19, 2010)**

**Public Hearing on Proposed Assessments for Five (5) Water Projects, Six (6) Sewer Projects, One (1) Storm Sewer Project in February 2011 Bond Sale Series 804. (Districts II, V, VI)**

(470-036/448-90273)

ORDINANCE NO. 48-859

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90273, TO SERVE JOHNSON COMMERICAL CENTRE, (South of 53rd St.North, West of Meridian).

(470-106/448-90335)

ORDINANCE NO. 48-860

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90335, TO SERVE MONARCH LANDING 2ND ADDITION, (North of 21st, West of 159th St. East).

(470-100/448-90389)

ORDINANCE NO. 48-861

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90389, TO SERVE SIERRA HILLS SECOND ADDITION, (North of Pawnee, West of 143rd St. East).

(470-104/448-90406)

ORDINANCE NO. 48-862

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90406, TO SERVE BELLECHASE SECOND ADDITION, (East of 127th St. East, North of Harry).

(470-112/448-90426)

ORDINANCE NO. 48-863

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of Water Distribution System No. 448-90426, TO SERVE FONTANA 4TH ADDITION, (East of 119th St. West, North of 29th St. North).

(480-001/468-84209)

ORDINANCE NO. 48-864

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of , LATERAL 2, MAIN 23, SOUTHWEST INTERCEPTOR SEWER, (West of West St., North of 21st).

(480-954/468-84420)

ORDINANCE NO. 48-865

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of , LATERAL 526, SOUTHWEST INTERCEPTOR SEWER, (South of Kellogg, West of Woodchuck).

(480-986/468-84433)

ORDINANCE NO. 48-866

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of , LATERAL 2, MAIN 24, FOUR MILE CREEK SEWER, (North of 21st, West of 159th St. East).

(480-981/468-84516)

ORDINANCE NO. 48-867

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of , LATERAL 2, MAIN 21, FOUR MILE CREEK SEWER, (North of Pawnee, West of 143rd St. East).

(480-989/468-84566)

ORDINANCE NO. 48-868

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of , LATERAL 59, COWSKIN INTERCEPTOR SEWER, (North of Kellogg, East of 167th St. West).

(480-992/468-84583)

ORDINANCE NO. 48-869

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of , LATERAL 7, MAIN 14, FOUR MILE CREEK, (South of 21st, East of 127th St. East).

485373/468-84555)

ORDINANCE NO. 48-870

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of SWD No. 352, Willow Creek East 2nd Addition, (East of Greenwich, South of Harry).

**Public Hearing on Proposed Assessments for Eight Paving Projects in February 2011 Bond Sale Series 804. (District II, V, VI)**

(490-150/472-84484)

ORDINANCE NO. 48-871

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of constructing a Left Turn Lane on 29th Street North, (North of 29th Street North, West of Maize)

(490-151/472-84537)

ORDINANCE NO. 48-872

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of constructing an Accel/Decel Lane on 29th Street North, (North of 29th Street North, West of Maize)

(490-152/472-84538)

ORDINANCE NO. 48-873

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of constructing a Left Turn Lane to serve the East Bound Left Turn Movement from 29th Street North to Covington, (North of 29th Street North, West of Maize)

(490-176/472-84561)

ORDINANCE NO. 48-874

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of constructing pavement on Mead, (South Line of Central to the North Line of 3rd Street North)

(490-248/472-84764)

ORDINANCE NO. 48-875

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of constructing pavement on Lynnrae, Lynnrae Court to and including the Cul-de-sac, Countryside, Funston, (East of Greenwich, South of Harry)

(490-256/472-84796)

ORDINANCE NO. 48-876

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of constructing pavement on Wichita Street, (North Line of Murdock to the South Line of 8th Street North)

(490-257/472-84820)

ORDINANCE NO. 48-877

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of constructing pavement on Zoo Park Circle and including the Cul-de-sac, (East of Hoover, North of 21st)

(490-260/472-84831)

ORDINANCE NO. 48-878

An Ordinance levying assessments on lots, pieces, and parcels of land in the City of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of constructing pavement on 21st Street North including Sidewalk, (North of 21st, East of Webb)

**Second Reading Ordinances for November 2, 2010 (first read on October 26, 2010)**

**SUB2010-00041 Plat of Harry and Webb Commercial Addition located on the south side of Harry and on the east side of Webb Road. (District II)**

ORDINANCE NO. 48-883

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

**Agreement to Respread Assessments, Woods North 2nd Addition. (District II)**

ORDINANCE NO. 48-884

An Ordinance amending Ordinance No. 48-455 and Resolution No. 08-058 of the City of Wichita, Kansas, for the purpose of paying a portion of the cost of constructing Water Distribution System No. 448-90363, to serve Woods North Addition, south of 29th St. North, west of 127th St. East (470-081).

ORDINANCE NO. 48-885

An Ordinance amending Ordinance no. 48-478 and Resolution no. 08-061 of the City of Wichita, Kansas, for the purpose of paying a portion of the cost of constructing Lateral 1, Main 26, Four Mile Creek Sewer & Main 26, Four Mile Creek Sewer, to serve Woods North & Greenwich Business Center Additions, South of 29th St. North, West of 127th St. East (468-84485/480-963).

ORDINANCE NO. 48-886

An Ordinance amending Ordinance No. 48-537 and Resolution No. 08-430 of the City of Wichita, Kansas, for the purpose of paying a portion of the cost of constructed pavement on Woodridge, Woodspring, Garnett, Woodbridge Ct., including the cul-de-sac and sidewalk, to serve Woods North Addition, (Project No. 490-213/472-84651).

ORDINANCE NO. 48-887

An ordinance amending Ordinance No. 48-538 and Resolution No. 08-458 of the City of Wichita, Kansas, for the purpose of paying a portion of the cost of constructing pavement on 127th Street East, to serve Woods North Addition, (Project No. 490-214/472-84653).

**<u>Agreement to Respread Assessments, Woods North Addition and Woods North 2nd Addition.</u>**
**District II)**

ORDINANCE NO. 48-888

An Ordinance amending Ordinance no. 48-494 and Resolution No. 08-063 of the city of Wichita, Kansas, for the purpose of paying a portion of the cost of construction of SWD No. 346, to serve Woods North Addition-Greenwich Business Park Addition, south of 29th Street North, west of 127th Street East (Project No. 468-84487/485-358)