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FINAL

CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. October 19, 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 5, 2010

AWARDS AND PROCLAMATIONS

-- Proclamations:

Friends of the Library Week
Kansas BEST Day
Wichita Asian Festival Day
Save for Retirement Week
Operation Holiday Kick-Off Day

-- Service Awards:

Tim Martz
Calvin Fugit

-- Recognition Awards:

Emerging Business Enterprises
Prime Contractors

I. PUBLIC AGENDA

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

1. Willard Ebersole - Little regard for public input given during Zoning Request ZON2010-00022 and unclear procedures in the voting on the issue.

COUNCIL BUSINESS

II. UNFINISHED COUNCIL BUSINESS

None

III. NEW COUNCIL BUSINESS

1. 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, and VI)

   RECOMMENDED ACTION: Close the Public Hearing, approve the proposed assessments, and place the ordinances on first reading.

2. Public Hearing on Proposed Assessments for Eight Paving Projects in February 2011 Bond Sale Series 804. (District II, V, and VI)

   RECOMMENDED ACTION: Close the Public Hearing, approve the proposed assessments, and place the ordinances on first reading.

3. Midtown Neighborhood Stormwater Master Plan. (District VI)

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

4. Agreement to Transfer Partial Water Rights.

   RECOMMENDED ACTION: Approve the agreement to transfer partial water rights to Fly High Inc. and authorize the Mayor to sign the agreement.

5. Amendments to the Building Code - Title 18.50 (2006 Edition of the International Building Code); Title 18.51 (2006 Edition of the International Residential Code); and Title 18.08 (Building Permit Fee Schedule).

   RECOMMENDED ACTION: Approve first reading of the proposed ordinances to: (1) amend Chapter 18.50 of the Code of the City of Wichita (IBC); (2) amend Chapter 18.51 of the Code of the City of Wichita (IRC); and (3) amend Chapter 18.08 of the Code of City of Wichita, which modifies the Building Permit Fee Schedule.

6. Ordinance Amending the Mechanical Code - Title 22 of the Code of the City of Wichita.

   RECOMMENDED ACTION: Approve first reading of the proposed ordinance to amend Title 22 of the Code of the City of Wichita (City of Wichita Mechanical Code).

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 (ITEMS 1 AND 2)

1. ZON2010-00026 – City zone change from SF-5 Single-Family Residential ("SF-5") to TF-3 Two-Family Residential ("TF-3"); generally located north and east of the intersection of North Hoover Road and West Robinson Street. (District VI)

   RECOMMENDED ACTION: 1) Adopt the findings of the MAPC, approve the zone change subject to the submission of a no protest petition for paving, withhold publication of the ordinance until the no protest petition has been submitted and authorize the Mayor to sign the ordinance (requires a three-fourths majority vote); OR 2) Adopt the findings of the MAPC, approve the zone change subject to the submission of a no protest petition for paving and to a Protective Overlay limiting the development to no more than two duplexes or four units, withhold publication of the ordinance until the no protest petition has been submitted and authorize the Mayor to sign the ordinance (requires a three-fourths majority vote); OR 3) Override the recommendation of the MAPC and deny the zone change (requires a two-thirds majority vote); OR 4)Return the application to the MAPC for reconsideration (simple majority).

2. 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)

   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).

V. CONSENT PLANNING AGENDA (ITEMS 1 THROUGH 6)

1. *ZON2010-00030 – City zone change from B Multi-Family Residential ("B") to LC Limited Commercial ("LC") for a greenhouse; generally located west of Osage Street and south of Maple Street. (District IV)

   RECOMMENDED ACTION: Adopt the findings of the MAPC, approve the zone change subject to the applicant submitting a "no-protest" petition regarding the possible future paving of the alleyway, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required). (An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

2. *ZON2010-00031 – City zone change from LI Limited Industrial to MF-18 Multi-Family Residential and LC Limited Commercial and amendment to Protective Overlay #74; generally located south of 29th Street North and one-fourth to one-half mile east of Greenwich Road. (District II)

   RECOMMENDED ACTION: Adopt the findings of the MAPC and approve the zone change and amendment to Protective Overlay #74; and authorize the Mayor to sign the ordinance, and withhold the publication of the ordinance until the plat is recorded. (Simple majority vote required)

3. *VAC2010-00009 - Request to vacate a portion of public street right-of-way; generally located midway between Waco Street and the Little Arkansas River, on the south side of 12th Street North. (District VI)

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

4. *VAC2010-00011 - Request to vacate a portion of a platted easement; generally located southwest of Pawnee Avenue and George Washington Boulevard. (District III)

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

5. *VAC2010-00016 - Request to vacate platted easements; generally located north of I-235, between Broadway Avenue and the Big Ditch. (District VI)

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

6. *DED2010-00008 -- Partial Dedication of Abutter's Access Rights (Access Control) located south of 31st Street South and on the east side of Meridian. (District IV)

   RECOMMENDED ACTION: Accept the Dedication.

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

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

1. Approval of travel expenses for Mayor Carl Brewer, Vice Mayor Jeff Longwell, Council Member Paul Gray, Council Member Sue Schlapp, Council Member Janet Miller, and Council Member Lavonta Williams to attend the National League of Cities (NLC) Congress for Cities and Exposition in Denver, Colorado, November 30 - December 5, 2010.

   RECOMMENDED ACTION: Approve the expenditures.

XI. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA (ITEMS 1 THROUGH 23A)

1. Report of Board of Bids and Contracts. (See Attached)
   a. Report of Board of Bids and Contracts dated October 11 and October 18, 2010.

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

2. Applications for Licenses:

Renewal	2010	
Robert Floyd	Rock Road Gift Shop Inc.	3526 North Rock Road Suite 200

RECOMMENDED ACTION: Approve the licenses.

3. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal	2010	(Consumption on Premises)
Steve Blaske	MacDonald Park Golf Course*	840 North Yale
Wayne Smith	Wichita Canteen Company, Inc.*	1845 Fairmount

Renewal	2010	(Consumption off Premises)
Rajeshkumar Patel	Krish LLC dba Stop and Shop	1826 West 13th Street N.
Nuot V Nguyen	Thai An Market	2425 South Hillside #500
Lindsay S. Cunningham	Presto #1629	3311 North Rock Road
Lindsay S. Cunningham	Presto #1630	2190 North Rock Road
Lindsay S. Cunningham	Presto #1631	1250 South Rock Road
Lindsay S. Cunningham	Presto #1633	1254 South Tyler Road
Lindsay S. Cunningham	Presto #1636	4414 West Maple
Lindsay S. Cunningham	Presto #1637	7136 West Central
Lindsay S. Cunningham	Presto #1638	2001 South Oliver
Lindsay S. Cunningham	Presto #1639	7236 West 21 Street North
Lindsay S. Cunningham	Presto #1640	4821 South Broadway
Lindsay S. Cunningham	Presto #1641	515 North Seneca
Lindsay S. Cunningham	Presto #1642	2356 South Seneca
Lindsay S. Cunningham	Presto #1643	1350 North Oliver
Lindsay S. Cunningham	Presto #1646	12728 East Central

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

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

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

   RECOMMENDED ACTION: Receive and file.

5. Deeds and Easements:
   a. Deeds and Easements.

   RECOMMENDED ACTION: Accept documents.

6. Consideration of Street Closures/Uses.
   a. Community Event - Monster Bash 5K Run. (District II)
   b. Community Events - Hope Art. (District I)
   c. Community Events - Veterans Day Post Parade Activities. (Districts I and VI)

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

7. Agreements/Contracts:
   a. BNSF Railway Company Pipeline License.
   b. Lawrence-Dumont Stadium-CIP Funded Improvements. (District IV)
   c. Aquifer Storage Recovery Phase II-City of Bentley Spur Line Tie-In Supplemental Agreement.
   d. Childhood Lead Poisoning Prevention Program Agreement.

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

8. Design Services Agreements:
   a. Supplemental Agreement No.2 for Design Services for 119th Street West from Kellogg to Maple. (District V)
   b. Supplemental Agreement for Design Services for Lincoln Street Bridge and Dam. (Districts III and IV)
   c. Supplemental Agreement for Design Services for 47th Street South, between Meridian and Seneca. (District IV)
   d. Agreement for Design Services for Water, Sanitary Sewer, Storm Water, Drainage, and Paving Improvements in Silverton Addition (north of 13th Street North, west of 135th Street West. (District V)

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

9. Change Order:
   a. Change Order No. 4: Street Paving in Washington Heights Addition, east of Oliver, north of 31st Street South. (District III)

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

10. Property Acquisitions:
    a. Partial Acquisition of Land for an Easement at 12525 West 117th Street for the Integrated Local Water Supply Plan. (County)
    b. Partial Acquisition of Land for an Easement at 12421 West 117th Street for the Integrated Local Water Supply Plan. (County)
    c. Partial Acquisition of Land for an Easement at 12501 West 117th Street for the Integrated Local Water Supply Plan. (County)
    d. Partial Acquisition of Land for an Easement at 12700 West 117th Street for the Integrated Local Water Supply Plan. (County)
    e. Partial Acquisition of 1403 North Vassar for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)
    f. Acquisition of 1355 North Chautauqua North for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)
    g. Acquisition of Land for a Recharge Basin and Well at the Southeast Corner of 117th Street North and 119th Street West for the Integrated Local Water Supply Plan.
    h. Partial Acquisition of Land for Easements at the Southeast Corner of 117th Street North and 119th Street West for the Integrated Local Water Supply Plan.
    i. Acquisition of 548 South Wetmore Court for the Cowskin Creek Channel Improvement Project from Kellogg to Maple. (District V)
    j. Partial Acquisition for Right-of-Way at 1931 South 119th Street West for the 119th Street, Pawnee Avenue to Kellogg Improvement Project. (District IV)
    k. Partial Acquisition of 2612 East 13th Street North for the East 13th Street, Hydraulic to Oliver Road Improvement Project. (District I)

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

11. Minutes of Advisory Boards/Commissions

    Wichita Board of Appeals of Refrigeration, Air-Conditioning, Warm Air Heating and Boiler, August 26th, 2010
    Design Council, September 15, 2010
    Wichita Transit Advisory Board, September 10, 2010

    RECOMMENDED ACTION: Receive and file.

12. Contracts and Agreements for September 2010. (See Attached)

    RECOMMENDED ACTION: Receive and file.

13. Settlement of Lawsuit.

    RECOMMENDED ACTION: Authorize payment of $25,000 as a full settlement of all possible claims which were made, or could have been made, in the claim and approve any necessary budget adjustments.

14. Payment for Settlement of Claim.

RECOMMENDED ACTION: Authorize payment of $13,000 as a full settlement of all possible claims, which were made or could have been made in the claim.

15. Wichita Community Foundation Walking Group Grant. (Districts I, II, and VI)

RECOMMENDED ACTION: Approve the grant application.

16. Recreational/Community Education Research Proposal.

RECOMMENDED ACTION: Authorize the project and funding from the Wichita State University mill levy fund.

17. Mead Street Improvement, between 3rd and Central. (District VI)

RECOMMENDED ACTION: Approve the revised project funding, adopt the resolution, approve the statement of cost and authorize the necessary signatures.

18. Cooperative Agreement with Heartland PTAC.

RECOMMENDED ACTION: Continue its relationship as a sub-contractor with Heartland PTAC Missouri Southern State University, approve the 2011 Letter of Commitment and proposed budget, and authorize the necessary budget adjustments and signatures.

19. Funding for Public Transportation.

RECOMMENDED ACTION: Approve the interlocal agreements.

20. Grant of Temporary Easement at the Proposed Water Utilities Aquifer Storage Recharge Treatment Plant near Bentley for the Integrated Local Water Supply Plan. (County)

RECOMMENDED ACTION: Approve the Temporary Easement and authorize the necessary signatures.

21. Woodlawn Improvement, between Harry and Lincoln. (Districts II and III)

RECOMMENDED ACTION: Approve the budget revision, authorize the necessary budget adjustment and authorize the signing of State/Federal agreements as required.

22. 2009 Street Rehabilitation Program. (District V)

RECOMMENDED ACTION: Approve the project revision, place the ordinance on first reading, authorize the necessary budget adjustment, and authorize the signing of state/federal agreements as required.

23. Second Reading Ordinances: (First Read October 5, 2010)
    a. List of Second Reading Ordinances. (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council Members

SUBJECT: 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, and VI)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Approve the proposed assessments and ordinances.

Background: The City Council was notified on September 21, 2010 that the proposed assessment rolls were on file for public inspection in the Department of Finance.

Analysis: Notice of hearing letters were published September 24, 2010 in the Wichita Eagle, being not less than ten days prior to the date of hearing. All affected property owners have been notified in writing. The Department of Finance and Public Works staff held an informal hearing October 11, 2010 at 11:00 a.m. for the water, sewer and storm sewer projects.

Financial Considerations: Statements of Special Assessment will be mailed to the property owners on November 5, 2010. The property owners have 30 days from date of statement to pay their assessment and avoid paying interest. The assessments not paid during this period will be in the February 2011 Bond Sale. The interest added to the principal amount will be determined by the rate at which the bonds sell. The principal and interest will then be spread and placed on the 2011 tax roll.

Goal Impact: The City of Wichita aggressively uses special assessments to lower the cost of residential developments. In doing so, the City's program satisfies the City Council's goal to promote Economic Vitality and Affordable Living. The program supports this goal through partnering with stakeholders in the development community and sustains affordable living by lowering the costs of home ownership.

Legal Considerations: These projects were initiated pursuant to provisions of KSA 12-6a01 et seq. as amended. All of the projects were 100% petitions with the exception of:

480-954 468-84420 Lateral 526, Southwest Interceptor Sewer (81% Petition)

Recommendation/Action: It is recommended that the City Council close the Public Hearing, approve the proposed assessments and place the ordinances on first reading.

Attachment: Special Assessments projects list.

HEARING ON PROPOSED ASSESSMENTS FOR CONSTRUCTION OF WATER, SEWER AND STORM SEWER.

On September 21, 2010 the Council was notified that the Proposed Assessment Rolls for construction of the following water, sewer and storm sewer projects has been prepared and were on file in the office of Debt Management in the Finance Department for public inspection:

WATER PROJECTS:

a. (470-036/448-90273) Construction of Water Distribution System No. 448-90273 TO SERVE JOHNSON COMMERCIAL CENTRE, South of 53rd St. North, West of Meridian, as authorized by Resolution No. 07-089, adopted February 6, 2007, and published February 8, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 20, 2010 in the amount of $1,100.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District VI

b. (470-106/448-90335) Construction of Water Distribution System No. 448-90335 TO SERVE MONARCH LANDING 2ND ADDITION, North of 21st, West of 159th St. East, as authorized by Resolution No. 07-569, adopted October 16, 2007, and published October 19, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 20, 2010 in the amount of $57,600.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

c. (470-100/448-90389) Construction of Water Distribution System, No. 448-90389 TO SERVE SIERRA HILLS SECOND ADDITION, North of Pawnee, West of 143rd St. East, as authorized by Resolution No. 08-276 rescinded by 09-275, adopted June 3, 2008; August 18, 2009, and published June 6, 2008; August 21, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 20, 2010 in the amount of $47,500.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

d. (470-104/448-90406) Construction of Water Distribution System No. 448-90406 TO SERVE BELLECHASE SECOND ADDITION, East of 127th St. East, North of Harry, as authorized by Resolution No. 08-489 rescinded by 09-272, adopted October 21, 2008; August 18, 2009, and published October 24, 2008; August 21, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 20, 2010 in the amount of $75,400.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

e. (470-112/448-90426) Construction of Water Distribution System No. 448-90426 TO SERVE FONTANA 4TH ADDITION, East of 119th St. West, North of 29th St. North, as authorized by Resolution No. 09-229, adopted July 21, 2009, and published July 24, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 20, 2010 in the amount of $75,300.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District V

SEWER PROJECTS:

f. (480-001/ 468-84209) Construction of Lateral 2, Main 23, Southwest Interceptor Sewer, To Serve Emerald Bay Estates & Unplatted Tract A Additions, West of West St., North of 21st, as authorized by Resolution No. 06-411, adopted August 1, 2006; published August 4, 2006. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 20, 2010 in the amount of $133,100.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District V

g. (480-954/ 468-84420) Construction of Lateral 526, Southwest Interceptor Sewer, To Serve Fairlawn Acres Addition, South of Kellogg, West of Woodchuck, as authorized by Resolution No. 07-693, adopted December 4, 2007; published December 7, 2007. Petition for this improvement was signed by owners representing 81% of the property ownership. The Statement of Cost approved July 20, 2010 in the amount of $42,400.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a square foot basis. District V

h. (480-986/ 468-84433) Construction of Lateral 2, Main 24, Four Mile Creek Sewer, To Serve Monarch Landing Second Add. & Unplatted Commercial Tract 2, North of 21st, West of 159th St. East, as authorized by Resolution No. 07-571, adopted October 16, 2007; published October 19, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 20, 2010 in the amount of $82,200.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

i. 480-981/ 468-84516) Construction of Lateral 2, Main 21, Four Mile Creek Sewer, To Serve Sierra Hills Second Addition, North of Pawnee, West of 143rd St. East, as authorized by Resolution No. 08-278 rescinded by 09-276, adopted June 3, 2008, August 18, 2009; published June 6, 2008, August 21, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 20, 2010 in the amount of $122,908.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

j. (480-989/ 468-84566) Construction of Lateral 59, Cowskin Interceptor Sewer, To Serve Goddard School 2nd Addition, North of Kellogg, East of 167th St. West, as authorized by Resolution No. 09-040, adopted February 10, 2009; published February 13, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 20, 2010 in the amount of $326,100.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District V

k. (480-992/ 468-84583) Construction of Lateral 7, Main 14, Four Mile Creek, To Serve Reed Commercial Addition, South of 21st, East of 127th St. East, as authorized by Resolution No. 09-076, adopted March 24, 2009; published March 27, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 20, 2010 in the amount of $12,100.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a square foot basis. District II

STORM SEWER PROJECTS:

l. (485373/468-84555) Construction of , SWD No. 352, East of Greenwich, South of Harry, as authorized by Resolution No. 08-527, adopted November 18, 2008, and published November 21, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 20, 2010, in the amount of $112,400.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

Agenda Item No. III-2

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council Members

SUBJECT: Public Hearing on Proposed Assessments for Eight Paving Projects in February 2011 Bond Sale Series 804 (District II, V, and VI)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Approve the proposed assessments and ordinances.

Background: The City Council was notified on September 14, 2010 that the proposed assessment rolls were on file for public inspection in the Department of Finance.

Analysis: Notice of hearing letters were published September 17, 2010 in the Wichita Eagle, being not less than ten days prior to the date of hearing. All affected property owners have been notified in writing. The Department of Finance and Public Works staff held an informal hearing October 4, 2010 at 11:00 a.m. for the paving projects.

Financial Considerations: Statements of Special Assessment will be mailed to the property owners on November 5, 2010. The property owners have 30 days from date of statement to pay their assessment and avoid paying interest. The assessments not paid during this period will be in the February 2011 Bond Sale. The interest added to the principal amount will be determined by the rate at which the bonds sell. The principal and interest will then be spread and placed on the 2011 tax roll.

Goal Impact: The City of Wichita aggressively uses special assessments to lower the cost of residential developments. In doing so, the City's program satisfies the City Council's goal to promote Economic Vitality and Affordable Living. The program supports this goal through partnering with stakeholders in the development community and sustains affordable living by lowering the costs of home ownership.

Legal Considerations: These projects were initiated pursuant to provisions of KSA 12-6a01 et seq. as amended. All of the projects were 100% petitions with the exception of:

472-84561 (490-176-766158), Improving Mead - Ordered In
472-84796 (490-256-766238), Improving Wichita Street - Ordered In

Recommendation/Action: It is recommended that the City Council close the Public Hearing, approve the proposed assessments and place the ordinances on first reading.

Attachment: Special Assessments projects list.

HEARING ON PROPOSED ASSESSMENTS FOR CONSTRUCTION OF PAVING PROJECTS**:**

On September 14, 2010 the Council was notified that the Proposed Assessment Rolls for construction of the following paving projects has been prepared and were on file in the office of Debt Management in the Finance Department for public inspection:

PAVING PROJECTS:

m. (490-150/472-84484) constructing a Left Turn Lane on 29th Street North (North of 29th Street North, West of Maize), as authorized by Resolution No. 07-155, adopted February 27, 2007, and published March 1, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 13, 2010 in the amount of $16,100.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District V

n. (490-151/472-84537) constructing an Accel/Decel Lane on 29th Street North (North of 29th Street North, West of Maize), as authorized by Resolution No. 07-207, adopted March 27, 2007, and published March 29, 2007, corrected & republished April 5, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 13, 2010 in the amount of $31,500.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District V

o. (490-152/472-84538) 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), as authorized by Resolution No. 07-208, adopted March 27, 2007, and published March 29, 2007. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 13, 2010 in the amount of $18,700.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District V

p. (490-176/472-84561) constructing pavement on Mead (South Line of Central to the North Line of 3rd Street North), as authorized by Resolution No. 07-323, 07-401, 10-197, 10-229 rescinding 07-401, adopted June 5, 2007, July 10, 2007, July 20, 2010, August 17, 2010, and published June 28, 2007, July 5, 2007, July 13, 2007, corrected and republished July 16, 2007, July 23, 2010, July 30, 2010, August 20, 2010. Petition for this improvement was Ordered In. The Statement of Cost approved July 13, 2010 in the amount of $451,400.00 is to be apportioned $237,000 payable by the improvement district, $214,400 payable by the City at Large. The cost has been assessed on a square foot basis. District VI

q. (490-248/472-84764) constructing pavement on Lynnrae, Lynnrae Court to and including the Cul-de-sac, Countryside, Funston (East of Greenwich, South of Harry), as authorized by Resolution No. 08-528, adopted November 18, 2008, and published November 21, 2008. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 13, 2010 in the amount of $319,300.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District II

r. (490-256/472-84796) constructing pavement on Wichita Street (North Line of Murdock to the South Line of 8th Street North), as authorized by Resolution No. 09-068, 09-087, adopted March 10, 2009, April 7, 2009, and published March 13, 2009, March 20, 2009, April 10, 2009. Petition for this improvement was Ordered In.
The Statement of Cost approved July 13, 2010 in the amount of $138,900.00 is to be apportioned 73.02% payable by the improvement district and 26.98% payable by the City at Large. The cost has been assessed on a square foot basis. District VI

s. (490-257/472-84820) constructing pavement on Zoo Park Circle and including the Cul-de-sac (East of Hoover, North of 21st), as authorized by Resolution No. 09-138, adopted May 12, 2009, and published May 15, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 13, 2010 in the amount of $404,100.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a fractional basis. District V

t. (490-260/472-84831) constructing pavement on 21st Street North including Sidewalk (North of 21st, East of Webb), as authorized by Resolution No. 09-192, adopted July 7, 2009, and published July 10, 2009. Petition for this improvement was signed by owners representing 100% of the property ownership. The Statement of Cost approved July 13, 2010 in the amount of $53,600.00 is to be apportioned 100% payable by the improvement district. The cost has been assessed on a square foot basis. District II

Agenda Item No. III-3

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Midtown Neighborhood Stormwater Master Plan (District VI)

INITIATED BY: Department of Public Works

AGENDA: New Business

Recommendation: Approve the project expenditure.

Background: In the past, there have been numerous flooding issues during rain events in the Midtown neighborhood. The 2004 Midtown Neighborhood Plan adopted by the City Council recommended the development of a stormwater master plan that addresses the flooding issues and methods to improve water quality. A Request for Proposal (RFP) for this project was issued on June 7, 2010. Water Resources Solutions, Burns & McDonnell and MKEC in association with CH2MHill responded to this RFP. All three consultants were interviewed. Based on experience and knowledge of the local area, the Staff Screening & Selection Committee selected MKEC on August 10, 2010.

Analysis: The proposed agreement between the City and MKEC will address stormwater quantity and quality within the neighborhood. This includes developing options to address the flooding and providing recommendations for implementation. In addition, this study will include a water quality assessment for runoff.

Financial Considerations: Funding for this project is included in the 2010 Capital Improvement Program budget in the amount of $300,000. The contract with MKEC is in the amount of $291,000 and will be paid with General Obligation bonds.

Goal Impact: This project addresses the goal of Efficient Infrastructure by developing a plan that will resolve future flooding in the Midtown neighborhood.

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

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

Attachments: CIP Sheet, ordinance, and agreement.

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	Storm Water	10/5/2010	Mattson Neighborhood Stormwater Master Plan

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
468-84502		2010	

9. Estimated Start Date	10. Estimated Completion Date	11. Project Revised
1-Nov-10	1-Oct-11	

12. Project Cost Estimate:

ITEM	GO	SA	Other*	TOTAL
Right of Way				
Paving, grading & const.				
Bridge & Culverts				
Drainages design & const.	$100,000			$100,000
Sanitary Sewer				
Sidewalk				
Water				
Railroad				
Totals	$300,000			$300,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

Go Bonds are to be paid by the General Fund

13. Recommendation:

Approve the project and resolution

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

(Published in ***The Wichita Eagle*** on October 29, 2010)

ORDINANCE NO. 48-854

AN ORDINANCE OF THE CITY OF WICHITA, KANSAS AUTHORIZING THE ISSUANCE OF ITS GENERAL OBLIGATION BONDS TO PAY THE COSTS OF PRODUCING A MIDTOWN NEIGHBORHOOD STORMWATER MASTER PLAN.

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

WHEREAS, the City of Wichita (the "City") desires to complete a design study to improve drainage infrastructure for the Midtown neighborhood and surrounding areas; and

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

WHEREAS, under the authority of Article 12, Section 5 of the Kansas Constitution, the Governing Body of the City hereby further finds and determines that it is necessary and desirable and in the interest and for the general welfare of the City and its inhabitants, that general obligation bonds of the City in an amount not to exceed $300,000, exclusive of the cost of interest on borrowed money (the "Bonds") be authorized and issued for the purpose of paying costs associated with the completion of such design study, said Bonds to be issued in accordance with the provisions of K.S.A. 10-101 *et seq*., as amended and supplemented.

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

SECTION 1. The Governing Body hereby finds and determines that it is necessary and desirable to authorize the issuance of general obligation bonds under the authority of Article 12, Section 5 of the Kansas Constitution in an amount not to exceed $300,000, exclusive of the costs of interest on borrowed money, for the purpose of paying costs associated with the completion of a design study to improve drainage infrastructure for the Midtown neighborhood and surrounding areas (the "Project"). Such Bonds shall be sold and delivered in accordance with the provisions of K.S.A. 10-101 *et seq*., as amended and supplemented.

SECTION 2. It is hereby further authorized, ordered and directed that in order to temporarily finance the costs of the Project prior to the completion thereof and until issuance of the Bonds as hereinbefore provided, there may be issued temporary improvement notes (the "Notes"), the aggregate amount of which shall not exceed the sum of $300,000, such Notes to be issued from time to time upon subsequent ordinance of the City which shall provide and set forth the details of the Notes, including the fixing of the dates, terms, denominations, interest rates and maturity dates thereof. Such Notes shall be issued and provision shall be made therefor as funds are needed and required for the orderly completion of the Project. Any Notes issued under the authority of this Section shall be issued under and will contain a recital that they are issued under the authority of K.S.A. 10-123, as amended and supplemented, and Article 12, Section 5 of the Kansas Constitution, and shall contain all other usual and required recitals and covenants and be in the form required therefor by said K.S.A. 10-123, as amended and supplemented; and said Notes may be issued in combination with any other temporary notes being issued

by the City as shall be determined by the Governing Body at the time of such issuance to be in the City's best interests.

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

PASSED AND APPROVED by the governing body of the City of Wichita, Kansas this 26th day of October, 2010.

_____

Carl Brewer, Mayor

Attest:

_____

Karen Sublett, City Clerk

(Seal)

Approved as to Form:

_____

Gary E. Rebenstorf, Director of Law

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

Mid-Kansas Engineering Consultants
In association with
CH2MHill

for

Midtown Neighborhood Stormwater Master Plan

THIS AGREEMENT, made this _____ day of _____, 2010, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and Mid-Kansas Engineering Consultants in association with CH2MHill, party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to prepare:

Develop a Midtown Neighborhood Stormwater Master Plan

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

SCOPE OF SERVICES

The ENGINEER shall furnish professional services as required for preparing a Midtown Neighborhood Stormwater Master Plan and to perform the PROJECT tasks outlined in Exhibit A.

II. IN ADDITION, THE ENGINEER AGREES

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

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

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

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

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

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

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

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

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

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

III. THE CITY AGREES:

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

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

C. To pay the ENGINEER for his services in accordance with the requirements of this agreement.
D. To provide the right-of-entry for ENGINEER'S personnel in performing field surveys and inspections.
E. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The CITY agrees to advise, the ENGINEER, in writing, of the person(s) designated as Project Manager with the issuance of the notice to proceed on the work required by this agreement. The CITY shall also advise the ENGINEER of any changes in the person(s) designated Project Manager. Written notification shall be provided to the ENGINEER for any changes exceeding one week in length of time.
F. To examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by ENGINEER in a timely fashion.

IV. PAYMENT PROVISIONS

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

Project No. 468-84712 $291,000.00

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

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

V. THE PARTIES HERETO MUTUALLY AGREE:

A. That the right is reserved to the CITY to terminate this agreement at any time, upon written notice, in the event the PROJECT is to be abandoned or indefinitely postponed, or because of the ENGINEER'S inability to proceed with the work.
B. That the field notes and other pertinent drawings and documents pertaining to the PROJECT shall become the property of the CITY upon completion or termination of the ENGINEER'S services in accordance with this agreement; and there shall be no restriction or limitation on their further use by the CITY. Provided, however, that CITY shall hold ENGINEER harmless from any and all claims, damages or causes of action which arise out of such further use when such further use is not in connection with the PROJECT.
C. That the services to be performed by the ENGINEER under the terms of this agreement are personal and cannot be assigned, sublet or transferred without specific consent of the CITY.
D. In the event of unavoidable delays in the progress of the work contemplated by this agreement, reasonable extensions in the time allotted for the work will be granted by the CITY, provided, however, that the ENGINEER shall request extensions, in writing, giving the reasons therefor.
E. It is further agreed that this agreement and all contracts entered into under the provisions of this agreement shall be binding upon the parties hereto and their successors and assigns.
F. Neither the CITY'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the ENGINEER under this agreement shall be construed to operate as a waiver of any right under this agreement or any cause of action arising out of the performance of this agreement.
G. The rights and remedies of the CITY provided for under this agreement are in addition to any other rights and remedies provided by law.
H. It is specifically agreed between the parties executing this contract, that it is not intended by any of the provisions of any part of this contract to create the public or any member thereof a third party

beneficiary hereunder, or to authorize anyone not a party to this contract to maintain a suit for damages pursuant to the terms or provisions of this contract.

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

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

SEAL:

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

Mid-Kansas Engineering Consultants

_____
(Name & Title)

ATTEST:

_____

SCOPE OF SERVICES

Task 1 – Project Chartering & Data Collection

Scope
CONSULTANT shall lead a kick-off meeting with City staff to establish plan goals and master planning instruments, outline preliminary purposes and expectations for parallel Midtown master planning efforts, and identify success criteria. Meeting minutes will be provided to City staff.

CONSULTANT shall lead a kick-off meeting with the Midtown Neighborhood Association and provide meeting minutes to the Association and City staff.

CITY shall provide all currently available GIS and LIDAR data for the two basins in which the Midtown Neighborhood resides. Our understanding is data will be complete and accurate in order to develop a stormwater model.

CONSULTANT shall notify City staff if GIS and LIDAR data is found to be incomplete or incorrect. CITY shall provide corrected or updated data.

Under this Scope of Services, the CONSULTANT shall not provide additional field survey. This can be provided as required and requested by the City for an additional cost.

CITY shall provide a meeting location as required to meet with the Midtown Neighborhood Association.

Deliverables
- Kick-off Meeting Minutes
- Midtown Neighborhood Association Meeting Minutes

Task 2 – Water Quantity Existing Conditions Model

Scope
Utilizing PCSWMM software, CONSULTANT shall prepare the Hydrology & Hydraulics (H&H) Existing Conditions model for the 2-, 5-, 10-, 25-, & 100-yr storm events, including the location of watershed interconnections, sump areas, overflow locations, structure locations, and reverse pipe flow conditions. A comprehensive set of analyses will be performed including both the east and west basins ("SWS Basin East" currently flowing to the Wichita Drainage Canal and "SWS Basin West" currently flowing to the Little Arkansas River, both delineated on the exhibit that is attached to this Scope of Services) and will show opportunities for supplementing or restructuring the existing storm water system to alleviate flooding problems. A review of hydraulic grade lines at the Little Arkansas River and the Wichita Drainage Canal will be performed.

CONSULTANT shall prepare the Hydrology & Hydraulics Existing Conditions model based only on the current land uses within the Midtown Neighborhood. A model incorporating future, planned, or projected land uses shall not be part of this scope of work.

Incorporating the currently available GIS and LIDAR data, CONSULTANT shall prepare the geodatabase representing the existing site conditions. PCSWMM and FLO-2D model output will be incorporated into the geodatabase. Geodatabase will be established in conformance with City of Wichita GIS requirements.

In preparing the geodatabase, CONSULTANT shall work with City staff to appropriately populate the geodatabase. Parameters such as delineated sub-basins, land coverage, CN values, percent

impervious, discharges, and inundation coverage areas for each storm event shall be included in the geodatabase. Reasonable deviations to this list of parameters will be acceptable. Once the final geodatabase is submitted to the City at the end of the Project, CONSULTANT shall not do any additional updates.

Deliverables

- PCSWMM Existing Conditions model electronic files
- FLO-2D electronic files
- 11"x17" Inundation map
- 11"x17" Map of existing drainage basin boundary map
- 11"x17" Existing storm water infrastructure map

Task 3 – Water Quality Existing Conditions Model

Scope

CONSULTANT shall add the water quality analysis module to the Hydrology & Hydraulics Existing Conditions model. Water quality impacts will be estimated using current land uses coupled with typical pollutant loads from published research. This model will provide the basis for evaluating the potential effectiveness of Master Plan's Best Management Practices (BMPs).

CONSULTANT shall develop the Existing Conditions Water Quality model for up to four (4) representative areas (residential, commercial, industrial, and a commercial/residential mix) within the Midtown Neighborhood. Representative areas shall be modeled for 1.2" of rainfall which has been identified as the depth corresponding to the 80th percentile storm event. Model results from the representative areas shall be used to determine BMP implementation throughout the remainder of the Midtown Neighborhood.

CITY shall provide all currently available water quality data within either drainage basin in which the Midtown Neighborhood resides.

Deliverables

- PCSWMM Existing Conditions model electronic files for selected representative areas
- 11"x17" Map of land use coupled with one (1) water quality parameter

Task 4 – Stakeholder Coordination

Scope

CONSULTANT shall chair a series of meetings with the stakeholders. The first meeting will be with City staff, followed by a meeting with the consultant working on the streetscape and transportation master planning effort, and finally a Public Meeting will be held in conjunction with the other consultant. Meeting minutes will be provided to stakeholders.

CONSULTANT shall review the Hydrology & Hydraulics Existing Conditions model with City staff.

CONSULTANT shall formulate a questionnaire suitable for distribution by email, in hard copy form, or for posting on a website. Questionnaire shall be made available to Midtown Neighborhood residents, property owners, business owners, and others who live and / or work in the Neighborhood for the purpose of obtaining feedback. A written analysis of questionnaire results will be provided to City staff.

CONSULTANT shall develop PowerPoint slides and Board-type exhibits for use at meetings with the streetscape and transportation master planning consultant and the Public. Slides and exhibits shall be based on previously produced maps.

CITY shall produce all individual handout type materials for use and distribution at Public Meeting.

CITY shall print questionnaires to be mailed or delivered in hard copy form.

For the questionnaires that are to be mailed to the intended recipients, CONSULTANT shall fold, address envelopes, provide postage, and mail the questionnaires.

CONSULTANT shall host any on-line version of the same questionnaire.

CITY shall provide meeting facilities for the Public Meeting and the meeting with streetscape and transportation consultant.

Deliverables

- Public Questionnaire as an electronic word processor document
- Up to five (5) page written report analyzing questionnaire results
- City Staff and Streetscape/Transportation Consultant Meeting Minutes
- Public Meeting No. 1 Minutes

Task 5 – Basin Master Planning & Concept Discovery

Scope

CONSULTANT shall utilize output from the Hydrology & Hydraulics Existing Conditions model and stakeholder input to plan storm water quantity and quality improvements throughout the "SWS West" and "SWS East" basins within which the Midtown Neighborhood resides.

CONSULTANT shall identify up to ten (10) alternate storm water sewer system modifications and improvements, identify up to seven (7) potential BMP alternatives, identify and confirm utility conflicts, constructability issues, and develop corridor & alignment constraints.

Along the alignment of proposed improvements, CONSULTANT shall identify and confirm utility conflicts, constructability issues, investigate potential for soil contamination, determine conflicts with historical sites, and develop corridor & alignment constraints of the alternate storm water sewer system modifications and improvements. Furthermore, CONSULTANT shall analyze the ability of the proposed improvements to serve adjacent sub-basins but shall not identify and confirm utility conflicts, constructability issues, and develop corridor & alignment constraints of the lateral systems serving these sub-basins.

CONSULTANT shall prepare alternative H&H model representations for the purpose of assisting decision making among the alternate storm water sewer system modifications and improvements.

CONSULTANT shall prepare estimates of probable construction costs for storm water sewer system modifications and improvements and BMP alternates.

CITY shall provide appropriate City staff for review of conceptual storm water sewer system modifications and improvements and proposed BMP alternatives for the purpose of rendering decisions on which of the concepts should be selected as capital improvement projects.

Deliverables

- PCSWMM Output from model representations for alternate storm water sewer system modifications and improvements.
- 11"x17" Map for City staff use outlining conceptual storm water sewer system modifications and improvements.

- 11"x17" Inundation map showing expected changes from the conceptual storm water sewer system modifications and improvements.
- 2010/2011 Estimates of Probable Construction Costs for the conceptual storm water sewer system modifications and improvements.

Task 6 – Concept Discovery Development

Scope
Based on the concepts selected as capital improvement projects, CONSULTANT shall represent up to seven (7) proposed storm water sewer system modifications and improvements and up to five (5) BMP improvements in a preliminary Hydrology & Hydraulics Proposed Conditions model to determine the expected effects on the basin.

CONSULTANT shall prepare a written plan or map exhibit depicting locations within the Midtown Neighborhood

CONSULTANT shall prepare preliminary proposed conditions H&H model for the 2-, 5-, 10-, 25-, & 100-yr storm events, incorporating the storm water sewer system modifications and improvements selected as potential capital improvement projects as well as the conceptual BMP alternatives.

CONSULTANT shall update geodatabase to incorporate potential capital improvement projects and prepare inundation maps as output from geodatabase.

As needed, CONSULTANT shall revise estimates of probable construction costs for storm water sewer system modifications and improvements and BMP alternates.

Deliverables
- PCSWMM Output from model representations
- Preliminary PCSWMM proposed conditions H&H model electronic files
- 11"x17" Inundation map incorporating storm water sewer system modifications and improvements.
- 11"x17" Map outlining proposed capital improvement projects
- One sheet profile of each proposed capital improvement, printed in black and white, on an 11" tall sheet which will be as long as necessary to show length of improvement.
- Revised 2010/2011 Estimate of Probable Construction Costs for the storm water sewer system modifications and improvements
- Written plan or 11"x17" Map showing locations of proposed BMPs

Task 7 – Stakeholder Coordination & Final Model Preparation

Scope
CONSULTANT shall chair a second coordination meeting with the consultant working on the streetscape and transportation master planning effort and present the proposed improvements.

CONSULTANT shall participate in a second Public Meeting which will be in conjunction with the streetscape and transportation master planning consultant.

CONSULTANT shall represent stakeholder feedback from these meetings in the Final Hydrology & Hydraulics Proposed Conditions model to determine the expected effects on the basin.

CONSULTANT shall develop inundation and proposed improvement maps utilizing the geodatabase.

As needed, CONSULTANT shall revise estimates of probable construction costs for storm water sewer system modifications and improvements and BMP alternates.

CONSULTANT shall develop PowerPoint slides and Board-type exhibits for use at meetings with the streetscape and transportation master planning consultant and the Public. Slides and exhibits shall be based on maps and other exhibits previously produced within this scope of work.

CITY shall produce all individual handout type materials for use and distribution at Public Meeting.

CITY shall provide meeting facilities for the Public Meeting and the meeting with streetscape and transportation consultant.

Deliverables

- City Staff and Streetscape/Transportation Consultant Meeting Minutes
- Public Meeting No. 2 Minutes
- Inundation and proposed improvement map

Task 6 – Master Plan Development

Phase A – Preliminary Master Plan and Public Meeting

Scope

CONSULTANT shall prepare the preliminary Midtown Neighborhood Stormwater Master Plan document and submit to City staff for review. Preliminary Master Plan will also serve to outline content for third public meeting.

CONSULTANT shall chair the final coordination meeting with the streetscape and transportation master planning consultant.

CONSULTANT shall participate in the third and final Public Meeting for the purpose of outlining the proposed improvements, their expected effects, the recommended priorities, and estimated project costs.

CONSULTANT shall develop PowerPoint slides and Board type exhibits for use at meetings with the streetscape and transportation master planning consultant and the Public. Slides and exhibits shall be based on previously produced maps.

CITY shall produce all individual handout type materials for use and distribution at Public Meeting.

CITY shall provide meeting facilities for the Public Meeting and the meeting with streetscape and transportation consultant.

Deliverables

- Preliminary Midtown Neighborhood Stormwater Master Plan document
- City Staff and Streetscape/Transportation Consultant Meeting Minutes
- Public Meeting No. 3 Minutes

Phase B – Final Master Plan

CONSULTANT shall prepare the final Midtown Neighborhood Stormwater Master Plan document and submit to City staff.

CONSULTANT shall confirm GIS data and format and submit geodatabase to the City.

CONSULTANT shall complete the final Hydrology & Hydraulics PCSWMM Proposed Conditions model.

CONSULTANT shall provide a Section in the Master Plan document as detailed in the Memorandum entitled, "Project Scope of Work related to EPA's *Nine Minimum Elements to be Included in a Watershed Plan*". Said Memorandum is attached as an exhibit to this Scope of Services.

Deliverables

- Master Plan Document
  - Existing Conditions
    - Water Quantity
    - Water Quality
  - Capital Improvement Project Concept Discovery
    - Master Planning and Preliminary Concept Discovery
    - Concept Discovery Development
  - Proposed Conditions
    - Water Quantity
    - Water Quality
  - Recommendations
    - Water Quantity - Prioritized Capital Improvement Projects
    - Water Quality
  - Summary relating Master Plan to EPA's *Nine Minimum Elements to be Included in Watershed Plan*
  - Exhibits
    - 11"x17" Existing Conditions Inundation map
    - 11"x17" Map of existing drainage basin boundary map
    - 11"x17" Existing storm water infrastructure map
    - 11"x17" Inundation map showing expected changes from the conceptual storm water sewer system modifications and improvements.
    - 11"x17" Map of land use coupled with a water quality parameter
    - 11"x17" Map outlining proposed capital improvement projects
    - 11"x17" Map showing locations of proposed BMPs (or wetter plan)
  - Cost Estimates
- FLO 2D model output
- Final PCSWMM Proposed Conditions model electronic files
- Final Geodatabase
  - Existing Conditions
  - Proposed Capital Improvements
  - Existing and Proposed storm sewer structure information
  - Inundation areas – before and after implementation of capital improvements
  - PCSWMM input and output
  - FLO 2D input and output
  - Existing utilities and conflict information

Project Schedule

Commence Project – September 28, 2010
Public Meeting #1 – November 1, 2010
Public Meeting #2 – February 1, 2011
Public Meeting #3 – April 5, 2011
Submit Final Storm Water Master Plan – May 27, 2011

MKEC ENGINEERING CONSULTANTS, INC.
411 N. Webb Road
Wichita, Kansas 67206
PHONE: (316) 684-9600 FAX: (316) 684-5100

M E M O R A N D U M

To: Scott Indebac, P.E., CFM; File

Date: 9/7/2010

From: Mark Buckingham, P.E.

Re: Midtown Neighborhood Storm Water Master Plan
Project Scope of Work related to EPA's *Nine Minimum Elements to be Included in a Watershed Plan*

MKEC Proj. No.: N/A

As a Section in the Master Plan document, the CONSULTANT shall provide written documentation conforming Best Management Practice (BMP) components recommended within the Master Plan to the EPA's *Nine Minimum Elements to be Included in a Watershed Plan*. This Section of the Master Plan will articulate areas where the recommended BMP improvements and approaches specifically address the *Nine Minimum Elements*. Requirements within the *Nine Minimum Elements* that are of an on-going programmatic or management nature will be included in the Section in so far as the CITY provides approach, cost estimating, implementation, and other details as needed to complete the narrative.

The following summarizes the expected relationship between the Project scope of work and the EPA's *Nine Minimum Elements to be Included in a Watershed Plan*.

1. *EPA Item (a)* – Water Quality (WQ) modeling will be performed for up to four (4) representative areas in the two drainage basins with which Midtown Neighborhood resides. Causes of impairment commonly associated with land use categories may be identified as part of the modeling effort, depending upon which representative areas are chosen. Causes of impairment may also be identified by and use in the hydrology and hydraulic (H&H) modeling effort. However, all causes of impairment cannot be identified since the WQ model will not encompass the entirety of the watershed within which Midtown Neighborhood resides. WQ model results from the representative areas will be extrapolated to all areas in the Neighborhood as judgments are made for which BMP's should be implemented and at what locations. These results will be included in the *Nine Minimum Elements* Section of the Master Plan.

2. *EPA Item (b)* – The model will indicate expected load reductions in the representative areas based on the selected BMP's. These load reductions will be extrapolated to determine their estimated total effect over the Midtown Neighborhood. These expected load reductions will be included in the *Nine Minimum Elements* Section of the Master Plan.

3. *EPA Item (c)* – Expected load reductions for recommended BMP's, based on standard load reduction values for the specific BMP's, will be included in the Master Plan. Critical areas for the implementation of such BMP's will be identified using the representative area modeling and extrapolation procedure described in Item #1 above.

4. *EPA Item (c)* – Capital improvement projects and structural BMP's identified by the Master Plan for implementation will be provided with estimates of probable construction costs. The CONSULTANT will partner with the City to include in the Master Plan information about financial and technical assistance the City may require for on-going implementation and programming. These efforts will extend beyond construction projects and are associated with implementing, maintaining, and managing efforts required to achieve load reductions such as on-going WQ monitoring, identifying which regulatory authority might implement the program, information and education (I/E) activities, and others as suggested by the *Nine Minimum Elements*. Descriptions of such programs and efforts will be included in the *Nine Minimum Elements* Section in as much as the CITY provides details as to the approach, cost estimating, implementation, and other components of the program.

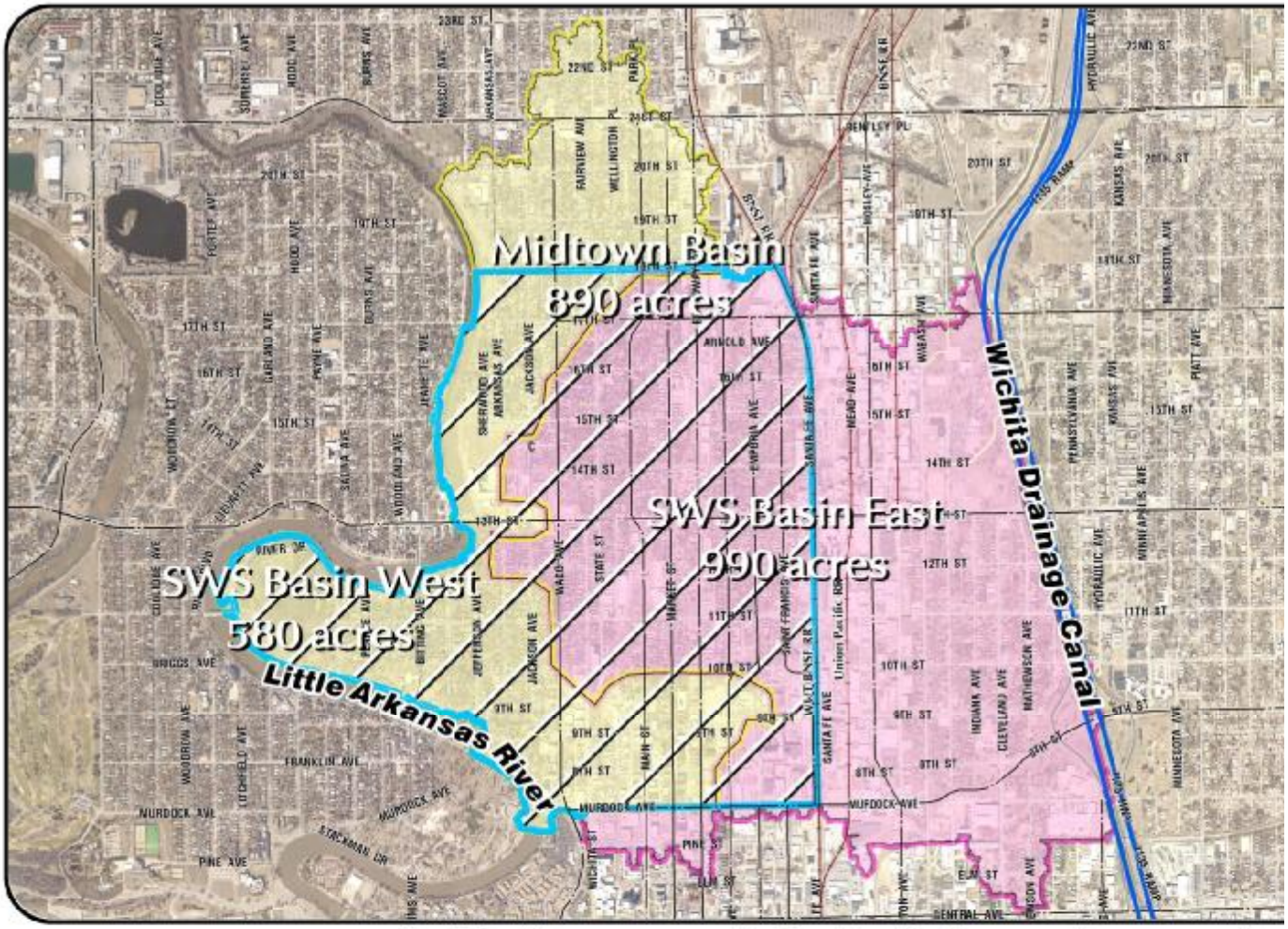
5. *EPA Item (e)* – The *Nine Minimum Elements* Section will describe the public outreach and meeting cycle that will be undertaken as part of the master planning effort. I/E activity required that is outside the public outreach effort and meeting cycle described in the Project scope of work will need to be undertaken by the CITY. A description of the implementation of this additional I/E effort can be included in the *Nine Minimum Elements* Section in as much as the CITY provides the details of the proposed effort.

6. *EPA Item (f)* – A schedule for implementing BMP's recommended as part of the Master Plan will be described in the *Nine Minimum Elements* Section. If it is the desire of the City to implement BMP's in addition to those recommended in the Master Plan, these can also be described the *Nine Minimum Elements* Section in as much as the CITY provides the details of the proposed effort.

7. *EPA Item (g)* – Non-point source management measures may be included in the final BMP recommendations. If this is the case, the *Nine Minimum Elements* Section will include a description of interim, measurable milestones for use in determining if the recommendations are being implemented. If it is the desire of the City to implement non point source management measures in addition to those recommended in the Master Plan, these can also be described the *Nine Minimum Elements* Section in as much as the CITY provides the details of the proposed effort.

8. *EPA Item (h)* – The Project will include, based on the proposed conditions WQ model, the expected pollutant load reductions due to BMP's recommended within the Master Plan. Based on where the recommended BMPs are implemented within the Midtown Neighborhood, interim targets for determining expected load reductions will be developed. These interim targets will be included in the *Nine Minimum Elements* Section. The interim targets may be either a direct or indirect measurement.

9. *EPA Item (i)* – The CONSULTANT will provide the City guidance on implementing a storm water quality monitoring program. The CONSULTANT will include a written synopsis of the monitoring program in the *Nine Minimum Elements* Section of the Master Plan in as much as the CITY provides the details of the monitoring approach and implementation effort.



Midtown Neighborhood

Stormwater Master Plan - Overview

REVISED 10-19-2010 (RECOMMENDED ACTION)

Agenda Item No. III-4

City of Wichita
City Council Meeting
October 19. 2010

TO: Mayor and City Council

SUBJECT: Agreement to Transfer Partial Water Rights

INITIATED BY: City Manager's Office

AGENDA: New Business

- -

Recommendation: Approve the development of an agreement to transfer evaporative water rights from the City of Wichita to Fly High Inc.

Background: The City of Wichita is the holder of an application and permit for water evaporation rights. This permit was issued by the State of Kansas on July 23, 2004. This permit entitles the City of Wichita to use up to 600 acre of feet of water per year at an unspecified rate. These water usage rights are associated with the Kingsbury tract which is currently under design for redevelopment as park and open space. City staff has determined that the Kingsbury project will not require usage of all of the water evaporative rights approved.

Analysis: Fly High Inc. is interested in the redevelopment of land recently purchased at 29th Street North and Hoover Road, known as the Riverside Airport. This property has the potential for redevelopment into an upscale housing development which could incorporate use of the existing airport runway along with water features derived from sand mining operations. The developer is requesting the City transfer the natural evaporative losses from 130 acres of surface from the Kingsbury tract to this location to assist with redevelopment efforts. In exchange for the water rights, the developer has agreed to bring the housing development into the City limits within five years. Should annexation not occur within this time frame, the developer will reimburse the City $500 per acre for the evaporative rights.

The City of Wichita agrees to transfer up to 216 acre feet of evaporative water rights from the Kingsbury tract to Fly High Inc. Fly High Inc. agrees to accomplish all of the paper work associated with the transfer and is responsible for all State fees and filing costs. All State of Kansas and Equus Beds Groundwater Management District No. 2 requirements will be met. Should the parties determine, after due diligence, that this agreement cannot be equitably accomplished, it will not be pursued.

Financial Considerations: There is no financial obligation to the City of Wichita associated with the transfer of water rights to Fly High Inc. The developer has agreed to reimburse the City $500/acre in the event that the residential development is not annexed by the City within five years

Goal Impact: This project addresses the goals of Economic Vitality and Affordable Living and Quality of Live as the redevelopment of this tract of land increases the City's tax base and creates a development with new and improved amenities for the citizens of Wichita.

Legal Considerations: The City has the legal authority to enter into this agreement subject to regulatory approval. The Law Department will negotiate this agreement to conform to those requirements.

Recommendations/Actions: It is recommended that the City Council direct staff to investigate and negotiate an agreement to transfer partial evaporative water rights to Fly High Inc. and authorize the Mayor to sign the agreement.

Attachment: None

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Amendments to the Building Code - Title 18.50 (2006 Edition of the International Building Code); Title 18.51 (2006 Edition of the International Residential Code); and Title 18.08 (Building Permit Fee Schedule)

INITIATED BY: Office of Central Inspection

AGENDA: New Business

Recommendations: Approve first reading of ordinances amending the City's currently adopted 2006 Edition of the International Building Code (IBC) (Chapter 18.50), the 2006 Edition of the International Residential Code (IRC) (Chapter 18.51) and the Building Permit Fee Schedule (Chapter 18.08).

Background: The City's current Building Code adopts model building codes developed and published by the International Code Council (ICC), including adoption of the 2006 Editions of the IBC (Chapter 18.50) and the IRC (Chapter 18.51). Nationally, most jurisdictions with building codes use model codes as the basis for local ordinances. Model codes, like those developed and published by the ICC, are generally updated and republished every three (3) years. For over 50 years, Wichita has reviewed, amended and adopted such model building codes on a three (3) to six (6) year cycle. This helps ensure that Wichita is using current national codes, as well as current, nationally tested and certified installation practices, materials and products.

The City's Building Code also sets forth a Building Permit Fee Schedule in Chapter 18.08. This fee schedule is proposed to be modified to codify increases to valuation-based permit fee tables approved in February 2009 (in conjunction with a City Council action to increase building permit fees by approximately fifteen percent). Various other building permit plan review, building permit processing, building permit site inspection and building permit code enforcement fees are being modified to reflect the current costs of providing these services.

Analysis: In May 2009, Office of Central Inspection (OCI) staff initiated review of the 2009 Editions of the IBC and IRC in conjunction with stakeholder representatives from the Wichita Fire Department, Wichita Area Builders Association, the Association of General Contractors, the local American Institute of Architects, local structural engineers and the Wichita Board of Code Standards and Appeals (BCSA). Several committees comprised of staff and stakeholders met routinely for nearly six (6) months to review the 2009 Editions of the IBC and IRC, and to compare them to the currently adopted 2006 Editions of the IBC and IRC.

Between late 2009 to early 2010, staff made presentations to the BCSA outlining key changes between the 2006 and 2009 Editions of the IBC and IRC, and also presented proposed local amendments to the 2009 Editions of the IBC and IRC (developed per staff and review committee recommendations). However, in March 2010, after a several month review of proposed ordinances to adopt the 2009 Editions of the IBC and IRC, the BCSA recommended that the City not move forward with adoption of the 2009 Editions of the IBC and IRC. The BCSA recommended instead that the City update the adopted 2006 Editions of the IBC and IRC to include many of the amendments and/or clarifications developed by staff/various code review committees between mid 2009 and early 2010, and to incorporate many new 2009 IBC and 2009 IRC Edition provisions.

The BCSA further recommended that the City: (1) move from the currently adopted 2000 Edition of the International Fire Code (IFC) to the 2006 Edition of the IFC; (2) move from the currently adopted 2000 Edition of the Uniform Plumbing Code (UPC) to the 2006 Edition of either the UPC or the International Plumbing Code (IPC); and (3) retain the 2006 Edition of the International Mechanical Code (IMC). The BCSA's expressed

interest was to get all building, fire and trade codes under the 2006 Editions of the various national model building, fire and trade codes.

In April 2010, the current status of code review, and of building and trade board recommendations, was presented to the Wichita City Council during a Council workshop. Based on feedback received during and after the workshop, OCI and Fire Department staff moved forward with development of ordinances as generally recommended by the BCSA in March 2010.

Since late April 2010, City staff has developed and re-presented proposed ordinance amendments (as generally recommended by the BCSA in March 2010) to the BCSA. The current ordinance amendments have also been presented to various building and design groups for review and input. On August 2, 2010, the BCSA recommended approval of the proposed ordinances amending the currently adopted 2006 Editions of the IBC and IRC, and modifying the Building Permit Fee Schedule.

Summaries of the most significant proposed amendments to the currently adopted 2006 Editions of the IBC and IRC are included in Attachments 1 and 2.

Financial Considerations: There are no costs to the City associated with adoption of the ordinance. Adoption of the amended Building Permit Fee Schedule ordinance (18.08) codifies a modified valuation-based building permit fee table authorized by City Council in February 2009, and increases various other building permitting fees to recover costs of services provided through those fees.

Goal Impact: This item impacts the Provide and Safe and Secure Community goal indicator by ensuring Wichita's use of the 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) amend Chapter 18.50 of the Code of the City of Wichita (IBC); (2) amend Chapter 18.51 of the Code of the City of Wichita (IRC); and (3) amend Chapter 18.08 of the Code of City of Wichita, which modifies the Building Permit Fee Schedule.

Attachments: Attachment 1 - Summary of Proposed Key Amendments to Chapter 18.50 (2006 IBC); Attachment 2 - Summary of Proposed Key Amendments to Chapter 18.51 (2006 IRC); Delineated ordinance for Chapter 18.50 (IBC); Delineated ordinance for Chapter 18.51 (IRC); Delineated ordinance for Chapter 18.08 (Building Permit Fee Schedule).

Attachment 1

Summary of Proposed Key Amendments to Chapter 18.50 (2006 IBC)

The following amendments to Chapter 18.50 incorporate certain provisions of the 2009 IBC into the current Building Code, which has adopted the 2006 IBC (with local amendments). Generally, these amendments will provide additional clarity for designers, builders and staff, and will provide additional design alternatives (many of which could reduce overall project costs).

IBC Section 402.6.1. Reduced open space. The covered mall exterior open space requirements have been relaxed to allow for reduced open space (from 60 feet to 40 feet) when certain conditions are met, similar to other types of occupancies.

IBC Section 421. Occupanices. This amendment is a new code section (with new subsections) that mirrors a 2009 IBC section specifically addressing requirements for "Live/Work Units" (allows mercantile/business uses to be combined with residential uses, which will greatly benefit redevelopment of existing structures).

IBC Section 507.6. Group A-3 buildings. The requirement that all unlimited area building A-3 assembly area floors be within 21" of adjoining grade (for sprinkled, non-combustible construction classifications) has been removed. The previous local amendment exception for small raised areas located in religious uses has been deleted since the code will now allow for raised platforms (not limited to 21 inches above grade level as previously restricted).

IBC Table 601. Fire-resistance rating requirements for building elements. Per a new provision in Section 704 of the 2009 IBC, fire resistance protective requirements have been amended to account for "secondary" structural members, requiring a lower level of fire protection for these "secondary" members (will decrease costs for protecting the structural frame).

IBC Section 803.10 and 803.10.1. Site-fabricated stretch systems. This amendment mirrors a new 2009 IBC section that regulates "Site Fabricated Stretch Wall and Ceiling Systems" (these are finish systems that are seeing increased use in schools, museums and other assembly venues).

IBC Section 903.3.1.2.1. Balconies and decks. Per a new 2009 IBC provision, the requirement to provide fire sprinkler protection at decks or balconies has been relaxed to only require this protection if decks or balconies have roof coverings (reduction in costs since most decks or balconies at hotels/apartments are not covered).

IBC Section 907.2. Where required – new buildings and structures. This amendment incorporates a 2009 IBC provision that does not require manual fire alarm boxes in Group R-2 occupancies (multifamily apartment buildings, dormitories, boarding houses), in order to reduce potential for tampering and/or nuisance alarms.

IBC Section 1007.3. Exit stairways. "Area of refuge" requirements are added to follow current City practice (per past ICC guidance and new 2009 IBC provisions), which exempt certain fire-sprinkled and Group R-2 occupancies from providing a separate area of refuge.

IBC Section 1008.1.2. Door swing. By this amendment, sliding doors may be allowed as a means of egress in certain occupancies.

IBC Sections 1008.1.8.4. Bolt locks. and 1008.1.8.8. Special locking arrangements in Group I-2. Manual edge bolts, surface-mounted bolts and electro-magnetic door locks will be permitted "by right" if certain conditions are met (per new 2009 IBC provisions).

IBC Section 1007.4. Elevators. This amendment sets forth requirements for access to roof top elevator equipment rooms that mirrors the requirements of the 2008 National Electrical Code elevator code requirements, as adopted by the City in late 2008.

IBC Section 1014.3. Common path of egress travel. Minimum "common path of travel" distance requirements have been increased for Group R-2 occupancies that have an NFPA 13R fire sprinkler system.

IBC Section 1017.3. Dead ends. Dead end corridor length requirements are increased for many occupancy classifications when otherwise protected with a fire sprinkler system.

IBC Section 1704. Special Inspector qualifications have been relaxed in the 2009 IBC to allow the project design professional to act as the required "special inspector" (cost benefit to project owner). A revised table based on building area and construction type is being included to more easily determine when "special inspections" are required.

In addition to the above amendments, which incorporate various 2009 IBC provisions into the City's Building Code, the following changes are also being made.

IBC Section 507.3. Sprinklered, one story & 507.10 Group E (educational) buildings. The current amendment to the 2006 IBC has been deleted since less restrictive local amendments to the IBC are not enforceable on school projects (per State statutes). The prior amendment allowed Group E occupancies to be placed within an unlimited area single story building, such as a mall facility.

IBC Table 601. Fire-resistance rating requirements for building elements. The previous footnote "h" amendment has been reworked to be less confusing. Other key changes to the table include: (1) an increase in the allowed size of a canopy without a fire resistance rating from 1,000 s.f. to 1,500 s.f. and (2) deletion of the one-hour separation requirement between the canopy and the adjacent building.

IBC Section 903.2.4. Group F-1 & IBC Section 903.2.9 Group S-1. Both of these sections establish fire area (12,000 s.f.) limitations for buildings without automatic sprinklers. The currently adopted amendment package for the 2006 IBC includes the same deletions, such that, there is not a restriction on the fire area for groups F-1 and S-1 occupancies. Previously, the '97 UBC did not have any fire area restriction for these two occupancies, so this amendment mirrors that standard.

IBC Section 903.4.1. Woodworking operations. This is a new amendment that establishes criteria for when a sprinkler system is triggered for a woodworking operation in excess of 2,500 s.f., which is located within a Group F-1 occupancy. The amendment requires non-combustible walls to define the area of the woodworking operation.

IBC Section 1009.14. Stairway to elevator equipment. This section requires roofs and penthouses containing elevator equipment to be accessed by a stairway. The section has been re-titled to: "Access to equipment rooms and areas" to indicate that access to equipment rooms and areas is subject to the adopted standards of the City and of OSHA. In addition, the text has been reworked to delete the above referenced stair to elevator equipment on roofs and in penthouses.

IBC Section 1101.2. Design. Add language to regulate side reach ranges for wheelchair users to mirror that of forward reach ranges: not less than 15 inches or more than 48 inches. This change mirrors the proposed ADA rewrite that is under Department of Justice review.

IBC Section 1503.4. Roof drainage. The amendment for this section has been rewritten from the text found in the current amendment. It establishes provisions for the design of roof drainage systems and condensate/waste water.

IBC Section 1503.4.1. Secondary drainage required. And Section 1503.4.2. Scuppers. The amendments for these two sections establish criteria for secondary drains and scuppers.

IBC Section 2902.4. Required public toilet facilities. This amendment clarifies that uses classified as a Group A and/or E occupancy are required to have access to public restrooms. In addition, clarification is made to address restroom requirements for outdoor Group A occupancies.

Attachment 2

Summary of Proposed Key Amendments to Chapter 18.51 (2006 IRC)

IRC Section R105.2. Work exempt from permit. A new exception is added to exempt small movable storage cabinets (25 s.f. or less) from the requirement of a location permit. New language requires that structures be anchored to the minimum standards described in "Non Vehicular Storage Structure Anchoring Standards" of the City of Wichita, or be attached to a permanent concrete foundation. Also added are exemptions from permits that clarify and/or codify long-standing policy enforced by OCI for many years.

IRC Section R109.1.6. Final inspection. A new provision has been added that allows the building official to grant licensed contractors who are part of an OCI-approved Limited Contractor Self-Inspection Program to self-certify the permit work they have performed.

IRC Table R301.2 (1). Climatic and Geographic Design Criteria. This table is now included in the ordinance with the values input into the appropriate sections. Prior code adoptions had left this table blank.

IRC Section R303.3. Bathrooms. This section has been rewritten to harmonize with the Mechanical code section M1507.2. Prior amendments had the provisions in different areas of the code. They have now been brought into one location for ease of use.

IRC Section R308.4. Hazardous locations. This section has been amended to add an additional exemption for safety glazing near hot tubs, whirlpools, or bathtubs. Glazing that is 18" or more from the water's edge is now exempt from the requirement.

IRC Section R310.2.1. Ladder, steps and fall protection. The revision to this section is made to clarify the requirements for window well covers or grate, as they have been enforced by OCI for several years. The change duplicates the former Uniform Building Code amendment.

IRC Section R404.1. Concrete and masonry foundation walls. The option of using the Basement Standards for One and Two Family Dwellings is now made a part of the amendment to this section. This section will now require that design documents and specifications for pre-engineered foundations (such as ICF) walls must now be on site for required inspections.

IRC Section R502.2.2. Decks. OCI, in cooperation with local builders and structural design engineers, has developed the "City of Wichita Standard for Residential Wood Framed Decks." With the proposed amendments, this standard may now be enforced as an alternative that meets the requirements of this IRC section. Decks that fall outside the scope of the standard are required to be designed by a Kansas licensed architect or structural engineer.

Section R602.10. Wall bracing. This amendment will refer to the wall bracing standard noted in the prior amendment (IRC Section R502.2.2, Decks).

IRC Section R907.3. Re-covering versus replacement. This amendment adds language to clarify that **all** layers of roofing must be removed prior to reroofing when any of the conditions listed in this IRC section are present.

IRC Part V. Mechanical chapters adopted. Chapter 12, which provides administrative direction for the Mechanical section of the IRC, has been added. Chapter 22, which deals with special piping and equipment (primarily oil-fired equipment), has been deleted.

The balance of the amendments to the 2006 IRC are dealing with either the Mechanical or Fuel Gas chapters of the code. The changes to these sections are made to agree with the amendments made in the International Mechanical Code where those requirements are germane to the residential requirements. Sections that deal with plumbing and electrical chapters of the IRC have been amended to refer the user to Title 19 or Title 21 of the Municipal Code of the City of Wichita.

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09/22/2010

ORDINANCE NO. 48-879

AN ORDINANCE CREATING SECTIONS 18.50.315, 18.50.365, 18.50.475, 18.50.535, 18.50.585, 18.50.588, 18.50.673, 18.50.676, 18.50.685, 18.50.703, 18.50.705, 18.50.707, 18.50.735, 18.50.795, 18.50.805, 18.50.1053, 18.50.1055, 18.50.1280 and18.50.1290, AND AMENDING SECTIONS 18.50.130, 18.50.170, 18.50.200, 18.50.290, 18.50.360, 18.50.380, 18.50.400, 18.50.690, 18.50.810, 18.50.820, 18.50.980, 18.50.990, 18.50.1050, 18.50.1110, 18.50.1180, 18.50.1200, and 18.50.1210 OF TITLE 18.50 OF THE CODE OF THE CITY OF WICHITA AND REPEALING THE ORIGINAL OF THE FOLLOWING AMENDMENT OF SAID CODE; 18.50.740.

ALL IN THE CODE OF THE CITY OF WICHITA, KANSAS, AND PERTAINING TO THE BUILDING CODES OF THE CITY OF WICHITA, KANSAS.

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

KANSAS:

SECTION 1. Section 18.50.130 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 105.2 of the International Building Code, is amended to read as follows:

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1(a). One-story accessory structures classified as a Group U occupancy provided the floor area does not exceed 200 square feet ($18m^2$), and a location permit is obtained from the Office of Central Inspection prior to installation.

Exception: Nonfixed and movable storage cabinets equipped with doors that conceal the contents within and having a footprint not exceeding 25 square feet (2.3 m^2), shall not require the issuance of a location permit.

All detached accessory structures greater than 25 (2.3 m^2) but equal to or less than 400 (37.16 m^2) square feet shall be tied down to the earth using anchoring methods described in "Non Vehicle Storage Structure Anchoring Standards" of the City of Wichita; or be attached to a permanent concrete foundation per Title 18.51 of the City Code.

1(b). Playhouses or tree houses having single or multi-level floors with or without roofs.

2(a). Concrete or masonry fences not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall and other fences not over 8 feet (2438 mm) high, unless the fence encloses an outdoor seating area.

2(b). Concrete or masonry monument sign bases not over 4 feet (1219 mm) in height measured from the lowest point of the adjoining grade. The sign size and content requires separate approval and permit.

3. Oil derricks.

4. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or III-A liquids.

5. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18,927 L) and the ratio of height to diameter or width does not exceed 2 to 1.

6. Sidewalks and driveways not more than 30 inches (762 mm) above grade and not over any basement or story below.

7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finishes.

8. Temporary motion picture, television and theater stage sets and scenery.

9. Prefabricated swimming pools accessory to a Group R, Division 3 occupancy that are less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (19,000 L) and are installed entirely above ground.

10. Swings and other playground equipment.

11. Windows awnings supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support.

12. Nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

13. Interior platforms not over 200 square feet (18.58 m^2) in area, nor more than 30 inches (762 mm) above the adjacent floor.

14. Exterior decks, curb ramps (maximum 6 inch (153 mm) vertical rise), stoops and porches not more than 30 inches (762 mm) above grade without overhead structures and not over any basement or story below.

15. Emergency board-up or securing of a building and installing temporary bracing after a fire, storm, vehicle damage or other disaster, which caused the building to be open or unsafe. The building owner or his/her agent may cause such work to be done provided the Office of Central Inspection is notified on the following business day.

16. Repair or Replacement roofing and/or siding materials not exceeding 400 square feet (37.16 m^2) within any 12-month period.

17. Repair or replacement of interior gypsum wallboard on non-fire rated walls or ceilings when the total area does not exceed 100 square feet (9.29 m^2) within any 12-month period and provided that no framing, electrical, mechanical or plumbing changes are made.

18. Paved areas not used for the purpose of parking or storage of vehicles and/or equipment or storage.

19. Replacement of windows or doors or replacement of roof skylights or equipment with the same size or smaller unit(s) that does not involve the removal, cutting, alteration or replacement of any building structural member; including but not limited to studs, headers, girders, beams, joists, rafters, cripples, jacks or other supportive framing member(s). The framing used to infill existing openings for the purpose

of installing smaller unit(s) shall be exempt from permit requirements. Placement of smaller windows or doors shall not reduce the minimum size requirements of escape and rescue openings, or egress door(s), or fire department access required by this code. The replacement door or window shall not be of a lower fire rating than the original assembly, unless a lower fire rating is allowed by this code.

Electrical:

Repairs and maintenance: Minor repair work, including the replacement of lamps or the connection of *approved* portable electrical equipment to *approved* permanently installed receptacles.

Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for a power supply and the installations of towers and antennas.

Temporary testing systems: A *permit* shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.

Gas:

1. Portable heating appliance.

2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Mechanical:

1. Portable heating appliances.

2. Portable ventilation equipment.

3. Portable cooling unit.

4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.

5. Replacement of any minor part that does not alter its approval or make it unsafe.

6. Portable evaporate cooler.

7. Self-contained refrigeration systems containing 10 pounds (5 kg) or less of refrigerant or that are actuated by motors of 1 horsepower (746 W) or less.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste or vent pipe provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a *permit* shall be obtained and inspection made as provided in this code.

2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures."

SECTION 2**.** Section 18.50.170 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 105.5 of the International Building Code, is amended to read as follows:

105.5 Expiration. Every permit issued shall expire unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. Work shall be considered to have been suspended or abandoned if it has been more than 180 days since the last requested inspection. Before work can be recommenced, the permit must be reinstated. The fee for the re-instatement shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and that such suspension or abandonment has not exceeded one year. In order to resume work after suspension or abandonment for a period of one year, a new permit shall be required. The building official is authorized to grant, one or more extensions of time, for periods not more than 180 days each. The extensions shall be requested in writing and justifiable cause demonstrated."

SECTION 3**.** Section 18.50.200 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Plan review fees.** When submittal documents are required by Section 106 of the *International Building Code*, a plan review fee shall be paid at the time of submitting the documents for plan review. Said plan review fee shall be 55

percent of the building permit fee as shown in Table A, Section 18.08.010 of the City Code. The plan review fees specified in this section are separate fees from those fees set forth in Section 108.2 and are in addition to building permit fees. When submittal documents are incomplete or changed so as to require additional plan review 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 shall be charged at the rate shown in Table A, Section 18.08.010 of the City Code."

SECTION 4. Section 18.50.290 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 308.5.1 of the International Building Code, is amended to read as follows:

308.5.1 Adult care facility. A facility that provides accommodations for less than 24 hours for more than ten unrelated adults and provides supervision and personal care services shall be classified as Group I-4.

Exception: A facility where occupants are capable of responding to an emergency situation without physical assistance from the staff shall be classified as Group R -3."

SECTION 5. Section 18.50.315 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 402.6.1 of the International Building Code, is hereby created to read as follows:

402.6.1 Reduced open space. The permanent open space of 60 feet shall be permitted to be reduced to not less than 40 feet, provided the following requirements are met:

1. The reduced open space shall not be allowed for more than 75 percent of the perimeter of the covered mall building and anchor buildings.

2. The exterior wall facing the reduced open space shall have a minimum fire-resistance rating of 3 hours.

3. Openings in the exterior wall facing the reduced open space shall have opening protectives with a minimum fire protection rating of 3 hours.

4. Group E, H, I, or R occupancies are not within the covered mall building or anchor stores.

SECTION 6. Section 18.50.360 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 412.2.6 of the International Building Code, is amended to read as follows:

[F] 412.2.6 Fire suppression. Aircraft hangars shall be provided with fire suppression as required by NFPA 409. Aircraft Maintenance Hangar shall be defined as any of following: major disassembling, inspection, and reassembling of aircraft; repair of aircraft; modification of the aircraft, rebuilding of structural damage, correction of a system malfunction or replacement of a major component; aircraft painting or paint removal; aircraft engine overhaul and maintenance; welding operations; and aircraft fuel tank or system repair or

cleaning. Aircraft Storage Hangar shall be defined as any of following: Routine service checks, corrections of flight crew complaints, and minor repair and maintenance preformed while the aircraft is routinely in out-of-flight status.

Exceptions:

1. Aircraft Maintenance Hangars, shall not require an automatic sprinkler and foam-extinguishing system where the fire area does not exceed 17,500 square feet (1626 m^2) and the following conditions are met:

   a. The hangar access door height of 28 feet (8.5m) or less.

   b. The building is protected by an approved Monitored Optical Fire Detection System throughout.

2. Aircraft Storage Hangars, shall not require an automatic sprinkler and foam-extinguishing system where the fire area does not exceed 26,000 square feet (2416 m^2) and the following conditions are met:

   a. The hangar access door height of 28 feet (8.5m) or less.

   b. The building is protected by an approved Monitored Optical Fire Detection System throughout.

3. Group II hangers as defined in NFPA 409 storing private aircraft are exempt from foam suppression requirements."

SECTION 7. Section 18.50.365 of the Code of the City of Wichita, is hereby created to read as follows:

Section 421, 421.1, 421.2, 421.3, 421.3.1, 421.3.2, 421.3.3, 421.3.4, 421.4, 421.5, 421.6, 421.7 and 421.8 of the International Building Code is hereby created to read as follows:

421 Occupancies. Live/work units shall be classified as a Group R-2 occupancy. Separation requirements found in Section 508 shall not apply within the live/work unit when the live/work unit is in compliance with Section 419. High hazard and storage occupancies shall not be permitted in a live/work unit. The aggregate area of storage in the nonresidential portion of the live/work unit shall be limited to 10 percent of the space dedicated to nonresidential activities.

421.1 General. A live/work unit is a dwelling unit or sleeping unit in which a significant portion of the space includes a nonresidential use that is operated by the tenant and shall comply with sections 419.1 through 419.8.

Exception: Dwelling or sleeping units that include an office that is less than 10 percent of the area of the dwelling unit shall not be classified as a live/work unit.

421.2 Limitations. The following shall apply to all live/work areas:

1. The live/work unit is permitted to be a maximum of 3,000 square feet;

2. The nonresidential area is permitted to be a maximum 50 percent of the area of each live/work unit;

3. The nonresidential area function shall be limited to the first or main floor only of the live/work unit; and

4. A maximum of five nonresidential workers or employees are allowed to occupy the nonresidential area at any one time.

421.3 Means of Egress. Except as modified by this section, the provisions for Group R-2 occupancies in Chapter 10 shall apply to the entire live/work unit.

421.3.1 Egress Capacity. The egress capacity for each element of the live/work unit shall be based on the occupant load for the function served in accordance with Table 1004.1.1.

421.3.2 Sliding Doors. Where doors in a means of egress are of the horizontal sliding type, the force to slide the door to its fully open position shall not exceed 50 pounds with a perpendicular force against the door of 50 pounds..

421.3.3 Spiral Stairs. Spiral stairs that conform to the requirements of Section 1009.8 shall be permitted.

421.3.4 Locks. Egress doors shall be permitted to be locked in accordance with Exception 4 of Section 1008.1.8.3.

421.4 Vertical Openings. Floor openings between floor levels of a live/work unit are permitted without enclosure.

421.5 Fire Protection. The live/work unit shall be provided with a monitored fire alarm sy stem where required by Section 907.2.9 and an automatic sprinkler system in accordance with Section 903.2.7 as amended.

421.6 Structural. Floor loading for the area within a live/work unit shall be designed to conform to Table 1607.1 based on the function within the space.

421.7 Accessibility. Accessibility shall be designed in accordance with Chapter 11.

421.8 Ventilation. The applicable requirements of the International Mechanical Code shall apply to each area within the live/work unit for the function within that space."

SECTION 8. Section 18.50.380 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 507.6 of the International Building Code, is amended to read as follows:

507.6 Group A-3 buildings. The area of a one-story, Group A-3 building of Type II construction shall not be limited when all of the following criteria are met:

1. The building shall not have a stage other than platform.
2. The building shall be equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.
3. The building shall be surrounded and adjoining by public ways or yards not less than 60 feet (18288 mm) in width."

SECTION 9. Section 18.50.400 of the Code of the City of Wichita, is hereby amended to read as follows:

"Table 601 of the International Building Code, is amended to read as follows:

TABLE 601[h]
FIRE-RESISTANCE RATING REQUIREMENTS FOR BUILDING ELEMENTS (hours)

BUILDING ELEMENT	TYPE I		TYPE II		TYPE III		TYPE IV	TYPE V	
	A	B	A[e]	B	A[e]	B	HT	A[e]	B
Primary Structural Frame[a]	3[b]	2[b]	1	0	1	0	HT	1	0
Bearing walls									
Exterior[g]	3	2	1	0	2	2	2	1	0
Interior	3[b]	2[b]	1	0	1	0	1/HT	1	0
Nonbearing walls and partitions Exterior	See Table 602								

Nonbearing Walls And Partitions Interior[f]	0	0	0	0	0	0	See Section 602.4.6	0	0
Floor construction and secondary members	2	2	1	0	1	0	HT	1	0
Roof construction and secondary members	1 1/2[c]	1[c, d]	1[c, d]	0[c, d]	1[c, d]	0[c, d]	HT	1[c, d]	0

For SI: 1 foot = 304.8mm.

a. The primary structural frame shall be considered to be the columns and the girders, beams, trusses and spandrels having direct connections to the column and bracing members designed to carry gravity loads. The following structural members shall be considered secondary members and not part of the primary structural frame:

i. Structural members not having direct connections to the columns;

ii. Members of the floor construction not having direct connections to the columns; and

iii. Bracing members other than those that are part of the primary structural frame.

b. Roof supports: Fire-resistance ratings of structural frame and bearing walls are permitted to the reduced by 1 hour where supporting a roof only.

c. Except in Group F-1, H, M, and S-1 occupancies, fire protection of structural members shall not be required, including protection of roof framing and

decking where every part of the roof construction is 20 feet or more above any floor immediately below. Fire–retardant-treated wood members shall be allowed to be used for such unprotected members.

d. In all occupancies, heavy timber shall be allowed where 1-hour or less fire-resistance rating is required.

e. An approved automatic sprinkler system in accordance with Section 903.3.1.1 shall be allowed to the substituted for 1-hour fire-resistance-rated construction, provided such system is not otherwise required by other provisions of this code or used for an allowable area increase in accordance with Section 506.3 or an allowable height increase in accordance with Section 504.2. The 1-hour substitution for the fire resistance of exterior walls shall not be permitted.

f. Not less than the fire-resistance rating required by other sections of this code.

g. Not less than the fire-resistance rating based on fire separation distance (See Table 602).

h. Canopies under which temporary transactions occur or the loading and unloading of passengers of private or pleasure-type motor vehicles may be of non-combustible construction, subject to the following conditions:

1. The canopy is open on three or more sides and is not more than 1500 square feet (139.4 m^2).

2. Canopy structures shall not be located in areas where building openings are prohibited or openings are required to be protected by Table 602.

3. Buildings or portions thereof with exits having canopy structures located over the exit discharge shall be provided with an alternate means of egress as required by Section 1015.2.1.

SECTION 10. Section 18.50.475 of the Code of the City of Wichita, is hereby created to read as follows:

Section 803.10 and 803.10.1 of the International Building Code, is created to read as follows:

Site-fabricated Stretch System. A system, fabricated on site and intended for acoustical, tackable or aesthetic purposes, that is comprised of three elements; (a) a frame (constructed of plastic, wood, metal or other material) used to hold fabric in place, (b) a core material (infill, with the correct properties for the application) and (c) an outside layer, comprised of a textile, fabric or vinyl, that is stretched taunt and held in place by tension or mechanical fasteners via the frame.

Section 803.10.1 Site fabricated stretched systems. Where used as interior wall or interior ceiling finish materials, site-fabricated stretch systems shall be tested in the manner intended for use, and shall comply with the requirements of Section 803.1.1 or 803.1.2. If the materials are tested in accordance with ASTM E 84 or UL 723, specimen preparation and mounting shall be in accordance with ASTM E 2573.

SECTION 11. Section 18.50.535 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 903.2.3.1 of the International Building Code, is amended to read as follows:

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 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 12. Section 18.50.585 of the code of the City of Wichita, is hereby created to read as follows:

"Section 903.3.1.2.1 of the International Building Code, is amended to read as follows:

[F] **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 13. Section 18.50.588 0f the Code of the City of Wichita, is hereby created to read as follows:

"Section 907.2 of the International Building Code, is hereby amended to read as follows:

[F] 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 waterflow 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 14. Section 18.50.673 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1007.3 of the International Building Code is hereby amended to read as follows:

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 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 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 15. Section 18.50.676 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1007.4 of the International Building Code, is hereby amended to read as follows:

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 16. Section 18.50.685 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1008.1.2 of the International building Code, is amended to read as follows:

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 17. Section 18.50.690 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 1008.1.4 of the International Building Code, is amended to read as follows:

1008.1.4 Floor Elevation. There shall be 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 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 18. Section 18.50.703 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1008.1.8.4 of the International Building Code, is amended to read as follows:

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 19. Section 18.50.705 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1008.1.8.8 of the International Building Code is hereby created to read as follows:

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 20. Section 18.50.707 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1008.1.8.9 of the International Building Code is hereby created to read as follows:

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 with 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 21. Section 18.50.735 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1009.12 of the International Building Code, is created to read as follows:

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 22. Section 18.50.740 of the Code of the City of Wichita is hereby repealed

SECTION 23. Section 18.50.795 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1014.3 of the International Building Code, is amended to read as follows:

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 24. Section 18.50.805 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1017.3 of the International Building Code, is amended to read as follows:

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 25. Section 18.50.810 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1019.1 of the International Building Code, is amended to read as follows:

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 EXISTS 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 26. Section 18.50.820 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 1019.2 of the International Building Code, is amended to read as follows:

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 travel distance
	H-2, H-3	3 occupants and 25 feet travel distance
	H-4, H-5, I, R	10 occupants and 75 feet travel distance
	S[a]	29 occupants and 100 feet travel distance
Second Story	B[b], F, M, S[a]	29 occupants and 75 feet travel distance
	R-2	4 dwelling units and 50 feet travel distance
Third Story	R-2[c]	4 dwelling units and 50 feet 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.
e. Day care maximum occupant load is 10.

SECTION 27. Section 18.50.980 of the Code of the City of Wichita, is hereby amended to read as follows:

"Counters and bars. Where food or alcoholic beverages are served or consumed at a counter or bar exceeding 34 inches (865 mm) in height for consumption by customers seated on stools or standing at the counter or bar, a

portion of the main counter or bar which is 60 inches (1525 mm) in length minimum shall be provided in compliance with the requirements for fixed or built-in seating and tables in accordance with the Americans with Disabilities Act ("ADA" or "the Act").

Exception: A counter or bar with a design occupant load of 10 or less and where service is available at accessible tables within the same room or area."

SECTION 28. Section 18.50.990 of the Code of the City of Wichita, is hereby amended to read as follows:

"Parking Space Design. Effective on or after January 1, 2006 for building permits reviewed and issued for new construction projects/development that require or provide new parking; new, expanded or re-constructed parking lots; or parking lots that are being restriped as part of a building permit, all accessible parking spaces shall be designed and installed in accordance with the "Universal Parking Design" standards of Appendix Section A4.6.3 of the Americans with Disabilities Act Accessibility Guidelines, as amended."

SECTION 29. Section 18.50.1050 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 1503.4 of the International Building Code, is amended to read as follows:

1503.4 Roof drainage, **condensate drainage and waste water.** Design and installation of roof drainage systems shall comply with Title 21 of the City

Code and the provisions on this section. Roofs shall be sloped a minimum of 1 unit vertical in 48 units horizontal (2-percent slope) for drainage unless designed by a licensed engineer for water accumulation. Unless roofs are sloped to drain over roof edges, primary piped roof drains or wall scuppers shall be installed at each low point of the roof. Roof drains (including primary and secondary piped drains and primary and secondary wall scuppers) shall be sized and discharged in accordance with Title 21 of the City Code. The storm drainage 60-minute duration rate, based on a 100-year return (maximum rate of rainfall), for Wichita has been determined by the building official to 3.9 inches (99 mm). Roof drainage water from a building shall not be allowed to flow over public or private property, unless permitted by an approved drainage agreement or easement. Discharge from mechanical equipment condensate drains and any other waste water and roof down spouts shall not discharge onto a pedestrian walking surface. A Storm Water Quality Compliance Statement is required to be filed with Central Inspection for discharges, other than storm water, that flow to storm water drainage systems."

SECTION 30. Section 18.50.1053 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1503.4.1 of the International Building Code, is created to read as follows:

1503.4.1 Secondary drainage required. Secondary (emergency overflow) piped roof drains or secondary scuppers shall be provided where the roof perimeter construction extends above the

roof in such a manner that water will be entrapped if the primary drains allow buildup for any reason. Secondary piped drains and scuppers shall be sized and located to prevent the depth of ponding water from exceeding that for which the roof was designed. The secondary drainage system shall be separate from the primary system and shall discharge independently at grade or other approved point of discharge. Secondary piped roof drains shall be installed with the inlet flow line 2 inches (51 mm) above the roof low point."

SECTION 31. Section 18.50.1055 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1503.4.2 of the International Building Code, is created to read as follows:

1503.4.2 Secondary scuppers. Secondary scuppers shall be installed with the flow line 2 inches (51 mm) maximum above the low point of the roof and shall not have an opening dimension of less than 4 inches (102 mm). Secondary scuppers shall be located minimum 4 feet (1219 mm) horizontally from primary scuppers and primary piped roof drains. Conductor heads installed at secondary wall scuppers shall include an unobstructed opening in the face of the conductor head at least equal in area to the secondary wall scupper opening and shall not have an opening dimension of less than 4 inches (102 mm), or the top of the conductor head shall be installed 2 inches (51 mm) above the low point of the roof. The flow through the primary system shall not be considered when locating and sizing scuppers."

SECTION 32. Section 18.50.1110 of the Code of the City of Wichita, is hereby amended to read as follows:

"Storm shelters: Scope. When a room or area is represented by a manufacturer or builder as a storm shelter, or is a designated location of refuge by an owner/user of a structure, the shelter shall meet the following requirements:

1. For a shelter with less than 12 occupants, the shelter may be constructed using the provisions of the current addition of FEMA 320 "Taking Shelter From The Storm".

2. For a shelter with 12 or more occupants, the shelter shall be designed by a licensed design professional in accordance with FEMA 361 "Design And Construction Guidance Of Community Shelters", editions 1 or 2. A licensed engineer shall seal a certificate to be posted on the inside of each shelter stating it was designed in accordance with FEMA 361.

3. Storm shelters shall comply with the provisions of the Americans with Disabilities Act ("ADA")."

SECTION 33. Section 18.50.1180 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 1613.5.3 of the International Building Code, is amended to read as follows:

1613.5.3 Site coefficients and adjusted maximum considered earthquake spectral response acceleration parameters. The maximum considered earthquake spectral response acceleration for short periods, $S_{s,}$ and at 1-second period, S_1, for Wichita has been determined by the building official to be 0.14 and 0.056 respectively."

SECTION 34. Section 18.50.1200 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 1702.1 of the International Building Code, is amended to read as follows:

1702.1 General. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

APPROVED AGENCY. An established and recognized agency regularly engaged in conducting tests or furnishing inspection services, when such agency has been approved.

APPROVED FABRICTOR. An established and qualified person, firm or corporation approved by the building official pursuant to Chapter 17 of this code.

CERTIFICATE OF COMPLIANCE. A certificate stating that materials and products meet specified standards or that work was done in compliance with approved construction documents.

DESIGNATED SEISMIC SYSTEM. Those architectural, electrical and mechanical systems and their components that require design in accordance with Chapter 13 of ASCE 7 and for which component importance factor, I_p, is greater than 1 in accordance with Section 13.1.3 of ASCE 7.

FABRICATED ITEM. Structural, load-bearing or lateral load-resisting assemblies consisting of materials assembled prior to installation in building or structure or subjected to operations such as heat treatment, thermal cutting, cold

working or reforming after manufacture and prior to installation in a building or structure. Materials produced in accordance with standard specifications referenced by this code, such as rolled structural steel shapes, steel-reinforcing bars, masonry units and wood structural panels shall not be considered "fabricated items."

INSPECTION CERTIFICATE. An identification applied on a product by an approved agency containing the name of the manufacturer, the function and performance characteristics, and the name and identification of an approved agency that indicates that the product or material has been inspected and evaluated by an approved agency (see Section 1703.5 and "Label," "Manufacturer's designation" and "Mark").

LABEL. An identification applied on a product by the manufacturer that contains the name of the manufacturer, the function and performance characteristics of the product or material, and the name and identification of an approved agency and that indicates that the representative sample of the product or material has been tested and evaluated by an approved agency (see Section 1703.5 and "Inspection certificate," "Manufacturer's designation" and "Mark").

MAIN WIND-FORCE-RESISTING SYSTEM. An assemblage of structural elements assigned to provide support and stability for the overall structure. The system generally receives wind loading from more than one surface.

MANUFACTURER'S DESIGNATION. An identification applied on a product by the manufacturer indicating that a product by the manufacturer

indicating that a product or material complies with a specified standard or set of rules (see also “Inspection certificate,” “Label” and “Mark”).

MARK. An identification applied on a product by the manufacturer indicating the name of the manufacturer and the function of a product or material (See also “Inspection certificate,” “Label” and “Manufacturer’s designation”).

SPECIAL INSPECTION. Inspection as herein required of the materials, installation, fabrication, erection or placement of components and connections requiring special expertise to ensure compliance with approved construction documents and referenced standards (see Section 1704).

SPECIAL INSPECTION, CONTINUOUS. The full-time observation of work requiring special inspection by an approved special inspector who is present in the area where the work is being performed.

SPECIAL INSPECTION, PERIODIC. The part-time or intermittent observation of work requiring special inspection by an approved special inspector who is present in the area where the work has been or is being performed and at the completion of the work.

SPECIAL INSPECTOR. The owner, building official, and the licensed design engineer shall approve the special inspector. The inspector shall also show competent knowledge to the building official, licensed design engineer, licensed design architect, and owner for those items to receive special inspection. The special inspector shall prevent a conflict of interest by not performing testing of construction materials for which the special inspector is engaged to observe compliance.

SPRAYED FIRE-RESISTANT MATERIALS. Cementations or fibrous materials that are spray applied to provide fire-resistant protection of the substrates.

STRUCTURAL OBSERVATION. The visual observation of the structural system by a registered design professional for general conformance to the approved construction documents at significant construction stages and at completion of the structural system. Structural observation does not include or waive the responsibility for the inspection required by Section 109, 1704 or other sections of this code."

SECTION 35. Section 18.50.1210 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 1704.1 of the International Building Code, is amended to read as follows:

1704.1 General. Where application is made for construction as described in this section, the owner or the registered design professional in responsible charge acting as the owner's agent shall employ one or more special inspectors to provide inspections during construction on the types of work listed under Section 1704. The special inspector shall be a qualified person who shall demonstrate competence, to the satisfaction of the building official, for inspection of the particular type of construction or operation requiring special inspection. These inspections are in addition to the inspections specified in Section 109.

The special inspector shall be a qualified person who shall demonstrate competence, to the satisfaction of the *building official*, for inspection of the particular type of construction or operation requiring *special inspection*. The *registered design professional in responsible charge* and engineers of record involved in the design of the project are permitted to act as the *approved agency* and their personnel are permitted to act as the special inspector for the work designed by them, provided those personnel meet the qualification requirements of this section to the satisfaction of the *building official*. The special inspector shall provide written documentation to the building official demonstrating his or her competence and relevant experience or training. Experience or training shall be considered relevant when the documented experience or training is related in complexity to the same type of *special inspection* activities for projects of similar complexity and material qualities. These qualifications are in addition to the qualifications specified in other sections of this code.

Exceptions:

Special inspections are not required for work of a minor nature or as warranted by conditions in the jurisdiction as approved by the building official, or as described in items 1.1 thru 1.4 listed below.

1.1 Buildings and other structures, or additions to existing buildings or structures, where there is a design occupant load of less 500 persons in any one area or room of the new construction or where the total design occupant load of the new

construction is less 1,000 persons, as calculated under Section 1004.1.

1.2 New hospitals and other health care facilities, or additions thereto, having surgery or emergency treatment facilities or capacity for less than 100 residential patients for the new construction area.

1.3 Buildings or structures, or additions to existing buildings or structures, where the floor area of the new construction is less than 50,000 square feet, or where the height of the exterior building walls are less than 22 feet as measured from the grade plane.

1.4 Conventional construction for the Wichita, Kansas, area, such as foundations not supported on reinforced concrete piers into weathered shale, etc., or required to obtain some desired or specified ksf allowable bearing.

1. Special inspections are not required for building components unless the design involves the practice of professional engineering or architecture as defined by applicable state statues and regulations governing the professional registration and certification of engineers or architects or the building components are fabricated at an AISC Certified Fabricator.

2. Unless otherwise required by the building official, special inspections are not required for occupancies in Group R-3 as applicable in Section

101.2 and occupancies in Group U that are accessory to a residential occupancy including, but not limited to, those listed in Section 312.1."

SECTION 36. Section 18.50.1280 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 2902.4 of the International Building Code, is amended to read as follows:

2902.4 Required public toilet facilities. Customers, patrons and visitors shall be provided with public toilet facilities for outdoor activities classified as a group "A" occupancy or structures and tenant spaces intended for public assembly, education and institutional uses. The accessible route to public facilities shall not pass through kitchens, storage rooms, closets or similar spaces. Employee toilet facilities shall be either separate or combined employee and public toilet facilities. The number of plumbing fixtures located within the required toilet facilities shall be provided in accordance with Section 2902.1 for all users."

SECTION 37. Section 18.50.1290 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 2903 of the International Building Code, is created to read as follows:

2903 Accessible urinal partitions. Each accessible urinal utilized by the public or employees shall occupy a separate area with walls or partitions to provide privacy. The walls or partitions shall begin at a height not more than 12 inches (305 mm) from and extend not less than 60 inches

(1524 mm) above the finished floor surface. The walls or partitions shall extend from the wall surface at each side of the urinal a minimum of 18 inches (457 mm) or to point not less than 6 inches (152 mm) beyond the outermost front lip of the urinal measured from the finished back wall surface, whichever is greater.

Exceptions:

1. Urinal partitions shall not be required in a single occupant or family or assisted use toilet room with a lockable door.
2. Toilet rooms located in a day care and child care facilities and containing two or more urinals shall be permited to have one urinal without partitions."

SECTION 38. 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 26th day of October, 2010.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

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First Published in The Wichita Eagle on _____

Delineated 09/22/2010

ORDINANCE NO. _____

AN ORDINANCE CREATING SECTIONS 18.50.315, 18.50.365, 18.50.475, 18.50.535, 18.50.585, 18.50.588, 18.50.673, 18.50.676, 18.50.685, 18.50.703, 18.50.705, 18.50.707, 18.50.735, 18.50.795, 18.50.805, 18.50.1053, 18.50.1055, 18.50.1280 and18.50.1290, AND AMENDING SECTIONS 18.50.130, 18.50.170, 18.50.200, 18.50.290, 18.50.360, 18.50.380, 18.50.400, 18.50.690, 18.50.810, 18.50.820, 18.50.980, 18.50.990, 18.50.1050, 18.50.1110, 18.50.1180, 18.50.1200, and 18.50.1210 OF TITLE 18.50 OF THE CODE OF THE CITY OF WICHITA AND REPEALING THE ORIGINAL OF THE FOLLOWING AMENDMENT OF SAID CODE; 18.50.740.

ALL IN THE CODE OF THE CITY OF WICHITA, KANSAS, AND PERTAINING TO THE BUILDING CODES OF THE CITY OF WICHITA, KANSAS.

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

KANSAS:

SECTION 1. Section 18.50.130 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 105.2 of the International Building Code, is amended to read as follows:

105.2 Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

Building:

1(a). One-story accessory structures classified as a Group ~~S or~~ U occupancy~~ies~~ provided the floor area does not exceed 200 square feet ($18m^2$), and a location permit is obtained from the Office of Central Inspection prior to installation.

Exception: Nonfixed and movable storage cabinets equipped with doors that conceal the contents within and having a footprint not exceeding 25 square feet (2.3 m^2), shall not require the issuance of a location permit.

All detached accessory structures greater than 25 (2.3 m^2) but equal to or less than 400 (37.16 m^2) square feet shall be tied down to the earth using anchoring methods described in "Non Vehicle Storage Structure Anchoring Standards" of the City of Wichita; or be attached to a permanent concrete foundation per Title 18.51 of the City Code.

1(b). Playhouses or tree houses having single or multi-level floors with or without roofs.

2(a). Concrete or masonry fences not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall and other fences not over 8 feet (2438 mm) high, unless the fence encloses an outdoor seating area.

2(b). Concrete or masonry monument sign bases not over 4 feet (1219 mm) in height measured from the lowest point of the adjoining grade. The sign size and content requires separate approval and permit.

3. Oil derricks.

4. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or III-A liquids.

5. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18,927 L) and the ratio of height to diameter or width does not exceed 2 to 1.

6. Sidewalks and driveways not more than 30 inches (762 mm) above grade and not over any basement or story below.

7. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finishes.

8. Temporary motion picture, television and theater stage sets and scenery.

9. Prefabricated swimming pools accessory to a Group R, Division 3 occupancy that are less than 24 inches (610 mm) deep, do not exceed 5,000 gallons (19,000 L) and are installed entirely above ground.

10. Swings and other playground equipment.

11. Windows awnings supported by an exterior wall that do not project more than 54 inches (1372 mm) from the exterior wall and do not require additional support ~~of Group R-3 and U occupancies~~.

12. Nonfixed and movable fixtures, cases, racks, counters and partitions not over 5 feet 9 inches (1753 mm) in height.

13. Interior platforms not over 200 square feet (18.58 m^2) in area, nor more than 30 inches (762 mm) above the adjacent floor.

14. Exterior decks, curb ramps (maximum 6 inch (153 mm) vertical rise), stoops and porches not more than 30 inches (762 mm) above grade without overhead structures and not over any basement or story below.

15. Emergency board-up or securing of a building and installing temporary bracing after a fire, storm, vehicle damage or other disaster, which caused the building to be open or unsafe. The building owner or his/her agent may cause such work to be done provided the Office of Central Inspection is notified on the following business day.

16. Repair or Replacement roofing and/or siding materials not exceeding 400 square feet (37.16 m^2) within any 12-month period.

17. Repair or replacement of interior gypsum wallboard on non-fire rated walls or ceilings when the total area does not exceed 100 square feet (9.29 m^2) within any 12-month period and provided that no framing, electrical, mechanical or plumbing changes are made.

18. Paved areas not used for the purpose of parking or storage of vehicles and/or equipment or storage.

19. Replacement of windows or doors or replacement of roof skylights or equipment with the same size or smaller unit(s) that does not involve the removal, cutting, alteration or replacement of any building structural member; including but not limited to studs, headers, girders, beams, joists, rafters, cripples, jacks or other supportive framing member(s). The framing used to infill existing openings for the purpose

of installing smaller unit(s) shall be exempt from permit requirements. Placement of smaller windows or doors shall not reduce the minimum size requirements of escape and rescue openings, or egress door(s), or fire department access required by this code. The replacement door or window shall not be of a lower fire rating than the original assembly, unless a lower fire rating is allowed by this code.

Electrical:

Repairs and maintenance: Minor repair work, including the replacement of lamps or the connection of *approved* portable electrical equipment to *approved* permanently installed receptacles.

Radio and television transmitting stations: The provisions of this code shall not apply to electrical equipment used for radio and television transmissions, but do apply to equipment and wiring for a power supply and the installations of towers and antennas.

Temporary testing systems: A *permit* shall not be required for the installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.

Gas:

1. Portable heating appliance.

2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

Mechanical:

1. Portable heating appliances.

2. Portable ventilation equipment.

3. Portable cooling unit.

4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.

5. Replacement of any minor part that does not alter its approval or make it unsafe.

6. Portable evaporate cooler.

7. Self-contained refrigeration systems containing 10 pounds (5 kg) or less of refrigerant or that are actuated by motors of 1 horsepower (746 W) or less.

Plumbing:

1. The stopping of leaks in drains, water, soil, waste or vent pipe provided, however, that if any concealed trap, drain pipe, water, soil, waste or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a *permit* shall be obtained and inspection made as provided in this code.

2. The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures."

SECTION 2**.** Section 18.50.170 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 105.5 of the International Building Code, is amended to read as follows:

105.5 Expiration. Every permit issued shall ~~become invalid~~ expire unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. Work shall be considered to have been suspended or abandoned if it has been more than 180 days ~~have passed~~ since the last requested ~~required~~ inspection. Before work can be recommenced, ~~a new~~ the permit must be reinstated ~~obtained~~. The fee for the re-instatement ~~permit~~ shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and ~~provided further~~ that such suspension or abandonment has not exceeded one year. In order to resume work after suspension or abandonment for a period of one year, a new permit shall be required. ~~renew action on a permit after expiration, the permit holder shall pay a full permit fee.~~ The building official is authorized to grant~~, in writing,~~ one or more extensions of time, for periods not more than 180 days each. The extensions shall be requested in writing and justifiable cause demonstrated."

SECTION 3**.** Section 18.50.200 of the Code of the City of Wichita, is hereby amended to read as follows:

"**Plan review fees.** When submittal documents are required by Section 106 of the *International Building Code*, a plan review fee shall be paid at the time of submitting the documents for plan review. Said plan review fee shall be ~~6~~5 percent of the building permit fee as shown in Table A, Section 18.08.010 of the City Code. The plan review fees specified in this section are separate fees from those fees set forth in Section 108.2 and are in addition to building permit fees. When submittal documents are incomplete or changed so as to require additional plan review 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 shall be charged at the rate shown in Table A, Section 18.08.010 of the City Code."

SECTION 4. Section 18.50.290 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 308.5.1 of the International Building Code, is amended to read as follows:

308.5.1 Adult care facility. A facility that provides accommodations for less than 24 hours for more than ten unrelated adults and provides supervision and personal care services shall be classified as Group I-4.

Exception: A facility where occupants are capable of responding to an emergency situation without physical assistance from the staff shall be classified as Group R ~~A~~-3."

SECTION 5. Section 18.50.315 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 402.6.1 of the International Building Code, is hereby created to read as follows:

402.6.1 Reduced open space. The permanent open space of 60 feet shall be permitted to be reduced to not less than 40 feet, provided the following requirements are met:

1. The reduced open space shall not be allowed for more than 75 percent of the perimeter of the covered mall building and anchor buildings.

2. The exterior wall facing the reduced open space shall have a minimum fire-resistance rating of 3 hours.

3. Openings in the exterior wall facing the reduced open space shall have opening protectives with a minimum fire protection rating of 3 hours.

4. Group E, H, I, or R occupancies are not within the covered mall building or anchor stores.

SECTION 6. Section 18.50.360 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 412.2.6 of the International Building Code, is amended to read as follows:

[F] 412.2.6 Fire suppression. Aircraft hangars shall be provided with fire suppression as required by NFPA 409. Aircraft Maintenance Hangar shall be defined as any of following: major disassembling, inspection, and reassembling

of aircraft; repair of aircraft; modification of the aircraft, rebuilding of structural damage, correction of a system malfunction or replacement of a major component; aircraft painting or paint removal; aircraft engine overhaul and maintenance; welding operations; and aircraft fuel tank or system repair or cleaning. Aircraft Storage Hangar shall be defined as any of following: Routine service checks, corrections of flight crew complaints, and minor repair and maintenance preformed while the aircraft is routinely in out-of-flight status.

Exceptions:

1. Aircraft Maintenance Hangers, shall not require an automatic sprinkler and foam-extinguishing system where the fire area does not exceed 17,500 square feet (1626 m^2) and the following conditions are met:

   a. The hangar access door height of 28 feet (8.5m) or less.

   b. The building is protected by an approved Monitored Optical Fire Detection System throughout.

2. Aircraft Storage Hangers, shall not require an automatic sprinkler and foam-extinguishing system where the fire area does not exceed 26,000 square feet (2416 m^2) and the following conditions are met:

   a. The hangar access door height of 28 feet (8.5m) or less.

   b. The building is protected by an approved Monitored Optical Fire Detection System throughout.

3. Group II hangers as defined in NFPA 409 storing private aircraft are exempt from foam suppression requirements."

SECTION 7. Section 18.50.365 of the Code of the City of Wichita, is hereby created to read as follows:

Section 421, 421.1, 421.2, 421.3, 421.3.1, 421.3.2, 421.3.3, 421.3.4, 421.4, 421.5, 421.6, 421.7 and 421.8 of the International Building Code is hereby created to read as follows:

421 Occupancies. Live/work units shall be classified as a Group R-2 occupancy. Separation requirements found in Section 508 shall not apply within the live/work unit when the live/work unit is in compliance with Section 419. High hazard and storage occupancies shall not be permitted in a live/work unit. The aggregate area of storage in the nonresidential portion of the live/work unit shall be limited to 10 percent of the space dedicated to nonresidential activities.

421.1 General. A live/work unit is a dwelling unit or sleeping unit in which a significant portion of the space includes a nonresidential use that is operated by the tenant and shall comply with sections 419.1 through 419.8.

Exception: Dwelling or sleeping units that include an office that is less than 10 percent of the area of the dwelling unit shall not be classified as a live/work unit.

421.2 Limitations. The following shall apply to all live/work areas:

1. The live/work unit is permitted to be a maximum of 3,000 square feet;

2. The nonresidential area is permitted to be a maximum 50 percent of the area of each live/work unit;

3. The nonresidential area function shall be limited to the first or main floor only of the live/work unit; and

4. A maximum of five nonresidential workers or employees are allowed to occupy the nonresidential area at any one time.

421.3 Means of Egress. Except as modified by this section, the provisions for Group R-2 occupancies in Chapter 10 shall apply to the entire live/work unit.

421.3.1 Egress Capacity. The egress capacity for each element of the live/work unit shall be based on the occupant load for the function served in accordance with Table 1004.1.1.

421.3.2 Sliding Doors. Where doors in a means of egress are of the horizontal sliding type, the force to slide the door to its fully open position shall not exceed 50 pounds with a perpendicular force against the door of 50 pounds..

421.3.3 Spiral Stairs. Spiral stairs that conform to the requirements of Section 1009.8 shall be permitted.

421.3.4 Locks. Egress doors shall be permitted to be locked in accordance with Exception 4 of Section 1008.1.8.3.

421.4 Vertical Openings. Floor openings between floor levels of a live/work unit are permitted without enclosure.

421.5 Fire Protection. The live/work unit shall be provided with a monitored fire alarm sy stem where required by Section 907.2.9 and an automatic sprinkler system in accordance with Section 903.2.7 as amended.

421.6 Structural. Floor loading for the area within a live/work unit shall be designed to conform to Table 1607.1 based on the function within the space.

421.7 Accessibility. Accessibility shall be designed in accordance with Chapter 11.

421.8 Ventilation. The applicable requirements of the International Mechanical Code shall apply to each area within the live/work unit for the function within that space."

SECTION 8. Section 18.50.380 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 507.6 of the International Building Code, is amended to read as follows:

507.6 Group A-3 buildings. The area of a one-story, Group A-3 building of Type II construction shall not be limited when all of the following criteria are met:

1. The building shall not have a stage other than platform.
2. The building shall be equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.
3. ~~The assembly floor shall be located at or within 21 inches (533 mm) of street or grade level and all exits are provided with ramps complying with Section 1010.1 to the street or grade level.~~

   ~~**Exception:** Building elements that are part of a religious practice or ceremony with a design capacity of less than 10 persons.~~

~~4.~~ 3. The building shall be surrounded and adjoining by public ways or yards not less than 60 feet (18288 mm) in width."

SECTION 9. Section 18.50.400 of the Code of the City of Wichita, is hereby amended to read as follows:

"Table 601 of the International Building Code, is amended to read as follows:

TABLE 601[h]
FIRE-RESISTANCE RATING REQUIREMENTS FOR BUILDING ELEMENTS (hours)

BUILDING ELEMENT	TYPE I		TYPE II		TYPE III		TYPE IV	TYPE V	
	A	B	A[e]	B	A[e]	B	HT	A[e]	B
Primary Structural Frame[a]	3[b]	2[b]	1	0	1	0	HT	1	0
Bearing walls Exterior[g] Interior	 3 3[b]	 2 2[b]	 1 1	 0 0	 2 1	 2 0	 2 1/HT	 1 1	 0 0
Nonbearing walls and partitions Exterior	See Table 602								
Nonbearing Walls And Partitions Interior[f]	0	0	0	0	0	0	See Section 602.4.6	0	0
Floor construction and secondary members ~~Including supporting beams and joists~~	2	2	1	0	1	0	HT	1	0
Roof construction and secondary members ~~Including supporting beams and joists~~	1 1/2[c]	1[c, d]	1[c, d]	0[c, d]	1[c, d]	0[c, d]	HT	1[c, d]	0

For SI: 1 foot = 304.8mm.

a. The primary structural frame shall be considered to be the columns and the girders, beams, trusses and spandrels having direct connections to the column and bracing members designed to carry

gravity loads. ~~The members of floor or roof panels, which have no connections to the columns shall be considered secondary members and not a part of the structural frame~~. The following structural members shall be considered secondary members and not part of the primary structural frame:

i. Structural members not having direct connections to the columns;

ii. Members of the floor construction not having direct connections to the columns; and

iii. Bracing members other than those that are part of the primary structural frame.

b. Roof supports: Fire-resistance ratings of structural frame and bearing walls are permitted to the reduced by 1 hour where supporting a roof only.

c. Except in Group F-1, H, M, and S-1 occupancies, fire protection of structural members shall not be required, including protection of roof framing and decking where every part of the roof construction is 20 feet or more above any floor immediately below. Fire–retardant-treated wood members shall be allowed to be used for such unprotected members.

d. In all occupancies, heavy timber shall be allowed where 1-hour or less fire-resistance rating is required.

e. An approved automatic sprinkler system in accordance with Section 903.3.1.1 shall be allowed to the substituted for 1-hour fire-resistance-rated construction, provided such system is not otherwise required by other provisions of this code or used

for an allowable area increase in accordance with Section 506.3 or an allowable height increase in accordance with Section 504.2. The 1-hour substitution for the fire resistance of exterior walls shall not be permitted.

f. Not less than the fire-resistance rating required by other sections of this code.

g. Not less than the fire-resistance rating based on fire separation distance (See Table 602).

h. Canopies under which temporary transactions occur or the loading and unloading of passengers of private or pleasure-type motor vehicles may be of non-combustible construction, subject to the following conditions:

1. The canopy is open on three or more sides and is not more than 15~~0~~00 square feet (~~92.90~~ 139.4 m^2).

2. Canopy structures shall not be located in areas where building openings are prohibited or openings are required to be protected by Table 602.

3. Buildings or portions thereof with exits having canopy structures located over the exit discharge shall be provided with an alternate means of egress as required by Section 1015.2.1.

~~4. Exterior walls adjacent to the canopy shall be protected with not less than 1-hour fire-resistive construction from grade to a point 10 feet (3048 mm) above the canopy roof. Unprotected openings are permitted in the adjacent walls below the roof structure unless required elsewhere.~~"

SECTION 10. Section 18.50.475 of the Code of the City of Wichita, is hereby created to read as follows:

Section 803.10 and 803.10.1 of the International Building Code, is created to read as follows:

Site-fabricated Stretch System. A system, fabricated on site and intended for acoustical, tackable or aesthetic purposes, that is comprised of three elements; (a) a frame (constructed of plastic, wood, metal or other material) used to hold fabric in place, (b) a core material (infill, with the correct properties for the application) and (c) an outside layer, comprised of a textile, fabric or vinyl, that is stretched taunt and held in place by tension or mechanical fasteners via the frame.

Section 803.10.1 Site fabricated stretched systems. Where used as interior wall or interior ceiling finish materials, site-fabricated stretch systems shall be tested in the manner intended for use, and shall comply with the requirements of Section 803.1.1 or 803.1.2. If the materials are tested in accordance with ASTM E 84 or UL 723, specimen preparation and mounting shall be in accordance with ASTM E 2573.

SECTION 11. Section 18.50.535 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 903.2.3.1 of the International Building Code, is amended to read as follows:

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 12. Section 18.50.585 of the code of the City of Wichita, is hereby created to read as follows:

"Section 903.3.1.2.1 of the International Building Code, is amended to read as follows:

[F] **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 13. Section 18.50.588 0f the Code of the City of Wichita, is hereby created to read as follows:

"Section 907.2 of the International Building Code, is hereby amended to read as follows:

[F] 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 waterflow 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 14. Section 18.50.673 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1007.3 of the International Building Code is hereby amended to read as follows:

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 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 <u>or 903.3.1.2.</u>
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 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 15. Section 18.50.676 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1007.4 of the International Building Code, is hereby amended to read as follows:

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 16. Section 18.50.685 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1008.1.2 of the International building Code, is amended to read as follows:

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 17. Section 18.50.690 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 1008.1.4 of the International Building Code, is amended to read as follows:

1008.1.4 Floor Elevation. There shall be 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 18. Section 18.50.703 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1008.1.8.4 of the International Building Code, is amended to read as follows:

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 19. Section 18.50.705 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1008.1.8.8 of the International Building Code is hereby created to read as follows:

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 20. Section 18.50.707 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1008.1.8.9 of the International Building Code is hereby created to read as follows:

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 with 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 21. Section 18.50.735 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1009.12 of the International Building Code, is created to read as follows:

1009.12Access 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 22. Section 18.50.740 of the Code of the City of Wichita is hereby repealed

SECTION 23. Section 18.50.795 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1014.3 of the International Building Code, is amended to read as follows:

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 <u>and assembly occupancies in Group E occupancies</u> 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 24. Section 18.50.805 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1017.3 of the International Building Code, is amended to read as follows:

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 25. Section 18.50.810 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1019.1 of the International Building Code, is amended to read as follows:

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 EXISTS 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 26. Section 18.50.820 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 1019.2 of the International Building Code, is amended to read as follows:

~~**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.~~

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 travel distance
	H-2, H-3	3 occupants and 25 feet travel distance
	H-4, H-5, I, R	10 occupants and 75 feet travel distance
	S[a]	29 occupants and 100 feet travel distance
Second Story	B[b], F, M, S[a]	29 occupants and 75 feet travel distance
	R-2	4 dwelling units and 50 feet travel distance
Third Story	R-2[c]	4 dwelling units and 50 feet 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.
e. Day care maximum occupant load is 10.

SECTION 27. Section 18.50.980 of the Code of the City of Wichita, is hereby amended to read as follows:

"Counters and bars. Where food or alcoholic beverages are served or consumed at a counter or bar exceeding 34 inches (865 mm) in height for consumption by customers seated on stools or standing at the counter or bar, a portion of the main counter or bar which is 60 inches (1525 mm) in length minimum shall be provided in compliance with the requirements for fixed or built-in seating and tables in accordance with ~~Section 4.32 of~~ the Americans with Disabilities Act ("ADA" or "the Act").

Exception: A counter or bar with a design occupant load of 10 or less and where service is available at accessible tables within the same room or area."

SECTION 28. Section 18.50.990 of the Code of the City of Wichita, is hereby amended to read as follows:

"Parking Space Design. Effective on or after January 1, 2006 for building permits reviewed and issued for new construction projects/development that require or provide new parking; new, expanded or re-constructed parking lots; or parking lots that are being restriped as part of a building permit, all accessible parking spaces shall be designed and installed in accordance with the "Universal Parking Design" standards of Appendix Section A4.6.3 of the Americans with Disabilities Act Accessibility Guidelines, as amended."

SECTION 29. Section 18.50.1050 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 1503.4 of the International Building Code, is amended to read as follows:

1503.4 Roof drainage, condensate drainage and waste water. Design and installation of roof drainage systems shall comply with Title 21 of the City Code and the provisions on this section. Roofs shall be sloped a minimum of 1 unit vertical in 48 units horizontal (2-percent slope) for drainage unless designed by a licensed engineer for water accumulation. Unless roofs are sloped to drain over roof edges, primary piped roof drains or wall scuppers shall be installed at each low point of the roof. Roof drains (including primary and secondary piped drains and primary and secondary wall scuppers) shall be sized and discharged in accordance with Title 21 of the City Code. The storm drainage 60-minute duration rate, based on a 100-year return (maximum rate of rainfall), for Wichita has been determined by the building official to 3.9 inches (99 mm). ~~Where roof drains are required, overflow drains having the same size as the roof drains shall be installed with the inlet flow line located 2 inches 51 mm) above the low point, or overflow scuppers having three times the size of the roof drains and having a minimum opening height of 4 inches (102 mm) shall be installed in the adjacent parapet walls with the inlet flow line 2 inches (51 mm) above the low point of the roof. Overflow drains shall discharge to an approved location and shall not be connected to the roof drain lines.~~ Roof drainage water from a building shall not be allowed to flow over public or private property, unless permitted by an approved drainage agreement or easement. Discharge from mechanical equipment condensate drains and any other waste water and ~~R~~roof down spouts

shall not discharge onto a pedestrian walking surface. A Storm Water Quality Compliance Statement is required to be filed with Central Inspection for discharges, other than storm water, that flow to storm water drainage systems."

SECTION 30. Section 18.50.1053 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1503.4.1 of the International Building Code, is created to read as follows:

1503.4.1 Secondary drainage required. Secondary (emergency overflow) piped roof drains or secondary scuppers shall be provided where the roof perimeter construction extends above the roof in such a manner that water will be entrapped if the primary drains allow buildup for any reason. Secondary piped drains and scuppers shall be sized and located to prevent the depth of ponding water from exceeding that for which the roof was designed. The secondary drainage system shall be separate from the primary system and shall discharge independently at grade or other approved point of discharge. Secondary piped roof drains shall be installed with the inlet flow line 2 inches (51 mm) above the roof low point."

SECTION 31. Section 18.50.1055 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 1503.4.2 of the International Building Code, is created to read as follows:

1503.4.2 Secondary scuppers. Secondary scuppers shall be installed with the flow line 2 inches (51 mm) maximum above the low point of the roof and shall not have an opening dimension of

less than 4 inches (102 mm). Secondary scuppers shall be located minimum 4 feet (1219 mm) horizontally from primary scuppers and primary piped roof drains. Conductor heads installed at secondary wall scuppers shall include an unobstructed opening in the face of the conductor head at least equal in area to the secondary wall scupper opening and shall not have an opening dimension of less than 4 inches (102 mm), or the top of the conductor head shall be installed 2 inches (51 mm) above the low point of the roof. The flow through the primary system shall not be considered when locating and sizing scuppers."

SECTION 32. Section 18.50.1110 of the Code of the City of Wichita, is hereby amended to read as follows:

"Storm shelters: Scope. When a room or area is represented by a manufacturer or builder as a storm shelter, or is a designated location of refuge by an owner/user of a structure, the shelter shall meet the following requirements:

1. For a shelter with less than 12 occupants, the shelter may be constructed using the provisions of the current addition of FEMA 320 "Taking Shelter From The Storm".

2. For a shelter with 12 or more occupants, the shelter shall be designed by a licensed design professional in accordance with ~~current addition of~~ FEMA 361 "Design And Construction Guidance Of Community Shelters", editions 1 or 2. A licensed engineer shall seal a certificate to be posted on the inside of each shelter stating it was designed in accordance with FEMA 361.

3. Storm shelters shall comply with the provisions of the Americans with Disabilities Act ("ADA")."

SECTION 33. Section 18.50.1180 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 1613.5.3 of the International Building Code, is amended to read as follows:

1613.5.3 Site coefficients and adjusted maximum considered earthquake spectral response acceleration parameters. The maximum considered earthquake spectral response acceleration for short periods, $\underline{S_s}$ $\cancel{S_{ms}}$, and at 1-second period, $\underline{S_1}$ $\cancel{S_{m1}}$, for Wichita has been determined by the building official to be 0.14 and 0.056 respectively."

SECTION 34. Section 18.50.1200 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 1702.1 of the International Building Code, is amended to read as follows:

1702.1 General. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

APPROVED AGENCY. An established and recognized agency regularly engaged in conducting tests or furnishing inspection services, when such agency has been approved.

APPROVED FABRICTOR. An established and qualified person, firm or corporation approved by the building official pursuant to Chapter 17 of this code.

CERTIFICATE OF COMPLIANCE. A certificate stating that materials and products meet specified standards or that work was done in compliance with approved construction documents.

DESIGNATED SEISMIC SYSTEM. Those architectural, electrical and mechanical systems and their components that require design in accordance with Chapter 13 of ASCE 7 and for which component importance factor, I_p, is greater than 1 in accordance with Section 13.1.3 of ASCE 7.

FABRICATED ITEM. Structural, load-bearing or lateral load-resisting assemblies consisting of materials assembled prior to installation in building or structure or subjected to operations such as heat treatment, thermal cutting, cold working or reforming after manufacture and prior to installation in a building or structure. Materials produced in accordance with standard specifications referenced by this code, such as rolled structural steel shapes, steel-reinforcing bars, masonry units and wood structural panels shall not be considered "fabricated items."

INSPECTION CERTIFICATE. An identification applied on a product by an approved agency containing the name of the manufacturer, the function and performance characteristics, and the name and identification of an approved agency that indicates that the product or material has been inspected and evaluated by an approved agency (see Section 1703.5 and "Label," "Manufacturer's designation" and "Mark").

LABEL. An identification applied on a product by the manufacturer that contains the name of the manufacturer, the function and performance

characteristics of the product or material, and the name and identification of an approved agency and that indicates that the representative sample of the product or material has been tested and evaluated by an approved agency (see Section 1703.5 and "Inspection certificate," "Manufacturer's designation" and "Mark").

MAIN WIND-FORCE-RESISTING SYSTEM. An assemblage of structural elements assigned to provide support and stability for the overall structure. The system generally receives wind loading from more than one surface.

MANUFACTURER'S DESIGNATION. An identification applied on a product by the manufacturer indicating that a product by the manufacturer indicating that a product or material complies with a specified standard or set of rules (see also "Inspection certificate," "Label" and "Mark").

MARK. An identification applied on a product by the manufacturer indicating the name of the manufacturer and the function of a product or material (See also "Inspection certificate," "Label" and "Manufacturer's designation").

SPECIAL INSPECTION. Inspection as herein required of the materials, installation, fabrication, erection or placement of components and connections requiring special expertise to ensure compliance with approved construction documents and referenced standards (see Section 1704).

SPECIAL INSPECTION, CONTINUOUS. The full-time observation of work requiring special inspection by an approved special inspector who is present in the area where the work is being performed.

SPECIAL INSPECTION, PERIODIC. The part-time or intermittent observation of work requiring special inspection by an approved special inspector who is present in the area where the work has been or is being performed and at the completion of the work.

SPECIAL INSPECTOR. The owner, building official, and the licensed design engineer shall approve the special inspector. ~~The special inspector shall be a licensed engineer or an employee under the direct supervision of the licensed engineer acting as the special inspector~~. The inspector shall also show competent knowledge to the building official, licensed design engineer, licensed design architect, and owner for those items to receive special inspection. The special inspector shall prevent a conflict of interest by not performing testing of construction materials for which the special inspector is engaged to observe compliance.

SPRAYED FIRE-RESISTANT MATERIALS. Cementations or fibrous materials that are spray applied to provide fire-resistant protection of the substrates.

STRUCTURAL OBSERVATION. The visual observation of the structural system by a registered design professional for general conformance to the approved construction documents at significant construction stages and at completion of the structural system. Structural observation does not include or waive the responsibility ~~for the inspection~~ for the inspection required by Section 109, 1704 or other sections of this code."

SECTION 35. Section 18.50.1210 of the Code of the City of Wichita, is hereby amended to read as follows:

"Section 1704.1 of the International Building Code, is amended to read as follows:

1704.1 General. Where application is made for construction as described in this section, the owner or the registered design professional in responsible charge acting as the owner's agent shall employ one or more special inspectors to provide inspections during construction on the types of work listed under Section 1704. The special inspector shall be a qualified person who shall demonstrate competence, to the satisfaction of the building official, for inspection of the particular type of construction or operation requiring special inspection. ~~The special inspector shall be a qualified person who shall demonstrate competence, to the satisfaction of the building official, for inspection of the particular type of construction or operation requiring special inspection.~~ These inspections are in addition to the inspections specified in Section 109.

The special inspector shall be a qualified person who shall demonstrate competence, to the satisfaction of the *building official*, for inspection of the particular type of construction or operation requiring *special inspection*. The *registered design professional in responsible charge* and engineers of record involved in the design of the project are permitted to act as the *approved agency* and their personnel are permitted to act as the special inspector for the work designed by them, provided those personnel meet the qualification requirements of this section to the satisfaction of the *building official*. The special inspector

shall provide written documentation to the building official demonstrating his or her competence and relevant experience or training. Experience or training shall be considered relevant when the documented experience or training is related in complexity to the same type of *special inspection* activities for projects of similar complexity and material qualities. These qualifications are in addition to the qualifications specified in other sections of this code.

Exceptions:

~~1.~~ Special inspections are not required for work of a minor nature or as warranted by conditions in the jurisdiction as approved by the building official, or as described in items 1.1 thru 1.4 listed below. ~~The below items are considered minor in nature:~~

1.1 Buildings and other structures, or additions to existing buildings or structures, where there is a design occupant load of less 500 persons in any one area or room of the new construction or where the total design occupant load of the new construction is less 1,000 persons, as calculated under Section 1004.1.

~~1.2. Building and other structures, or additions to existing buildings or structures, with elementary, middle, secondary or day-care facilities with a total design occupant load for the new construction is less 500 persons, as calculated under Section 1004.1.~~

~~1.3~~ 1.2 New hospitals and other health care facilities, or additions thereto, having surgery or emergency treatment facilities or capacity for less 100 residential patients for the new construction area.

~~1.4~~ 1.3 Buildings or ~~other~~ structures, or ~~of steel construction, or steel construction~~ additions to existing buildings or structures, where the floor area of the new construction is less than 50,000 square feet, or where the height of the exterior ~~structural~~ building walls are less than ~~24~~ 22 feet as measured from the grade plane.

~~1.5 Buildings or other structures of masonry or reinforced masonry construction, additions to existing buildings, where the floor area of the new construction exceeds is less than 24,000 square feet, or the height of the exterior of the exterior structural masonry building walls is less than 24 feet.~~

~~1.6 Buildings or other structures of concrete construction, or concrete construction addition to existing buildings, where the floor area of the new construction is less than 50,000 square feet, or where there are the construction is less than three stories in height.~~

~~1.7 Pre-engineered steel/metal buildings or structures, or pre-engineered steel/metal additions to existing buildings or structures where the floor are is less than 80,000 square feet, or~~

~~where the height of the exterior structural building walls are less than 24 feet~~

~~1.8~~ 1.4 Conventional construction for the Wichita, Kansas, area, such as foundations not supported on reinforced concrete piers into weathered shale, etc., or required to obtain some desired or specified ksf allowable bearing.

2. Special inspections are not required for building components unless the design involves the practice of professional engineering or architecture as defined by applicable state statues and regulations governing the professional registration and certification of engineers or architects or the building components are fabricated at an AISC Certified Fabricator.

3. Unless otherwise required by the building official, special inspections are not required for occupancies in Group R-3 as applicable in Section 101.2 and occupancies in Group U that are accessory to a residential occupancy including, but not limited to, those listed in Section 312.1."

SECTION 36. Section 18.50.1280 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 2902.4 of the International Building Code, is amended to read as follows:

2902.4 Required public toilet facilities. Customers, patrons and visitors shall be provided with public toilet facilities ~~in~~ for outdoor activities classified as a group "A" occupancy or structures and tenant spaces intended for public assembly, education and institutional uses. ~~utilization.~~ The

accessible route to public facilities shall not pass through kitchens, storage rooms, closets or similar spaces. Employee toilet facilities shall be either separate or combined employee and public toilet facilities. The number of plumbing fixtures located within the required toilet facilities shall be provided in accordance with Section 2902.1 for all users."

SECTION 37. Section 18.50.1290 of the Code of the City of Wichita, is hereby created to read as follows:

"Section 2903 of the International Building Code, is created to read as follows:

2903 Accessible urinal partitions. Each accessible urinal utilized by the public or employees shall occupy a separate area with walls or partitions to provide privacy. The walls or partitions shall begin at a height not more than 12 inches (305 mm) from and extend not less than 60 inches (1524 mm) above the finished floor surface. The walls or partitions shall extend from the wall surface at each side of the urinal a minimum of 18 inches (457 mm) or to point not less than 6 inches (152 mm) beyond the outermost front lip of the urinal measured from the finished back wall surface, whichever is greater.

Exceptions:

1. Urinal partitions shall not be required in a single occupant or family or assisted use toilet room with a lockable door.
2. Toilet rooms located in a day care and child care facilities and containing two or more urinals shall be permited to have one urinal without partitions."

SECTION 38. 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

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Clean Copy October 14, 2010

ORDINANCE NO. 48-880

AN ORDINANCE AMENDING AND REPEALING THE ORIGINAL OF SECTIONS: 18.51.030, 18.51.070, 18.51.150, 18.51.170, 18.51.220, 18.51.440, 18.51.510, 18.51.540, 18.51.630, 18.51.650, 18.51.700, 18.51.710, 18.51.730, 18.51.750; CREATING SECTIONS: 18.51.112, 18.51.115, 18.51.402, 18.51.424, 18.51.572, 18.51.602, 18.51.604, 18.51.702, 18.51.704, 18.51.706, 18.51.708, 18.51.712, 18.51.714, 18.51.715, 18.51.716, 18.51.718; AND DELETING SECTION: 18.51.620, OF TITLE 18.51 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

ALL IN THE CODE OF THE CITY OF WICHITA, KANSAS AND PERTAINING TO THE BUILDING CODES OF THE CITY OF WICHITA, KANSAS.

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

SECTION 1. Section 18.51.030 of the Code of the City of Wichita, is hereby amended to read as follows:

Section R105.2 of the International Residential Code is amended to read as follows:

R105.2 Work exempt from permit: Exemption from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

BUILDING:

1. One-story detached accessory structures, provided the floor area does not exceed 200 square feet (18.58 m^2) and a location permit is obtained from the Office of Central Inspection prior to installation.

Exception: Non-fixed and movable storage cabinets equipped with doors that conceal the contents within and having a footprint not exceeding 25 square feet (2.32 m^2), shall not require the issuance of a location permit.

All detached accessory structures greater than 25 (2.32m^2) but equal to or less than 400 (37.16 m^2) square feet shall be tied down to the earth using anchoring methods described in "Non Vehicular Storage Structure Anchoring Standards" of the City of Wichita; or be attached to a permanent concrete foundation per R403.1.6.

1.1 Playhouses or tree houses having single or multi-level floors with or without roofs.

2. Concrete or masonry fences not over 4 feet (1219mm) in height measured from the bottom of the footing to the top of the wall and other fences not over 8 feet (2438mm) high.

2.1 Concrete or masonry monument sign bases not 4 feet (1219 mm) in height measured from the lowest point of the adjoining grade. The sign size and content requires separate approval and permit.

3. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.

4. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18, 925 L) and the ratio of height to diameter or width does not exceed 2 to 1.

5. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade and not over any basement or story below.

6. Decks, stoops, and porches not more than 30 inches (762mm) above adjacent grade without overhead structures and not over any basement or story below.

7. Replacement of floor covering, painting, papering, tiling, carpeting, cabinets, counter tops, paneling and similar finish work.

8. Prefabricated swimming pools that are less than 24 inches (610 mm) deep and the capacity does not exceed 5,000 gallons (18,925 L) in which the pool walls are entirely above ground.

9. Swings and other playground equipment accessory to a one- or two-family dwelling.

10. Window awnings supported by an exterior wall which do not project more than 54 inches (1372mm) from the exterior wall and do not require additional support.

11. Emergency board-up, or securing temporary bracing of a building after a fire, storm, vehicle damage or other disaster which caused the building to be open or unsafe. The building owner or his/her agent may cause such work to be done provided that the Office of Central Inspection is notified the following business day.

12. Repair or replacement of roofing and/or siding materials not exceeding 400 square feet (37.16 m^2) within any 12 month period.

13. Repair or replacement of interior gypsum wallboard on non-fire rated walls or ceilings when the total area does not exceed 100 square feet (9.29 m^2) within any 12-month period and provided that no framing electrical, mechanical or plumbing changes are made.

14. Replacement of windows or doors or replacement of roof skylights or equipment with the same size or smaller unit(s) that does not involve the removal, cutting, alteration or replacement of any building structural member; including but not limited to studs, headers, girders, beams, joists, rafters, cripples, jacks or other supporting framing member(s). The framing used to infill existing openings for the purpose of installing smaller unit(s) shall be exempt from permit requirements. Placement of smaller windows or doors shall not reduce the minimum size requirements of escape and rescue openings, or egress door(s) required in Sections R310 and R311 of this code. The replacement door or window shall not be of a lower fire rating than required by this code for any rated wall or assembly.

Electrical:

Exemptions for electrical permits shall be governed by Title 19 of the Code of the City of Wichita.

GAS:

1. Portable heating, cooking or clothes drying appliances.

2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

3. Portable-fuel-cell appliances that are not connected to a fixed piping system and are not interconnected to a power grid.

MECHANICAL:

1. Portable heating appliances.

2. Portable ventilation appliances.

3. Portable cooling units.

4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.

5. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

6. Portable evaporative coolers.

7. Self-contained refrigeration systems containing 10 pounds (4.54kg) or less of refrigerant or that are actuated by motors of 1 horsepower (746 W) or less.

8. Portable-fuel-cell appliances that are not connected to a fixed piping system and are not interconnected to a power grid.

The stopping of leaks in drains, water, soil, waste or vent pipe; provided, however, that if any concealed trap, drainpipe, water, soil, water or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.

The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

SECTION 2. Section 18.51.070 of the Code of the City of Wichita, is hereby amended to read as follows:

Section R105.5 of the International Residential Code is amended to read as follows:

R105.5 Expiration. Every permit issued shall expire unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. Work shall be considered to have been suspended or abandoned if it has been more than 180 days since the last requested inspection. Before work can be recommenced, the permit must be re-instated. The fee for re-instatement shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and that such suspension or abandonment has not exceeded one year. In order to resume work after suspension or abandonment for a period exceeding one year, a new permit shall be required. The code official is authorized to grant, in writing, one or more extensions of time for periods not more than 180 days each. The extensions shall be requested in writing and justifiable cause demonstrated.

SECTION 3. Section 18.51.112 of the Code of the City of Wichita, is hereby created to read as follows:

Section R109.1.6 of the International Residential Code is amended to read as follows:

R109.1.6 Final inspection. Final inspection shall be made after the permitted work is complete and prior to occupancy. This requirement may be waived by the building official for approvals granted to limited contractors who are part of self-certification programs established and monitored by the Office of Central Inspection. In these instances the contractors must meet all established program criteria, must provide all required documentation, and be subject to periodic audits by the Office of Central Inspection. The building official may revoke permission to self-certify, for cause, at any time.

SECTION 4. Section 18.51.115 of the Code of the City of Wichita, is hereby created to read as follows:

TableR301.2(1) of the International Residential Code is amended to read as follows:

Table R301.2(1) Climatic and Geographic Design Criteria. The Climatic and Geographic Design Criteria for building design shall be as provided in Table R301.2(1).

Table Inset:

TABLE R301.2(1)
CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

GROUND SNOW LOAD	WIND SPEED[d] (mph)	SEISMIC DESIGN CATEGORY[f]	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP[e]	ICE BARRIER UNDERLAYMENT REQUIRED[h]	FLOOD HAZARDS[g]	AIR FREEZING INDEX[i]	MEAN ANNUAL TEMP[j]
			Weathering[a]	Frost line depth[b]	Termite[c]					
15	90	A	Severe	24 "	Mod./ Severe	-7^0 F.	Yes	Title 27.06_	700_	55/ 60

For SI: 1 pound per square foot = 0.0479 kPa, 1 mile per hour = 0.447 m/s.

a. Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy the structural requirements of this code. The weathering column shall be filled in with the weathering index (i.e., "negligible," "moderate" or "severe") for concrete as determined from the Weathering Probability Map [Figure R301.2(3)]. The grade of masonry units shall be determined from ASTM C 34, C 55, C 62, C 73, C 90, C 129, C 145, C 216 or C 652.

b. The frost line depth may require deeper footings than indicated in Figure R403.1(1). The jurisdiction shall fill in the frost line depth column with the minimum depth of footing below finish grade.

c. The jurisdiction shall fill in this part of the table to indicate the need for protection depending on whether there has been a history of local subterranean termite damage.

d. The jurisdiction shall fill in this part of the table with the wind speed from the basic wind speed map [FigureR301.2(4)]. Wind exposure category shall be determined on a site-specific basis in accordance with Section R301.2.1.4.

e. The outdoor design dry-bulb temperature shall be selected from the columns of 97½ percent values for winter from Appendix D of the *International Plumbing Code*. Deviations from the Appendix D temperatures shall be permitted to reflect local climates or local weather experience as determined by the building official.

f. The jurisdiction shall fill in this part of the table with the seismic design category determined from Section R301.2.2.1.

g. The jurisdiction shall fill in this part of the table with (a) the date of the jurisdiction's entry into the National Flood Insurance Program (date of adoption of the first code or ordinance for management of flood hazard areas), (b) the date(s) of the currently effective FIRM and FBFM, or other flood hazard map adopted by the community, as may be amended.

h. In accordance with Sections R905.2.7.1, R905.4.3.1, R905.5.3.1, R905.6.3.1, R905.7.3.1 and R905.8.3.1, where there has been a history of local damage from the effects of ice damming, the jurisdiction shall fill in this part of the table with "YES". Otherwise, the jurisdiction shall fill in this part of the table with "NO".

i. The jurisdiction shall fill in this part of the table with the 100-year return period air freezing index (BF-days) from Figure R403.3(2) or from the 100-year (99%) value on the National Climatic Data Center data table "Air Freezing Index-USA Method (Base 32°Fahrenheit)" at www.ncdc.noaa.gov/fpsf.html.

j. The jurisdiction shall fill in this part of the table with the mean annual temperature from the National Climatic Data Center data table "Air Freezing Index-USA Method (Base 32°Fahrenheit)" at www.ncdc.noaa.gov/fpsf.html.

SECTION 5. Section 18.51.150 of the Code of the City of Wichita, is hereby amended to read as follows:

Section R303.3 of the International Residential Code is amended to read as follows:

R303.3 Bathrooms. Bathrooms, water closet compartments and other similar rooms shall be provided with aggregate glazing area in windows of not less than 3 ($0.3m^2$) square feet, one-half of which must be openable.

Exception: The glazed areas shall not be required where artificial light and a mechanical ventilation system are provided. The minimum ventilation rates shall be 50 cubic feet per minute (24 L/s) for intermittent ventilation or 20 cubic feet per minute (10 L/s) for continuous ventilation. Ventilation air from the space shall be exhausted directly to the outside or into a properly ventilated attic when all of the following are met:

1. The duct(s) conveying exhaust into the attic shall terminate a minimum of 36 inches above the top of the ceiling framing members, and shall not discharge upon any building element.
2. Attics into which bath and/or toilet room exhausts are discharged must be properly ventilated, in accordance with Section R806, and shall not discharge into an unvented attic assembly.
3. The exhaust duct(s) shall terminate above the top of the attic insulation with a "goose-neck" installed to prevent infiltration of insulating material into the duct.
4. Exhaust duct(s) run above the insulation inside of attics, with a developed length greater than 5 feet, shall be insulated.

SECTION 6. Section 18.51.170 of the Code of the City of Wichita, is hereby amended to read as follows:

Section R308.4 of the International Residential Code is amended to read as follows:

R308.4 Hazardous locations. The following shall be considered specific hazardous locations for the purpose of glazing:

1. Glazing in swinging doors except jalousies.

2. Glazing in fixed and sliding panels of sliding door assemblies and panels in sliding and bi-fold closet door assemblies.

3. Glazing in storm doors.

4. Glazing in all unframed swinging doors.

5. Glazing in doors and enclosures for hot tubs, whirlpools, saunas, steam rooms, bathtubs and showers where the bottom exposed edge of the glazing is less than 60 inches (1524 mm) measured vertically above any standing or walking surface.

> **Exception:** Glazing that is 18 inches (1524 mm) or more, measured horizontally and in a straight line, from the waters edge of a hot tub, whirlpool or bathtub.

6. Glazing, in an individual fixed or operable panel adjacent to a door where the nearest vertical edge is within a 12 inch (305mm) arc of the door in a closed position and whose bottom edge is less than 60 inches (1524mm) above the floor or walking surface.

7. Glazing in an individual fixed or operable panel, other than those locations described in items 5 and 6 above, that meets all of the following conditions:

> 7.1. Exposed area of an individual pane larger than 9 square feet (0.836 m2).
>
> 7.2. Bottom edge less than 10 inches (254 mm) above the floor.
>
> 7.3. Top edge more than 36 inches (914 mm) above the floor.
>
> 7.4. One or more walking surfaces within 36 inches (914 mm) horizontally of the glazing.

8. All glazing in railings regardless of an area or height above a walking surface. Included are structural baluster panels and nonstructural in-fill panels.

9. Glazing in walls and fences enclosing indoor and outdoor swimming pools, hot tubs and spas where the bottom edge of the glazing is less than 60 inches (1524 mm) above a walking surface and within 60 inches (1524 mm) horizontally of the water's edge. This shall apply to single glazing and all panes in multiple glazing.

10. Glazing adjacent to stairways, landings and ramps within 36 inches (914 mm) horizontally of a walking surface when the exposed surface of the glass is less than 60 inches (1524 mm) above the plane of the adjacent walking surface.

11. Glazing in walls enclosing stairway landings or within 60 inches (1524 mm) of the top and bottom of stairways where the bottom edge of the glass is less than 60 inches (1524 mm) above the walking surface.

Exception: The following products, materials and uses are exempt from the above hazardous locations:

1. Openings in doors through which a 3-inch (76mm) sphere is unable to pass.

2. Decorative glass in Items 1, 6 or 7.

3. Glazing in Section R 308.4, Item 6, when there is an intervening wall or other permanent barrier between the door and the glazing.

4. Glazing in Section R 308.4, Item 6, in walls perpendicular to the plane of the door in a closed position, other than the wall toward which the door swings when opened, or where access through the door is to a closet or storage area 3 feet (914mm) or less in depth. Glazing in these applications shall comply with Section R 308.4, Item 7.

5. Glazing in Section R308.4, Items 7 and 10, when a protective bar is installed on the accessible side(s) of the glazing 36 inches ± 2 inches (914 mm ± 51 mm) above the floor. The bar shall be capable of withstanding a horizontal load of 50 pounds per linear foot (730 N/m) without contacting the glass and be a minimum of 1.5 inches (38 mm) in height.

6. Outboard panes in insulating glass units and other multiple glazed panels in Section R 308.4, Item 7, when the bottom edge of the glass is 25 feet (7620mm) or more above grade, a roof, walking surfaces, or other horizontal [within 45 degrees (0.79 rad) of horizontal] surface adjacent to the glass exterior.

7. Louvered windows and jalousies complying with the requirements of Section R 308.2.

8. Mirrors and other glass panels mounted or hung on a surface that provides a continuous backing support.

9. Safety glazing in Section R 308.4, Items 10 and 11, is not required where:

9.1. The side of a stairway, landing or ramp has a guardrail or handrail, including balusters or in-fill panels, complying with provisions of Sections 1013 and 1607.7 of the International Building Code; and

9.2. The plane of the glass is more than 18 inches (457 mm) from the railing; or

9.3. When a solid wall or panel extends from the plane of the adjacent walking surface to 34 inches (863 mm) to 36 inches (914 mm) above the floor and the construction at the top of that wall or panel is capable of withstanding the same horizontal load as the protective bar.

10. Glass block panels complying with Section R 610.

11. All windows in walls may be protected by an approved safety film installed by certified installers in accordance with the manufacture's specifications.

SECTION 7. Section 18.51.220 of the Code of the City of Wichita, is hereby amended to read as follows:

Section R310.2.1 of the International Residential Code is amended to read as follows:

R310.2.1 Ladders, steps and fall protection. Window wells with a vertical depth greater than 44 inches (1118 mm) shall be equipped with a permanently affixed ladder or steps usable with the window in the fully open position. Ladders or steps required by this section shall not be required to comply with Sections R311.5 and R311.6. Ladders or rungs shall have a inside width of at least 12 inches (305 mm), shall project at least 3 inches (76 mm) to the back of the rung from the wall and shall be spaced not more than 12 inches (305 mm) on center vertically for the full height of the window well. Window wells with a vertical depth of more than 30 inches (762 mm) shall be provided with guardrails that are designed in accordance with Section R312, or a protective cover designed to a minimum of 20 pounds per square foot (0.96 KN per m^2) uniformly distributed live load. Window well covers shall be provided with an emergency egress hatch located above the ladder or steps, with the minimum egress opening maintained. The force required to open the egress hatch shall not exceed 30 pounds (133.45 N) and shall not require the use of keys, more than one operation, or any special knowledge or effort. Window well covers, grates, and guardrails shall be constructed of materials approved for exterior use.

SECTION 8. Section 18.51.402 of the Code of the City of Wichita, is hereby created to read as follows:

Section R404.1 of the International Residential Code is amended to read as follows:

R404.1 Concrete and masonry foundation walls. Concrete and masonry foundation walls shall be selected and constructed in accordance with the provisions of Section R404 or in accordance with ACI 318,ACI 332,NCMATR68–A or ACI 530/ASCE 5/TMS 402 or other approved structural standards. The "Basement Standards for One and Two Family Dwellings prepared by Central Inspection Division September, 1988" may be used to comply with the requirements of this section; but do not preclude the right of the Office of Central Inspection to require a footing/foundation to be designed by a Kansas licensed architect or engineer.

Pre-engineered foundation wall systems such as insulated concrete forms (ICF walls) shall be installed to comply with the manufacturer's specifications or with architect or engineer requirements. All specifications or design documents shall be on site for each required inspection.

When ACI 318, ACI 332 or ACI 530/ASCE 5/TMS 402 or the provisions of Section R404 are used to design concrete or masonry foundation walls, project drawings, typical details and specifications are not required to bear the seal of the architect or engineer responsible for design, unless otherwise required by the state law of the jurisdiction having authority.

Foundation walls that meet all of the following shall be considered laterally supported:

1. Full basement floor shall be 3.5 inches (89 mm) thick concrete slab poured tight against the bottom of the foundation wall.

2. Floor joists and blocking shall be connected to the sill plate at the top of wall by the prescriptive method called out in Table R404.1(1), or; shall be connected with an approved connector with listed capacity meeting Table R404.1(1).

3. Bolt spacing for the sill plate shall be no greater than per Table R404.1(2).

4. Floor shall be blocked perpendicular to the floor joists. Blocking shall be full depth within two joist spaces of the foundation wall, and be flat-blocked with minimum 2-inch by 4-inch (51mm by 102mm) blocking elsewhere.

5. Where foundation walls support unbalanced load on opposite sides of the building, such as a daylight basement, the building aspect ratio, L/W, shall not exceed the value specified in Table R404.1(3). For such foundation walls, the rim board shall be attached to the sill with a 20 gage metal angle clip at 24 inches (610 mm) on center, with five 8d nails per leg, or an approved connector supplying 230 pounds per linear foot (3.36 kN/m) capacity.

SECTION 9. Section 18.51.424 of the Code of the City of Wichita, is hereby created to read as follows:

Section R502.2.2 of the International Residential Code is amended to read as follows:

R502.2.2 Decks. The "City of Wichita Standard for Residential Wood Framed Decks" may be used to design and construct decks to comply with the requirements of this section. Decks which fall outside of the scope of the standard will require design by a Kansas licensed architect or engineer. Where supported by attachment to an exterior wall, decks shall be positively anchored to the primary structure and designed for both vertical and lateral loads as applicable. Such attachment shall not be accomplished by the use of toenails or nails subject to withdrawal. Where positive connection to the primary building structure cannot be verified during inspection, decks shall be self supporting. For decks with cantilevered framing members, connections to exterior walls or other framing members, shall be designed and constructed to resist uplift resulting from the full live load specified in Table R301.5 acting on the cantilevered portion of the deck.

SECTION 10. Section 18.51.440 of the Code of the City of Wichita, is hereby amended to read as follows:

Section R602.10 of the International Residential Code is amended to read as follows:

R602.10 Wall bracing. All exterior walls shall be braced in accordance with this section. In addition, interior braced wall lines shall be provided in accordance with Section R602.10.1.1. For buildings in Seismic Design Categories D0, D1 and D2, walls shall be constructed in accordance with the additional requirements of Sections R602.10.9, R602.10.11, and R602.11.

In addition, the following methods of shear wall bracing are acceptable:

1. Method stated in "Bracing of Wall Sections in Residential Homes Up to 12 Foot Vertical Walls”-City of Wichita" 2007.

2. Method stamped by Kansas Licensed Structural Engineer.

SECTION 11. Section 18.51.510 of the Code of the City of Wichita, is hereby amended to read as follows:

Section R907.3 of the International Residential Code is amended to read as follows:

R907.3 Re-covering versus replacement. New roof coverings shall not be installed without first removing all existing layers of roof coverings where any of the following conditions occur:

1. Where the existing roof or roof covering is water-soaked or has deteriorated to the point that the existing roof or roof covering is not adequate as a base for additional roofing.

2. Where the existing roof covering is wood shake, slate, clay, and cement or asbestos-cement tile.

3. Where the existing roof has two or more applications of any type of roof covering.

Exceptions:

1. Complete and separate roofing systems, such as standing-seam metal roof systems, that are designed to transmit the roof loads directly to the building's structural system and that do not rely on existing roofs and roof coverings for support, shall not require the removal of existing roof coverings.

2. Installation of metal panel, metal shingle, and concrete and clay tile roof coverings over existing wood shake roofs shall be permitted when the application is in accordance with Section R907.4.

3. The application of new protective coating over existing spray polyurethane foam roofing systems shall be permitted without tear-off of existing roof coverings.

SECTION 12. Section 18.51.540 of the Code of the City of Wichita, is hereby amended to read as follows:

Part V, Mechanical chapters adopted.

Mechanical chapters 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, and 24 of the International Residential Code are hereby adopted by the Code of the City of Wichita.

SECTION 13. Section 18.51.572 of the Code of the City of Wichita, is hereby created to read as follows:

Section M1305.1.4.1 of the International Residential Code is amended to read as follows:

M1305.1.4.1 Ground Clearance. Equipment and appliances installed at grade level shall be supported on a level concrete slab or other approved material extending above adjoining grade or shall be suspended a minimum of 6 inches (152 mm) above adjoining grade. Supports for heat pumps shall be at least 3 inches and conform to the manufacturer's specifications.

SECTION 14. Section 18.51.602 of the Code of the City of Wichita, is hereby created to read as follows:

Section M1411.3.1 of the International Residential Code is amended to read as follows:

M1411.3.1 Auxiliary and secondary drain systems. In addition to the requirements of Section M1411.3, a secondary drain or auxiliary drain pan shall be required for each cooling or evaporator coil when located above finished ceilings or furred spaces. Such piping shall maintain a minimum horizontal slope in the direction of discharge of not less than 1/8 unit vertical in 12 units horizontal (1-percent slope). Drain piping shall be a minimum of 3/4-inch (19 mm) nominal pipe size. One of the following methods shall be used:

1. An auxiliary drain pan with a separate drain shall be installed under the coils on which condensation will occur. The auxiliary pan drain shall discharge to a conspicuous point of disposal to alert occupants in the event of a stoppage of the primary drain. The pan shall have a minimum depth of 1.5 inches (38 mm), shall not be less than 3 inches (76 mm) larger than the unit or the coil dimensions in width and length and shall be constructed of corrosion-resistant material. Metallic pans shall have a minimum thickness of not less than 0.0276-inch (0.7 mm) galvanized sheet metal. Nonmetallic pans shall have a minimum thickness of not less than 0.0625 inch (1.6 mm).

2. A separate overflow drain line shall be connected to the drain pan provided with the equipment. This overflow drain shall discharge to a conspicuous point of disposal to alert occupants in the event of a stoppage of the primary drain. The overflow drain line shall connect to the drain pan at a higher level than the primary drain connection.

3. An auxiliary drain pan without a separate drain line shall be installed under the coils on which condensate will occur. This pan shall be equipped with a water level detection device conforming to UL 508 that will shut off the equipment served prior to overflow of the pan. The auxiliary drain pan shall be constructed in accordance with Item 1 of this section.

4. A water level detection device conforming to UL 508 shall be provided that will shut off the equipment served in the event that the primary drain is blocked. The device shall be installed in the primary drain line, the overflow drain line or the equipment-supplied drain pan, located at a point higher than the primary drain line connection and below the overflow rim of such pan.

SECTION 15. Section 18.51.604 of the Code of the City of Wichita, is hereby created to read as follows:

Section M1411.4 of the International Residential Code is amended to read as follows:

M1411.4 Auxiliary drain pan. Category IV condensing appliances shall have an auxiliary drain pan when located above finished ceilings or furred spaces. These pans shall be installed in accordance with the applicable provisions of Section M1411.3.1.

Exception: Fuel-fired appliances that automatically shut down operation in the event of a stoppage in the condensate drainage system.

SECTION 16. Section 18.51.620 of the Code of the City of Wichita, is hereby deleted it its entirety.

SECTION 17. Section 18.51.630 of the Code of the City of Wichita, is hereby amended to read as follows:

Section 18.51.630 **Vertical clearance above cooking appliances**.

Domestic cooking appliances either built-in or freestanding shall have a vertical clearance above the cooking top of not less than thirty (30) inches (760 mm) to combustible material or metal cabinets. A minimum clearance of twenty-four (24) inches (610 mm) is permitted when one of the following is installed:

1. The underside of the combustible material or metal cabinet above the cooking top is protected with not less than 1/4 inch (6.4 mm) insulating millboard covered with sheet metal not less than 0.0122 inch (0.3 mm) thick.

2. A metal ventilating hood of sheet metal not less than 0.0122 inch (0.3 mm) thick is installed above the cooking top with a clearance of not less than 1/4 inch (6.4 mm) between the hood and the underside of the combustible material or metal cabinet, and the hood is at least as wide as the appliance and is centered over the appliance.

3. A listed cooking appliance or microwave oven is installed over a listed cooking appliance and will conform to the terms of the upper appliance's listing and the manufacturers' instructions.

SECTION 18. Section 18.51.650 of the Code of the City of Wichita, is hereby amended to read as follows:

Section M1507.2 of the International Residential Code is amended to read as follows:

M1506.2 Recirculation of air. Exhaust air from bathrooms and toilet rooms shall not be recirculated within a residence or to another dwelling unit and shall be exhausted directly to the outdoors. Exhaust air from bathrooms and toilet rooms may discharge into an attic when the following are met:

1. The duct(s) conveying exhaust into the attic shall terminate a minimum of 36 inches above the top of the ceiling framing members, and shall not discharge upon any building element.
2. Attics into which bath and/or toilet room exhausts are discharged must be properly ventilated, in accordance with Section R806, and shall not discharge into an unvented attic assembly.
3. The exhaust duct(s) shall terminate above the top of the attic insulation with a "goose-neck" installed to prevent infiltration of insulating material into the duct.

Exhaust duct(s) run above the insulation inside of attics, with a developed length greater than 5 feet, shall be insulated.

SECTION 19. Section 18.51.700 of the Code of the City of Wichita, is hereby amended to read as follows:

Section M1701.4 of the International Residential Code is amended to read as follows:

M1701.4 Prohibited sources. Combustion air ducts and openings shall not connect appliance enclosures with space in which the operation of a fan may adversely affect the flow of combustion air. Combustion air shall not be obtained from an area in which flammable vapors present a hazard. Fuel-fired appliances shall not obtain combustion air from any of the following rooms or spaces:

1. Sleeping rooms.

2. Bathrooms.

3. Toilet rooms.

Exception: The following appliances shall be permitted to obtain combustion air from sleeping rooms, bathrooms and toilet rooms:

1. Solid fuel-fired appliances provided that the room is not a confined space and the building is not of unusually tight construction.

2. Replacement of fuel-fired appliances installed in toilet rooms if approved by the building official.

SECTION 20. Section 18.51.702 of the Code of the City of Wichita, is hereby created to read as follows:

Water Heaters Used for Space Heating.

Water heaters shall be regulated by Title 21 of the Municipal Code of the City of Wichita. Section M2004 of the International Residential Code is deleted in it's entirety.

SECTION 21. Section 18.51.704 of the Code of the City of Wichita, is hereby created to read as follows:

Water Heaters.

Water heaters shall be regulated by Title 21 of the Municipal Code of the City of Wichita. Section M2005 of the International Residential Code is deleted in it's entirety.

SECTION 22. Section 18.51.706 of the Code of the City of Wichita, is hereby created to read as follows:

Fuel gas (Application).

Section G2401.1 (101.2) of the International Residential Code is amended to read as follows:

G2401.1 (101.2) Application. This chapter covers fuel-gas utilization appliances and related accessories, venting systems and combustion air configurations most commonly encountered in the construction of one- and two-family dwellings and structures regulated by this code. Requirements for gas appliances and related accessories shall include installation, combustion and ventilation air and venting. Fuel gas piping, systems, and connections for buildings governed by the International Residential Code, shall be regulated by Title 21 of the Municipal Code of the City of Wichita. The omission from this chapter of any material or method of installation provided for in the *International Fuel Gas Code* shall not be construed as prohibiting the use of such material or method of installation. Fuel-gas piping systems, fuel-gas appliances and related accessories, venting systems and combustion air configurations not specifically covered in these chapters shall comply with the applicable provisions of the *International Fuel Gas Code.*

Gaseous hydrogen systems shall be regulated by Chapter 7 of the *International Fuel Gas Code*.

This chapter shall not apply to the following:

1. Liquefied natural gas (LNG) installations.

2. Temporary LP-gas piping for buildings under construction or renovation that is not to become part of the permanent piping system.

3. Except as provided in Section G2412.1.1, gas piping, meters, gas pressure regulators, and other appurtenances used by the serving gas supplier in the distribution of gas, other than undiluted LP-gas.

4. Portable LP-gas equipment of all types that is not connected to a fixed fuel piping system.

5. Portable fuel cell appliances that are neither connected to a fixed piping system nor interconnected to a power grid.

6. Installation of hydrogen gas, LP-gas and compressed natural gas (CNG) systems on vehicles.

SECTION 23. Section 18.51.708 of the Code of the City of Wichita, is hereby created to read as follows:

Section G2404.10 (307.5) of the International Residential Code is amended to read as follows:

G2404.10 (307.5)Auxiliary drain pan. Category IV condensing appliances shall have an auxiliary drain pan when located above finished ceilings or furred spaces. These pans shall be installed in accordance with the applicable provisions of Section M1411.3.1 as amended in Section 18.51.602 of this ordinance.

Exception: An auxiliary drain pan shall not be required for appliances that automatically shut down operation in the event of a stoppage in the condensate drainage system.

SECTION 24. Section 18.51.710 of the Code of the City of Wichita, is hereby amended to read as follows:

Section G 2406.2 (303.3) of the International Residential Code is amended to read as follows:

G2406.2 (303.3) Prohibited locations. Appliances shall not be located in or obtain combustion air from sleeping rooms, bathrooms, toilet rooms, storage closets or surgical rooms, or in a space that opens into such rooms or spaces, except where the installation complies with one of the following:

1. The appliance is a direct-vent appliance installed in accordance with the conditions of the listing and the manufacturer's instructions.

2. Vented room heaters, wall furnaces, vented decorative appliances, vented gas fireplaces, vented gas fireplace heaters and decorative appliances for installation in vented solid fuel-burning fireplaces are installed in rooms that meet the required volume criteria of Section G2407.5.

3. A single wall-mounted unvented room heater is installed in a bathroom and such unvented room heater is equipped as specified in Section G2445.6 and has an input rating not greater than 6,000 Btu/h (1.76 kW). The bathroom shall meet the required volume criteria of Section G2407.5.

4. A single wall-mounted unvented room heater is installed in a bedroom and such unvented room heater is equipped as specified in Section G2445.6 and has an input rating not greater than 10,000 Btu/h (2.93 kW). The bedroom shall meet the required volume criteria of Section G2407.5.

5. The appliance is installed in a room or space that opens only into a bedroom or bathroom, and such room or space is used for no other purpose and is provided with a solid weather-stripped door equipped with an approved self-closing device. All combustion air shall be taken directly from the outdoors in accordance with Section G2407.6 or other approved areas.

6. Replacement of fuel fired appliances installed in toilet rooms if approved by the building official.

SECTION 25. Section 18.51.712 of the Code of the City of Wichita, is hereby created to read as follows:

Section G2408.4 (305.7) of the International Residential Code is amended to read as follows:

G2408.4 (305.7) Clearances from grade. The placement of appliances in relation to ground level shall be governed by Section 18.51.572 of the Code of the City of Wichita.

SECTION 26. Section 18.51.714 of the Code of the City of Wichita, is hereby created to read as follows:

Section G2410 (309) of the International Residential Code is amended to read as follows:

Section G2410 (309) Electrical shall be regulated by Title 19 of the Municipal Code of the City of Wichita.

SECTION 27. Section 18.51.715 of the Code of the City of Wichita, is hereby created to read as follows:

Section G2410.2 (309.2) of the International Residential Code is amended to read as follows:

G2410.2 (309.2) Connections. Electrical connections between gas appliances and the building wiring, including the grounding of the appliances, shall conform to Title 19 of the Municipal Code of the City of Wichita.

SECTION 28. Section 18.51.716 of the Code of the City of Wichita, is hereby created to read as follows:

Section G2411 (310) of the International Residential Code is amended to read as follows:

Section G2411 (310) Electrical bonding shall be regulated by Title 19 of the Municipal Code of the City of Wichita.

SECTION 29. Section 18.51.718 of the Code of the City of Wichita, is hereby created to read as follows:

Sections of Chapter 24 (regulating gas piping) amended.

The following sections of Chapter 24 shall each be amended to read as follows:

Sections G2412 (401), G2413 (402), G2414 (403), G2415 (404), G2416 (405), G2417 (406), G2418 (407), G2419 (408), G2420 (409), G2421 (410), G2422 (411), G2423 (413) and G2424 (415) of the International Residential Code shall be regulated under Title 21 of the Municipal Code of the City of Wichita.

SECTION 30. Section 18.51.730 of the Code of the City of Wichita, is hereby amended to read as follows:

Section 18.51.730 Venting (wall furnaces).

Section G2436.2 (608.2) of the International Residential Code is amended to read as follows:

G2436.2 (608.2) Venting. Vented wall furnaces shall be vented in accordance with Section G2427. The wall cavity directly above the wall furnace shall be ventilated by a 26 gage (0.016 inch) (0.4 mm) metal thimble into attic; or, an eight (8) (203 mm) inch by fourteen (14) (356 mm) inch metal grill a minimum of twelve (12) (305 mm) inches below the ceiling.

SECTION 31. Section 18.51.750 of the Code of the City of Wichita, is hereby created to read as follows:

Section G2448 (624) of the International Residential Code is amended to read as follows:

Section G2448 (624) Water Heaters of the International Residential Code is deleted and water heaters shall be regulated under Title 21 of the Municipal Code of the City of Wichita.

SECTION 32. 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 26th day of October, 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 October 14, 2010

ORDINANCE NO. _____

AN ORDINANCE AMENDING AND REPEALING THE ORIGINAL OF SECTIONS: 18.51.030, 18.51.070, 18.51.150, 18.51.170, 18.51.220, 18.51.440, 18.51.510, 18.51.540, 18.51.630, 18.51.650, 18.51.700, 18.51.710, 18.51.730, 18.51.750; CREATING SECTIONS: 18.51.112, 18.51.115, 18.51.402, 18.51.424, 18.51.572, 18.51.602, 18.51.604, 18.51.702, 18.51.704, 18.51.706, 18.51.708, 18.51.712, 18.51.714, 18.51.715, 18.51.716, 18.51.718; AND DELETING SECTION: 18.51.620, OF TITLE 18.51 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

ALL IN THE CODE OF THE CITY OF WICHITA, KANSAS AND PERTAINING TO THE BUILDING CODES OF THE CITY OF WICHITA, KANSAS.

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

SECTION 1. Section 18.51.030 of the Code of the City of Wichita, is hereby amended to read as follows:

Section R105.2 of the International Residential Code is amended to read as follows:

R105.2 Work exempt from permit: Exemption from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. Permits shall not be required for the following:

BUILDING:

1. ~~(a)~~ One-story detached accessory structures, provided the floor area does not exceed 200 ~~(13.94mm2)~~ square feet (18.58 m^2) and a location permit is obtained from the Office of Central Inspection prior to installation.

Exception: Non-fixed and movable storage cabinets equipped with doors that conceal the contents within and having a footprint not exceeding 25 square feet (2.32 m^2), shall not require the issuance of a location permit.

All detached accessory structures greater than 25 (2.32m^2) but equal to or less than 400 (37.16 m^2) square feet shall be tied down to the earth using anchoring methods described in "Non Vehicular Storage Structure Anchoring Standards" of the City of Wichita; or be attached to a permanent concrete foundation per R403.1.6.

~~1. (b)~~ 1.1 Playhouses or tree houses having single or multi-level floors with or without roofs.

2. ~~(a)~~ Concrete or masonry fences not over 4 feet (1219mm) in height measured from the bottom of the footing to the top of the wall and other fences not over 8 feet (2438mm) high.

~~2. (b)~~ 2.1 Concrete or masonry monument sign bases not 4 feet (1219 mm) in height measured from the lowest point of the adjoining grade. The sign size and content requires separate approval and permit.

3. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge.

4. Water tanks supported directly upon grade if the capacity does not exceed 5,000 gallons (18, 92~~7~~5 L) and the ratio of height to diameter or width does not exceed 2 to 1.

5. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade and not over any basement or story below.

6. Decks, stoops, and porches not more than 30 inches (762mm) above adjacent grade without overhead structures and not over any basement or story below.

7. Replacement of floor covering, painting, papering, tiling, carpeting, cabinets, counter tops, paneling and similar finish work.

8. Prefabricated swimming pools that are less than 24 inches (610 mm) deep and the capacity does not exceed 5,000 gallons (18,92~~7~~5 L) in which the pool walls are entirely above ~~the adjacent grade~~ ground.

9. Swings and other playground equipment accessory to a one- or two-family dwelling.

10. Window awnings supported by an exterior wall which do not project more than 54 inches (1372mm) from the exterior wall and do not require additional support.

11. Emergency board-up, or securing temporary bracing of a building after a fire, storm, vehicle damage or other disaster which caused the building to be open or unsafe. The building owner or his/her agent may cause such work to be done provided that the Office of Central Inspection is notified the following business day.

12. Repair or replacement of roofing and/or siding materials not exceeding 400 square feet (37.16~~mm2~~ m^2) within any 12 month period.

13. Repair or replacement of interior gypsum wallboard on non-fire rated walls or ceilings when the total area does not exceed 100 square feet (9.29 m^2) within any 12-month period and provided that no framing electrical, mechanical or plumbing changes are made.

14. Replacement of windows or doors or replacement of roof skylights or equipment with the same size or smaller unit(s) that does not involve the removal, cutting, alteration or replacement of any building structural member; including but not limited to studs, headers, girders, beams, joists, rafters, cripples, jacks or other supporting framing member(s). The framing used to infill existing openings for the purpose of installing smaller unit(s) shall be exempt from permit requirements. Placement of smaller windows or doors shall not reduce the minimum size requirements of escape and rescue openings, or egress door(s) required in Sections R310 and R311 of this code. The replacement door or window shall not be of a lower fire rating than required by this code for any rated wall or assembly.

Electrical:

Exemptions for electrical permits shall be governed by Title 19 of the Code of the City of Wichita.

GAS:

1. Portable heating, cooking or clothes drying appliances.

2. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

3. Portable-fuel-cell appliances that are not connected to a fixed piping system and are not interconnected to a power grid.

MECHANICAL:

1. Portable heating appliances.

2. Portable ventilation appliances.

3. Portable cooling units.

4. Steam, hot or chilled water piping within any heating or cooling equipment regulated by this code.

5. Replacement of any minor part that does not alter approval of equipment or make such equipment unsafe.

6. Portable evaporative coolers.

7. Self-contained refrigeration systems containing 10 pounds (4.54kg) or less of refrigerant or that are actuated by motors of 1 horsepower (746 W) or less.

8. Portable-fuel-cell appliances that are not connected to a fixed piping system and are not interconnected to a power grid.

The stopping of leaks in drains, water, soil, waste or vent pipe; provided, however, that if any concealed trap, drainpipe, water, soil, water or vent pipe becomes defective and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.

The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures, and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement or rearrangement of valves, pipes or fixtures.

SECTION 2. Section 18.51.070 of the Code of the City of Wichita, is hereby amended to read as follows:

Section R105.5 of the International Residential Code is amended to read as follows:

R105.5 Expiration. Every permit issued shall ~~become invalid~~ expire unless the work on the site authorized by such permit is commenced within 180 days after its issuance, or if the work authorized on the site by such permit is suspended or abandoned for a period of 180 days after the time the work is commenced. Work shall be considered to have been suspended or abandoned if it has been more than 180 days since the last ~~required~~ requested inspection. Before work can be recommenced, ~~a new~~ the permit must be ~~obtained~~ re-instated. The fee for ~~the permit~~ re-instatement shall be one-half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and that such suspension or abandonment has not exceeded one year. In order to resume work after suspension or abandonment for a period exceeding one year, a new permit shall be required. The code official is authorized to grant, in writing, one or more extensions of time for periods not more than 180 days each. The extensions shall be requested in writing and justifiable cause demonstrated.

SECTION 3. Section 18.51.112 of the Code of the City of Wichita, is hereby created to read as follows:

Section R109.1.6 of the International Residential Code is amended to read as follows:

R109.1.6 Final inspection. Final inspection shall be made after the permitted work is complete and prior to occupancy. This requirement may be waived by the building official for approvals granted to limited contractors who are part of self-certification programs established and monitored by the Office of Central Inspection. In these instances the contractors must meet all established program criteria, must provide all required documentation, and be subject to periodic audits by the Office of Central Inspection. The building official may revoke permission to self-certify, for cause, at any time.

SECTION 4. Section 18.51.115 of the Code of the City of Wichita, is hereby created to read as follows:

TableR301.2(1) of the International Residential Code is amended to read as follows:

Table R301.2(1) Climatic and Geographic Design Criteria. The Climatic and Geographic Design Criteria for building design shall be as provided in Table R301.2(1).

Table Inset:

TABLE R301.2(1)
CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

GROUND SNOW LOAD	WIND SPEED[d] (mph)	SEISMIC DESIGN CATEGORY[f]	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP[e]	ICE BARRIER UNDERLAYMENT REQUIRED[h]	FLOOD HAZARDS[g]	AIR FREEZING INDEX[i]	MEAN ANNUAL TEMP[j]
			Weathering[a]	Frost line depth[b]	Termite[c]					
15	90	A	Severe	24 "	Mod./ Severe	-7^0 F.	Yes	Title 27.06	700	55/ 60

For SI: 1 pound per square foot = 0.0479 kPa, 1 mile per hour = 0.447 m/s.

a. Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy the structural requirements of this code. The weathering column shall be filled in with the weathering index (i.e., "negligible," "moderate" or "severe") for concrete as determined from the Weathering Probability Map [Figure R301.2(3)]. The grade of masonry units shall be determined from ASTM C 34, C 55, C 62, C 73, C 90, C 129, C 145, C 216 or C 652.

b. The frost line depth may require deeper footings than indicated in Figure R403.1(1). The jurisdiction shall fill in the frost line depth column with the minimum depth of footing below finish grade.

c. The jurisdiction shall fill in this part of the table to indicate the need for protection depending on whether there has been a history of local subterranean termite damage.

d. The jurisdiction shall fill in this part of the table with the wind speed from the basic wind speed map [Figure R301.2(4)]. Wind exposure category shall be determined on a site-specific basis in accordance with Section R301.2.1.4.

e. The outdoor design dry-bulb temperature shall be selected from the columns of $97\frac{1}{2}$-percent values for winter from Appendix D of the *International Plumbing Code*. Deviations from the Appendix D temperatures shall be permitted to reflect local climates or local weather experience as determined by the building official.

f. The jurisdiction shall fill in this part of the table with the seismic design category determined from Section R301.2.2.1.

g. The jurisdiction shall fill in this part of the table with (a) the date of the jurisdiction's entry into the National Flood Insurance Program (date of adoption of the first code or ordinance for management of flood hazard areas), (b) the date(s) of the currently effective FIRM and FBFM, or other flood hazard map adopted by the community, as may be amended.

h. In accordance with Sections R905.2.7.1, R905.4.3.1, R905.5.3.1, R905.6.3.1, R905.7.3.1 and R905.8.3.1, where there has been a history of local damage from the effects of ice damming, the jurisdiction shall fill in this part of the table with "YES". Otherwise, the jurisdiction shall fill in this part of the table with "NO".

i. The jurisdiction shall fill in this part of the table with the 100-year return period air freezing index (BF-days) from Figure R403.3(2) or from the 100-year (99%) value on the National Climatic Data Center data table "Air Freezing Index-USA Method (Base 32°Fahrenheit)" at www.ncdc.noaa.gov/fpsf.html.

j. The jurisdiction shall fill in this part of the table with the mean annual temperature from the National Climatic Data Center data table "Air Freezing Index-USA Method (Base 32°Fahrenheit)" at www.ncdc.noaa.gov/fpsf.html.

SECTION 5. Section 18.51.150 of the Code of the City of Wichita, is hereby amended to read as follows:

Section R303.3 of the International Residential Code is amended to read as follows:

R303.3 Bathrooms. Bathrooms, water closet compartments and other similar rooms shall be provided with aggregate glazing area in windows of not less than 3 ($0.3m^2$) square feet, one-half of which must be openable.

Exception: The glazed areas shall not be required where artificial light and a mechanical ventilation system are provided. The minimum ventilation rates shall be 50 cubic feet per minute (24 L/s) for intermittent ventilation or 20 cubic feet per minute (10 L/s) for continuous ventilation. Ventilation air from the space shall be exhausted directly to the outside or into a properly ventilated attic ~~as per Section R806. Ducts conveying exhaust into the attic shall terminate a minimum of 36" above the ceiling joist.~~ <u>when all of the following are met:</u>

1. The duct(s) conveying exhaust into the attic shall terminate a minimum of 36 inches above the top of the ceiling framing members, and shall not discharge upon any building element.
2. Attics into which bath and/or toilet room exhausts are discharged must be properly ventilated, in accordance with Section R806, and shall not discharge into an unvented attic assembly.
3. The exhaust duct(s) shall terminate above the top of the attic insulation with a "goose-neck" installed to prevent infiltration of insulating material into the duct.
4. Exhaust duct(s) run above the insulation inside of attics, with a developed length greater than 5 feet, shall be insulated.

SECTION 6. Section 18.51.170 of the Code of the City of Wichita, is hereby amended to read as follows:

Section R308.4 of the International Residential Code is amended to read as follows:

R308.4 Hazardous locations. The following shall be considered specific hazardous locations for the purpose of glazing:

1. Glazing in swinging doors except jalousies.

2. Glazing in fixed and sliding panels of sliding door assemblies and panels in sliding and bi-fold closet door assemblies.

3. Glazing in storm doors.

4. Glazing in all unframed swinging doors.

5. Glazing in doors and enclosures for hot tubs, whirlpools, saunas, steam rooms, bathtubs and showers~~. Glazing in any part of a building wall enclosing these compartments~~ where the bottom exposed edge of the glazing is less than 60 inches (1524 mm) measured vertically above any standing or walking surface.

> **Exception:** Glazing that is 18 inches (1524 mm) or more, measured horizontally and in a straight line, from the waters edge of a hot tub, whirlpool or bathtub.

6. Glazing, in an individual fixed or operable panel adjacent to a door where the nearest vertical edge is within a 12 inch (305mm) arc of the door in a closed position and whose bottom edge is less than 60 inches (1524mm) above the floor or walking surface.

7. Glazing in an individual fixed or operable panel, other than those locations described in items 5 and 6 above, that meets all of the following conditions:

> 7.1. Exposed area of an individual pane larger than 9 square feet (0.836 m2).
>
> 7.2. Bottom edge less than 10 inches (254 mm) above the floor.
>
> 7.3. Top edge more than 36 inches (914 mm) above the floor.
>
> 7.4. One or more walking surfaces within 36 inches (914 mm) horizontally of the glazing.

8. All glazing in railings regardless of an area or height above a walking surface. Included are structural baluster panels and nonstructural in-fill panels.

9. Glazing in walls and fences enclosing indoor and outdoor swimming pools, hot tubs and spas where the bottom edge of the glazing is less than 60 inches (1524 mm) above a walking surface and within 60 inches (1524 mm) horizontally of the water's edge. This shall apply to single glazing and all panes in multiple glazing.

10. Glazing adjacent to stairways, landings and ramps within 36 inches (914 mm) horizontally of a walking surface when the exposed surface of the glass is less than 60 inches (1524 mm) above the plane of the adjacent walking surface.

11. Glazing in walls enclosing stairway landings or within 60 inches (1524 mm) of the top and bottom of stairways where the bottom edge of the glass is less than 60 inches (1524 mm) above the walking surface.

Exception: The following products, materials and uses are exempt from the above hazardous locations:

1. Openings in doors through which a 3-inch (76mm) sphere is unable to pass.

2. Decorative glass in Items 1, 6 or 7.

3. Glazing in Section R 308.4, Item 6, when there is an intervening wall or other permanent barrier between the door and the glazing.

4. Glazing in Section R 308.4, Item 6, in walls perpendicular to the plane of the door in a closed position, other than the wall toward which the door swings when opened, or where access through the door is to a closet or storage area 3 feet (914mm) or less in depth. Glazing in these applications shall comply with Section R 308.4, Item 7.

5. Glazing in Section R308.4, Items 7 and 10, when a protective bar is installed on the accessible side(s) of the glazing 36 inches ± 2 inches (914 mm ± 51 mm) above the floor. The bar shall be capable of withstanding a horizontal load of 50 pounds per linear foot (730 N/m) without contacting the glass and be a minimum of 1.5 inches (38 mm) in height.

6. Outboard panes in insulating glass units and other multiple glazed panels in Section R 308.4, Item 7, when the bottom edge of the glass is 25 feet (7620mm) or more above grade, a roof, walking surfaces, or other horizontal [within 45 degrees (0.79 rad) of horizontal] surface adjacent to the glass exterior.

7. Louvered windows and jalousies complying with the requirements of Section R 308.2.

8. Mirrors and other glass panels mounted or hung on a surface that provides a continuous backing support.

9. Safety glazing in Section R 308.4, Items 10 and 11, is not required where:

9.1. The side of a stairway, landing or ramp has a guardrail or handrail, including balusters or in-fill panels, complying with provisions of Sections 1013 and 1607.7 of the International Building Code; and

9.2. The plane of the glass is more than 18 inches (457 mm) from the railing; or

9.3. When a solid wall or panel extends from the plane of the adjacent walking surface to 34 inches (863 mm) to 36 inches (914 mm) above the floor and the construction at the top of that wall or panel is capable of withstanding the same horizontal load as the protective bar.

10. Glass block panels complying with Section R 610.

11. All windows in walls may be protected by an approved safety film installed by certified installers in accordance with the manufacture's specifications.

SECTION 7. Section 18.51.220 of the Code of the City of Wichita, is hereby amended to read as follows:

Section R310.2.1 of the International Residential Code is amended to read as follows:

R310.2.1 Ladders ~~and~~, steps and fall protection. Window wells with a vertical depth greater than 44 inches (1118 mm) shall be equipped with a permanently affixed ladder or steps usable with the window in the fully open position. Ladders or steps required by this section shall not be required to comply with Sections R311.5 and R311.6. Ladders or rungs shall have a inside width of at least 12 inches (305 mm), shall project at least 3 inches (76 mm) to the back of the rung from the wall and shall be spaced not more than 12 inches (305 mm) on center vertically for the full height of the window well. Window wells with a vertical depth of more than 30 inches (762 mm) shall be provided with guardrails that are designed in accordance with Section R312, or a protective cover designed to a minimum of 20 pounds per square foot (0.96 KN per m^2) uniformly distributed live load. Window well covers shall be provided with an emergency egress hatch located above the ladder or steps, with the minimum egress opening maintained. The force required to open the egress hatch shall not exceed 30 pounds (133.45 N) and shall not require the use of keys, more than one operation, or any special knowledge or effort. Window well covers, grates, and guardrails shall be constructed of materials approved for exterior use.

SECTION 8. Section 18.51.402 of the Code of the City of Wichita, is hereby created to read as follows:

Section R404.1 of the International Residential Code is amended to read as follows:

R404.1 Concrete and masonry foundation walls. Concrete and masonry foundation walls shall be selected and constructed in accordance with the provisions of Section R404 or in accordance with ACI 318,ACI 332,NCMATR68–A or ACI 530/ASCE 5/TMS 402 or other approved structural standards. The "Basement Standards for One and Two Family Dwellings prepared by Central Inspection Division September, 1988" may be used to comply with the requirements of this section; but do not preclude the right of the Office of Central Inspection to require a footing/foundation to be designed by a Kansas licensed architect or engineer.

Pre-engineered foundation wall systems such as insulated concrete forms (ICF walls) shall be installed to comply with the manufacturer's specifications or with architect or engineer requirements. All specifications or design documents shall be on site for each required inspection.

When ACI 318, ACI 332 or ACI 530/ASCE 5/TMS 402 or the provisions of Section R404 are used to design concrete or masonry foundation walls, project drawings, typical details and specifications are not required to bear the seal of the architect or engineer responsible for design, unless otherwise required by the state law of the jurisdiction having authority.

Foundation walls that meet all of the following shall be considered laterally supported:

1. Full basement floor shall be 3.5 inches (89 mm) thick concrete slab poured tight against the bottom of the foundation wall.

2. Floor joists and blocking shall be connected to the sill plate at the top of wall by the prescriptive method called out in Table R404.1(1), or; shall be connected with an approved connector with listed capacity meeting Table R404.1(1).

3. Bolt spacing for the sill plate shall be no greater than per Table R404.1(2).

4. Floor shall be blocked perpendicular to the floor joists. Blocking shall be full depth within two joist spaces of the foundation wall, and be flat-blocked with minimum 2-inch by 4-inch (51mm by 102mm) blocking elsewhere.

5. Where foundation walls support unbalanced load on opposite sides of the building, such as a daylight basement, the building aspect ratio, L/W, shall not exceed the value specified in Table R404.1(3). For such foundation walls, the rim board shall be attached to the sill with a 20 gage metal angle clip at 24 inches (610 mm) on center, with five 8d nails per leg, or an approved connector supplying 230 pounds per linear foot (3.36 kN/m) capacity.

SECTION 9. Section 18.51.424 of the Code of the City of Wichita, is hereby created to read as follows:

Section R502.2.2 of the International Residential Code is amended to read as follows:

R502.2.2 Decks. <u>The "City of Wichita Standard for Residential Wood Framed Decks" may be used to design and construct decks to comply with the requirements of this section. Decks which fall outside of the scope of the standard will require design by a Kansas licensed architect or engineer.</u> Where supported by attachment to an exterior wall, decks shall be positively anchored to the primary structure and designed for both vertical and lateral loads as applicable. Such attachment shall not be accomplished by the use of toenails or nails subject to withdrawal. Where positive connection to the primary building structure cannot be verified during inspection, decks shall be self supporting. For decks with cantilevered framing members, connections to exterior walls or other framing members, shall be designed and constructed to resist uplift resulting from the full live load specified in Table R301.5 acting on the cantilevered portion of the deck.

SECTION 10. Section 18.51.440 of the Code of the City of Wichita, is hereby amended to read as follows:

Section R602.10 of the International Residential Code is amended to read as follows:

R602.10 Wall bracing. All exterior walls shall be braced in accordance with this section. In addition, interior braced wall lines shall be provided in accordance with Section R602.10.1.1. For buildings in Seismic Design Categories D0, D1 and D2, walls shall be constructed in accordance with the additional requirements of Sections R602.10.9, R602.10.11, and R602.11.

In addition, the following methods of shear wall bracing are acceptable:

1. Method stated in "~~Standards for~~ Bracing of Wall Sections in Residential Homes Up to 12 Foot Vertical Walls"-City of Wichita" 2007.

2. Method stamped by Kansas Licensed Structural Engineer.

SECTION 11. Section 18.51.510 of the Code of the City of Wichita, is hereby amended to read as follows:

Section R907.3 of the International Residential Code is amended to read as follows:

R907.3 Re-covering versus replacement. New roof coverings shall not be installed without first removing all existing layers of roof coverings where any of the following conditions occur:

1. Where the existing roof or roof covering is water-soaked or has deteriorated to the point that the existing roof or roof covering is not adequate as a base for additional roofing.

2. Where the existing roof covering is wood shake, slate, clay, and cement or asbestos-cement tile.

3. Where the existing roof has two or more applications of any type of roof covering.

Exceptions:

1. Complete and separate roofing systems, such as standing-seam metal roof systems, that are designed to transmit the roof loads directly to the building's structural system and that do not rely on existing roofs and roof coverings for support, shall not require the removal of existing roof coverings.

2. Installation of metal panel, metal shingle, and concrete and clay tile roof coverings over existing wood shake roofs shall be permitted when the application is in accordance with Section R907.4.

3. The application of new protective coating over existing spray polyurethane foam roofing systems shall be permitted without tear-off of existing roof coverings.

SECTION 12. Section 18.51.540 of the Code of the City of Wichita, is hereby amended to read as follows:

Part V, Mechanical chapters adopted.

Mechanical chapters 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, ~~22,~~ 23, and 24 of the International Residential Code are hereby adopted by the Code of the City of Wichita.

SECTION 13. Section 18.51.572 of the Code of the City of Wichita, is hereby created to read as follows:

Section M1305.1.4.1 of the International Residential Code is amended to read as follows:

M1305.1.4.1 Ground Clearance. Equipment and appliances ~~supported from the ground~~ installed at grade level shall be l~~evel and firmly~~ supported on a level concrete slab or other approved material extending above ~~the~~ adjoining ~~ground~~ grade or shall be suspended a minimum of 6 inches (152 mm) above adjoining grade. ~~Appliances suspended from the floor shall have a clearance of not less than 6 inches (152 mm) from the ground.~~ Supports for heat pumps shall be at least 3 inches and conform to the manufacturer's specifications.

SECTION 14. Section 18.51.602 of the Code of the City of Wichita, is hereby created to read as follows:

Section M1411.3.1 of the International Residential Code is amended to read as follows:

M1411.3.1 Auxiliary and secondary drain systems. In addition to the requirements of Section M1411.3, a secondary drain or auxiliary drain pan shall be required for each cooling or evaporator coil ~~where damage to any building components will occur as a result of overflow from the equipment drain pan or stoppage in the condensate drain piping~~ when located above finished ceilings or furred spaces. Such piping shall maintain a minimum horizontal slope in the direction of discharge of not less than 1/8 unit vertical in 12 units horizontal (1-percent slope). Drain piping shall be a minimum of 3/4-inch (19 mm) nominal pipe size. One of the following methods shall be used:

1. An auxiliary drain pan with a separate drain shall be installed under the coils on which condensation will occur. The auxiliary pan drain shall discharge to a conspicuous point of disposal to alert occupants in the event of a stoppage of the primary drain. The pan shall have a minimum depth of 1.5 inches (38 mm), shall not be less than 3 inches (76 mm) larger than the unit or the coil dimensions in width and length and shall be constructed of corrosion-resistant material. Metallic pans shall have a minimum thickness of not less than 0.0276-inch (0.7 mm) galvanized sheet metal. Nonmetallic pans shall have a minimum thickness of not less than 0.0625 inch (1.6 mm).

2. A separate overflow drain line shall be connected to the drain pan provided with the equipment. This overflow drain shall discharge to a conspicuous point of disposal to alert occupants in the event of a stoppage of the primary drain. The overflow drain line shall connect to the drain pan at a higher level than the primary drain connection.

3. An auxiliary drain pan without a separate drain line shall be installed under the coils on which condensate will occur. This pan shall be equipped with a water level detection device conforming to UL 508 that will shut off the equipment served prior to overflow of the pan. The auxiliary drain pan shall be constructed in accordance with Item 1 of this section.

4. A water level detection device conforming to UL 508 shall be provided that will shut off the equipment served in the event that the primary drain is blocked. The device shall be installed in the primary drain line, the overflow drain line or the equipment-supplied drain pan, located at a point higher than the primary drain line connection and below the overflow rim of such pan.

SECTION 15. Section 18.51.604 of the Code of the City of Wichita, is hereby created to read as follows:

Section M1411.4 of the International Residential Code is amended to read as follows:

M1411.4 Auxiliary drain pan. Category IV condensing appliances shall have an auxiliary drain pan ~~where damage to any building component will occur as a result of stoppage in the condensate drainage system~~ <u>when located above finished ceilings or furred spaces</u>. These pans shall be installed in accordance with the applicable provisions of Section M1411.3.1.

Exception: Fuel-fired appliances that automatically shut down operation in the event of a stoppage in the condensate drainage system.

SECTION 16. Section 18.51.620 of the Code of the City of Wichita, is hereby deleted it its entirety.

~~Section M1502.6 of the International Residential Code is amended to read as follows:~~

~~Duct length. The maximum length of a clothes dryer exhaust duct shall not exceed 25 feet (7620 mm) total developed length for rigid metal duct, and twenty 20 feet (6096 mm) for metal flex duct, including four (4) 90-degree (1.6 rad) bends. The maximum developed length of the duct shall be reduced 2.5 feet (762 mm) for each 45-degree (0.8 rad) bend and 5 feet (1524 mm) for each 90-degree (1.6 rad) bend beyond the four (4) allowed 90-degree (1.6 rad) bends. The maximum length of the exhaust duct does not include the transition duct or the initial 90-degree (1.6 rad) inlet connection.~~

SECTION 17. Section 18.51.630 of the Code of the City of Wichita, is hereby amended to read as follows:

Section 18.51.630 Vertical ~~C~~clearance above cooking appliances.

~~Built-in top (or surface)~~ Domestic cooking appliances either built-in or freestanding shall have a vertical clearance above the cooking top of not less than thirty (30) inches (760 mm) to combustible material or metal cabinets. A minimum clearance of twenty-four (24) inches (610 mm) is permitted when one of the following is installed:

1. The underside of the combustible material or metal cabinet above the cooking top is protected with not less than 1/4 inch (6.4 mm) insulating millboard covered with sheet metal not less than 0.0122 inch (0.3 mm) thick.

2. A metal ventilating hood of sheet metal not less than 0.0122 inch (0.3 mm) thick is installed above the cooking top with a clearance of not less than 1/4 inch (6.4 mm) between the hood and the underside of the combustible material or metal cabinet, and the hood is at least as wide as the appliance and is centered over the appliance.

3. A listed cooking appliance or microwave oven is installed over a listed cooking appliance and will conform to the terms of the upper appliance's listing and the manufacturers' instructions.

SECTION 18. Section 18.51.650 of the Code of the City of Wichita, is hereby amended to read as follows:

Section M1507.2 of the International Residential Code is amended to read as follows:

M1506.2 Recirculation of air. Exhaust air from bathrooms and toilet rooms shall not be recirculated within a residence or to another dwelling unit and shall be exhausted directly to the outdoors. Exhaust air from bathrooms and toilet rooms ~~shall not~~ may discharge into an attic~~, crawl space or other areas inside the building.~~ when the following are met:

~~Exception: In R-3 type occupancies, the exhaust air from bathrooms and toilet rooms may be allowed to terminate in a properly ventilated attic space. The exhaust shall terminate above the top of the insulation with a "goose-neck" installed to prevent infiltration of insulating material into the duct.~~

1. The duct(s) conveying exhaust into the attic shall terminate a minimum of 36 inches above the top of the ceiling framing members, and shall not discharge upon any building element.

2. Attics into which bath and/or toilet room exhausts are discharged must be properly ventilated, in accordance with Section R806, and shall not discharge into an unvented attic assembly.

3. The exhaust duct(s) shall terminate above the top of the attic insulation with a "goose-neck" installed to prevent infiltration of insulating material into the duct.

Exhaust duct(s) run above the insulation inside of attics, with a developed length greater than 5 feet, shall be insulated.

SECTION 19. Section 18.51.700 of the Code of the City of Wichita, is hereby amended to read as follows:

Section M1701.4 of the International Residential Code is amended to read as follows:

M1701.4 Prohibited sources. Combustion air ducts and openings shall not connect appliance enclosures with space in which the operation of a fan may adversely affect the flow of combustion air. Combustion air shall not be obtained from an area in which flammable vapors present a hazard. Fuel-fired appliances shall not obtain combustion air from any of the following rooms or spaces:

1. Sleeping rooms.

2. Bathrooms.

3. Toilet rooms.

Exception: The following appliances shall be permitted to obtain combustion air from sleeping rooms, bathrooms and toilet rooms:

1. Solid fuel-fired appliances provided that the room is not a confined space and the building is not of unusually tight construction.

2. ~~Appliances installed in an enclosure in which all combustion air is taken from the outdoors and the enclosure is equipped with a solid weather stripped door and self-closing device.~~ Replacement of fuel-fired appliances installed in toilet rooms if approved by the building official.

SECTION 20. Section 18.51.702 of the Code of the City of Wichita, is hereby created to read as follows:

Water Heaters Used for Space Heating. Water heaters shall be regulated by Title 21 of the Municipal Code of the City of Wichita.

Section M2004 of the International Residential Code is deleted in it's entirety.

~~**M2004 WATER HEATERS USED FOR SPACE HEATING**~~

~~**M2004.1 General.** Water heaters used to supply both potable hot water and hot water for space heating shall be installed in accordance with this chapter, Chapter 24, Chapter 28 and the manufacturer's installation instructions.~~

SECTION 21. Section 18.51.704 of the Code of the City of Wichita, is hereby created to read as follows:

Water Heaters. Water heaters shall be regulated by Title 21 of the Municipal Code of the City of Wichita.

Section M2005 of the International Residential Code is deleted in it's entirety.

~~**M2005.1 General.** Water heaters shall be installed in accordance with the manufacturer's installation instructions and the requirements of this code. Water heaters installed in an attic shall conform to the requirements of Section M1305.1.3. Gas-fired water heaters shall conform to the requirements in Chapter 24. Domestic electric water heaters shall conform to UL 174 or UL 1453. Commercial electric water heaters shall conform to UL 1453. Oiled-fired water heaters shall conform to UL 732.~~

~~**M2005.2 Prohibited locations.** Fuel-fired water heaters shall not be installed in a room used as a storage closet. Water heaters located in a bedroom or bathroom shall be installed in a sealed enclosure so that combustion air will not be taken from the living space. Installation of direct-vent water heaters within an enclosure is not required~~

~~TABLE M2005.2~~
~~EXPANSION TANK MINIMUM CAPACITY[a] FOR FORCED HOT WATER SYSTEMS~~

~~SYSTEM VOLUME[b] (gallons)~~	~~PRESSURIZED DIAPHRAGM TYPE~~	~~NONPRESSURIZED TYPE~~
~~10~~	~~1.0~~	~~1.5~~
~~20~~ ~~30~~	~~1.5~~ ~~2.5~~	~~3.0~~ ~~4.5~~
~~40~~	~~3.0~~	~~5.0~~
~~50~~	~~4.0~~	~~7.5~~
~~60~~	~~5.0~~	~~9.0~~
~~70~~	~~6.0~~	~~10.5~~
~~80~~ ~~90~~	~~6.5~~ ~~7.5~~	~~12.0~~ ~~13.5~~
~~100~~	~~8.0~~	~~15.0~~

~~For SI: 1 gallon = 3.785 L, 1 pound per square inch gauge = 6.895 kPa, °C = [(°F) - 32]/1.8.~~
~~a. Based on average water temperature of 145°F, fill pressure of 12 psig and a maximum operating pressure of 30 psig.~~
~~b. System volume includes volume of water in boiler, convectors and piping, not including the expansion tank.~~

~~**M2005.2.1 Water heater access.** Access to water heaters that are located in an attic or under floor crawl space is permitted to be through a closet located in a sleeping room or bathroom where ventilation of those spaces is in accordance with this code.~~

~~**M2005.3 Electric water heaters.** Electric water heaters shall also be installed in accordance with the applicable provisions of Chapters 33 through 42.~~

~~**M2005.4 Supplemental water heating devices.** Potable water heating devices that use refrigerant-to-water heat exchangers shall be approved and installed in accordance with the manufacturer's installation instructions.~~

SECTION 22. Section 18.51.706 of the Code of the City of Wichita, is hereby created to read as follows:

Fuel gas (Application).

Section G2401.1 (101.2) of the International Residential Code is amended to read as follows:

G2401.1 (101.2) Application. This chapter covers ~~those fuel gas piping systems,~~ fuel-gas utilization ~~equipment~~ appliances and related accessories, venting systems and combustion air configurations most commonly encountered in the construction of one- and two-family dwellings and structures regulated by this code. ~~Coverage of piping systems shall extend from the point of delivery to the outlet of the equipment shutoff valves (see "Point of delivery"). Piping systems requirements shall include design, materials, components, fabrication, assembly, installation, testing, inspection, operation and maintenance~~. Requirements for gas ~~utilization equipment~~ appliances and related accessories shall include installation, combustion and ventilation air and venting ~~and connections to piping systems~~. Fuel gas piping, systems, and connections for buildings governed by the International Residential Code, shall be regulated by Title 21 of the Municipal Code of the City of Wichita. The omission from this chapter of any material or method of installation provided for in the *International Fuel Gas Code* shall not be construed as prohibiting the use of such material or method of installation. Fuel-gas piping systems, fuel-gas ~~utilization equipment~~ appliances and related accessories, venting systems and combustion air configurations not specifically covered in these chapters shall comply with the applicable provisions of the *International Fuel Gas Code.*

Gaseous hydrogen systems shall be regulated by Chapter 7 of the *International Fuel Gas Code*.

This chapter shall not apply to the following:

1. Liquefied natural gas (LNG) installations.

2. Temporary LP-gas piping for buildings under construction or renovation that is not to become part of the permanent piping system.

3. Except as provided in Section G2412.1.1, gas piping, meters, gas pressure regulators, and other appurtenances used by the serving gas supplier in the distribution of gas, other than undiluted LP-gas.

4. Portable LP-gas equipment of all types that is not connected to a fixed fuel piping system.

5. Portable fuel cell appliances that are neither connected to a fixed piping system nor interconnected to a power grid.

6. Installation of hydrogen gas, LP-gas and compressed natural gas (CNG) systems on vehicles.

SECTION 23. Section 18.51.708 of the Code of the City of Wichita, is hereby created to read as follows:

Section G2404.10 (307.5) of the International Residential Code is amended to read as follows:

G2404.10 (307.5)Auxiliary drain pan. Category IV condensing appliances shall ~~be provided with an auxiliary drain pan where damage to any building component will occur as a result of stoppage in the condensate drainage system~~ have an auxiliary drain pan when located above finished ceilings or furred spaces. ~~Such pan~~ These pans shall be installed in accordance with the applicable provisions of Section M1411.3.1 as amended in Section 18.51.602 of this ordinance.

Exception: An auxiliary drain pan shall not be required for appliances that automatically shut down operation in the event of a stoppage in the condensate drainage system.

SECTION 24. Section 18.51.710 of the Code of the City of Wichita, is hereby amended to read as follows:

Section G 2406.2 (303.3) of the International Residential Code is amended to read as follows:

G2406.2 (303.3) Prohibited locations. Appliances shall not be located in or obtain combustion air from sleeping rooms, bathrooms, toilet rooms, storage closets or surgical rooms, or in a space that opens into such rooms or spaces, except where the installation complies with one of the following:

1. The appliance is a direct-vent appliance installed in accordance with the conditions of the listing and the manufacturer's instructions.

2. Vented room heaters, wall furnaces, vented decorative appliances, vented gas fireplaces, vented gas fireplace heaters and decorative appliances for installation in vented solid fuel-burning fireplaces are installed in rooms that meet the required volume criteria of Section G2407.5.

3. A single wall-mounted unvented room heater is installed in a bathroom and such unvented room heater is equipped as specified in Section G2445.6 and has an input rating not greater than 6,000 Btu/h (1.76 kW). The bathroom shall meet the required volume criteria of Section G2407.5.

4. A single wall-mounted unvented room heater is installed in a bedroom and such unvented room heater is equipped as specified in Section G2445.6 and has an input rating not greater than 10,000 Btu/h (2.93 kW). The bedroom shall meet the required volume criteria of Section G2407.5.

5. The appliance is installed in a room or space that opens only into a bedroom or bathroom, and such room or space is used for no other purpose and is provided with a solid weather-stripped door equipped with an approved self-closing device. All combustion air shall be taken directly from the outdoors in accordance with Section G2407.6 or other approved areas.

6. Replacement of fuel fired appliances installed in toilet rooms if approved by the building official.

SECTION 25. Section 18.51.712 of the Code of the City of Wichita, is hereby created to read as follows:

Section G2408.4 (305.7) of the International Residential Code is amended to read as follows:

G2408.4 (305.7) Clearances from grade. ~~Equipment and appliances installed at grade level shall be supported on a level concrete slab or other approved material extending above adjoining grade or shall be suspended a minimum of 6 inches (152 mm) above adjoining grade.~~ The placement of appliances in relation to ground level shall be governed by Section 18.51.572 of the Code of the City of Wichita.

SECTION 26. Section 18.51.714 of the Code of the City of Wichita, is hereby created to read as follows:

Section G2410 (309) of the International Residential Code is amended to read as follows:

Section G2410 (309) Electrical shall be regulated by Title 19 of the Municipal Code of the City of Wichita.

SECTION 27. Section 18.51.715 of the Code of the City of Wichita, is hereby created to read as follows:

Section G2410.2 (309.2) of the International Residential Code is amended to read as follows:

G2410.2 (309.2) Connections. Electrical connections between gas ~~utilization equipment~~ appliances and the building wiring, including the grounding of the ~~equipment~~ appliances, shall conform to ~~Chapters 34 through 42~~ Title 19 of the Municipal Code of the City of Wichita.

SECTION 28. Section 18.51.716 of the Code of the City of Wichita, is hereby created to read as follows:

Section G2411 (310) of the International Residential Code is amended to read as follows:

Section G2411 (310) Electrical bonding shall be regulated by Title 19 of the Municipal Code of the City of Wichita.

SECTION 29. Section 18.51.718 of the Code of the City of Wichita, is hereby created to read as follows:

Sections of Chapter 24 (regulating gas piping) amended.

The following sections of Chapter 24 shall each be amended to read as follows:

Sections G2412 (401), G2413 (402), G2414 (403), G2415 (404), G2416 (405), G2417 (406), G2418 (407), G2419 (408), G2420 (409), G2421 (410), G2422 (411), G2423 (413) and G2424 (415) of the International Residential Code shall be regulated under Title 21 of the Municipal Code of the City of Wichita.

SECTION 30. Section 18.51.730 of the Code of the City of Wichita, is hereby amended to read as follows:

Section 18.51.730 Venting (wall furnaces).

Section G2436.2 (608.2) of the International Residential Code is amended to read as follows:

G2436.2 (608.2) Venting. Vented wall furnaces shall be vented in accordance with Section G2427. The wall cavity directly above the wall furnace shall be ventilated by a 26 gage (0.016 inch) (0.4 mm) metal thimble into attic; or, an eight (8) (203 mm) inch by fourteen (14) (356 mm) inch metal grill a minimum of twelve (12) (305 mm) inches below the ceiling. ~~Replacement of floor furnaces with the same or lesser B.T.U. rating may be installed in the same location with prior approval by the building official.~~

SECTION 31. Section 18.51.750 of the Code of the City of Wichita, is hereby created to read as follows:

Section G2448 (624) of the International Residential Code is amended to read as follows:

Section G2448 (624) Water Heaters of the International Residential Code is deleted and water heaters shall be regulated under Title 21 of the Municipal Code of the City of Wichita.

SECTION 32. 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

First Published in The Wichita Eagle on October 29, 2010

09/22/2010

ORDINANCE NO. 48-881

AN ORDINANCE AMENDING SECTION 18.08.010 OF THE CODE OF THE CITY OF WICHITA, KANSAS, AND PERTAINING TO BUILDING PERMIT FEES OF THE CITY OF WICHITA, KANSAS.

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

SECTION 1. Section 18.08.010 of the Code of the City of Wichita, is amended to read as follows:

"Fee schedule. A fee for each building permit shall be paid to the building official as set forth in this section and as required in Sections 18.50.010 and 18.51.010 of the Code of the City of Wichita.

For purposes of determining the building valuation where floor areas are used in the computation, the number of square feet shall be determined by the total area enclosed by the exterior dimensions for each floor. Areas of garages, carports, breezeways, covered walkways, porches, canopies, basements, tunnels and accessory structures shall be calculated by including the area under the roof or overhead protecting structure and which area is bounded by the outer line of the supports. Other fees to be paid to the building official are as stated in the tables to follow:

TABLE A - BUILDING PERMIT FEES

TOTAL VALUATION	FEE
$1.00 to $1,000.00	$40.00
$1001.00 to $2,000.00	$40.00 for the first $1,000.00 plus $3.00 for each additional $100.00, or fraction thereof, to and including $2,000.00
$2,001.00 to $40,000.00	$70.00 for the first $2,000.00 plus $11.00 for each additional $1,000.00, or fraction thereof, to and including $40,000.00
$40,001.00 to $100,000.00	$488.00 for the first $40,000.00 plus $9.00 for each additional $1,000.00, or fraction thereof, to and including $ 100,000.00
$100,001.00 to $500,000.00	$1028.00 for the first $100,000.00 plus $7.00 for each additional $1,000.00, or fraction thereof, to and including $500,000.00
$500,001.00 to $1,000,000.00	$3,828.00 for the first $500,000.00 plus $5.00 for each additional $1,000.00, or fraction thereof, to and including $1,000,000.00
$1,000,001.00 to $5,000,000.00	$6,328.00 for the first $1,000,000.00 plus $3.00 for each additional $1,000.00, or fraction thereof to and including $5,000,000.00.
$5,000,001.00 and up	$18,328.00 for the first $5,000,000.00 plus $2.25 for each additional $1,000.00 or fraction thereof.

Note: The above outlined Table A fee structure may be adjusted from time to time per the provisions of the City of Wichita Resolution No. R-95-560, adopted by the Wichita City Council on December 12, 1995.

Other Inspections and Fees:

1. Inspections outside of normal business hours.....$40.00 per hour
   (Minimum charge--two hours)

2. Reinspection fees ……..……..$40.00

3. Inspections for which no fee is specifically indicated…….....$30.00 per hour
   (Minimum charge--one half hour)

4. Plan review fee….…….....55% of the building permit fee

5. Additional plan review required by significant floor plan modifications or other major changes to the plans…….……..$40.00 per hour
(Minimum charge—one half hour)

6. For use of outside consultants for plan checking and inspections, or both…… Actual Costs (Actual costs include administrative and overhead costs).

7. Conditional building permit issuance…….....…Additional 25% of plan review fee (Minimum charge: $50.00)

8. Progress print submittal fee....……....Additional 50% of plan review fee (No additional charge for conditional permit)

9. Change of Contractor ……...10% of original building permit fee (Minimum charge $40.00) (See Section 18.08.030 of the City code).

10. Replacement of Inspection Record Card……..……..……$15.00

11. Certification of Occupancy letters…….. $40.00 per hour
    charge for research with a $20.00 per address minimum.

12. Change of Address Processing Fee…….…..…..……$35.00

13. Federal Flood Plain Application Processing Fee…….…..……$15.00

14. Location permit……..……$25.00

TABLE B – GRADING FEES

GRADING PLAN REVIEW FEES

50 cubic yards (38.2 m^3) or less……..……No Fee
51 to 100 cubic yards (40 m^3 to 76 m^3)…….…… $25.00
101 to 1,000 cubic yards (77.2 m^3 to 764.6 m^3)……..……$40.00
1,001 to 10,000 cubic yards (765.3m^3 to 7645 m^3)……...……$50.00
10,001 to 100,000 cubic yards (7646.3 m^3 to 76 455 m^3)….….$50.00 for the first 10,000 cubic yards (7645.5 m^3), plus $254.00 for each additional 10,000 cubic yards (7645.5 m^3) or fraction thereof.
100,001 to 200,000 cubic yards (76 456 m^3 to 152 911m^3)..$275.00 for the first 100,000 cubic yards (76 455 m^3), plus $13.00 for each additional 10,000 cubic yards (7645.5 m^3) or fraction thereof.
200,001 cubic yards (152 912 m^3) or more……....$405.00 for the first 200,000 cubic yards (152 911 m^3), plus $7.00 for each additional 10,000 cubic yards (7645.5 m^3) or fraction thereof.
Other Fees: Additional plan review required by significant changes-to the approved plans……..$40.00 per hour.

GRADING PERMIT FEES

50 cubic yards (38.2 m^3) or less……..$25.00
51 to 100 cubic yards (40 m^3 to 76.5 m^3)……..…….$40.00
101 to 1,000 cubic yards (77.2 m^3 to 764.6 m^3)……..$40.00 for the first 100 cubic yards (76.5 m^3) plus $18.00 for each additional 100 cubic yards (76.5 m^3) or fraction thereof.
1,001 to 10,000 cubic yards (765.3 m^3 to 7645.5 m^3)….$202.00 for the first 1,000 cubic yards (746.6 m^3), plus $145.00 for each additional 1,000 cubic yards (746.6 m^3) or fraction thereof.
10,001 to 100,000 cubic yards (7646.3 m^3 to 76 455 m^3)……...$337.00 for the first 10,000 cubic yards (7645.5 m^3), plus $66.00 for each additional 10,000 cubic yards (7645.5 m^3) or fraction thereof.
100,001 cubic yards (76 456 m^3) or more…….….$931.00 for the first 100,000 cubic yards (76 455 m^3), plus $37.00 for each additional 10,000 cubic yards (7645.5 m^3) or fraction thereof.
Other Inspections and Fees: See Table A above.

TABLE C - WRECKING PERMITS

Detached accessory structures: without water, sewer, gas or metered electrical service:

1,000 square feet or less…….$20.00

Other buildings

1,000 square feet or less.……..$40.00

For each additional 1,000 square feet or fraction thereof, add……$20.00

TABLE D – MISCELLANEOUS

Air supported structures:

1,000 square feet or less in floor area……$85.00

For each additional 1,000 square feet or fraction thereof……..$10.00

Applications for moving permit……$40.00

Moving permits….……$100.00

Tents: (No building permit is required for tents of 200 square feet or less in size)

1,000 square feet or fraction thereof ……..…….$85.00

For each additional 1,000 square feet or fraction thereof……$10.00

Parking Lots (Plan Review fee assessed per Table A. Other Inspections and Fees)

Each permit issuance……$25.00

Additional Charge per parking space……..…….$2.00

Automatic Sprinkler Systems and Standpipes: (permit issued as a plumbing permit)

Each permit issuance…….$25.00

Total valuation per $1,000 or fraction thereof……..$18.00

Plan review fee…….…(fee assessed per Table A. Other Inspections and Fees)

Towers, tanks, communications structures, wind generators and structures not specified above shall be taken on a valuation basis for issuance of the building permit.

SECTION 2. The original of section 18.08 of the Code of the City of Wichita, Kansas, is hereby amended.

SECTION 3. 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 26th day of October, 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 09/22/2010

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 18.08.010 OF THE CODE OF THE CITY OF WICHITA, KANSAS, AND PERTAINING TO BUILDING PERMIT FEES OF THE CITY OF WICHITA, KANSAS.

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

SECTION 1. Section 18.08.010 of the Code of the City of Wichita, is amended to read as follows:

"Fee schedule. A fee for each building permit shall be paid to the building official as set forth in this section and as required in Sections 18.50.010 and 18.51.010 of the Code of the City of Wichita.

For purposes of determining the building valuation where floor areas are used in the computation, the number of square feet shall be determined by the total area enclosed by the exterior dimensions for each floor. Areas of garages, carports, breezeways, covered walkways, porches, canopies, basements, tunnels and accessory structures shall be calculated by including the area under the roof or overhead protecting structure and which area is bounded by the outer line of the supports. Other fees to be paid to the building official are as stated in the tables to follow:

TABLE A - BUILDING PERMIT FEES

TOTAL VALUATION	FEE
$1.00 to $~~5~~1,000.00	$~~25~~ 40.00
$~~5~~1001.00 to $2,000.00	$~~25~~ 40.00 for the first $~~5~~1,000.00 plus $3.00 for each additional $100.00, or fraction thereof, to and including $2,000.00
$2,001.00 to $40,000.00	$70.00 for the first $2,000.00 plus $11.00 for each additional $1,000.00, or fraction thereof, to and including $40,000.00
$40,001.00 to $100,000.00	$488.00 for the first $40,000.00 plus $9.00 for each additional $1,000.00, or fraction thereof, to and including $ 100,000.00
$100,001.00 to $500,000.00	$1028.00 for the first $100,000.00 plus $7.00 for each additional $1,000.00, or fraction thereof, to and including $500,000.00
$500,001.00 to $1,000,000.00	$3,828.00 for the first $500,000.00 plus $5.00 for each additional $1,000.00, or fraction thereof, to and including $1,000,000.00
$1,000,001.00 to $5,000,000.00	$6,328.00 for the first $1,000,000.00 plus $3.00 for each additional $1,000.00, or fraction thereof to and including $5,000,000.00.
$5,000,001.00 and up	$18,328.00 for the first $5,000,000.00 plus ~~$1.00~~ 2.25 for each additional $1,000.00 or fraction thereof.

Note: The above outlined Table A fee structure may be adjusted from time to time per the provisions of the City of Wichita Resolution No. R-95-560, adopted by the Wichita City Council on December 12, 1995.

Other Inspections and Fees:

1. Inspections outside of normal business hours.....$~~3~~ 40.00 per hour~~*~~
   (Minimum charge--two hours)

2. Reinspection fees ……..……..$~~3~~ ~~4~~0.00 ~~per hour*~~

3. Inspections for which no fee is specifically indicated…….....$30.00 per hour~~*~~
   (Minimum charge--one half hour)

4. Plan review fee….…….....~~6~~55% of the building permit fee

5. Additional plan review required by significant floor plan modifications or other major changes~~, addition or revisions~~ to the plans……..……..$~~3~~ 40.00 per hour~~*~~
(Minimum charge—one half hour)

6. For use of outside consultants for plan checking and inspections, or both…… Actual Costs (Actual costs include administrative and overhead costs).

7. Conditional building permit issuance…….....…Additional 25% of plan review fee (Minimum charge: $50.00)

8. Progress print submittal fee....……....Additional 50% of plan review fee (No additional charge for conditional permit)

9. Change of Contractor ……...10% of original building permit fee (Minimum charge $40.00) (~~Issuance of new permit –~~ ~~s~~See Section 18.08.030 of the City code).

10. Replacement of Inspection Record Card……..……..……$15.00

11. Certification of Occupancy letters…….. $~~3~~ 40.00 per hour
    charge for research with a $~~15~~20.00 per address minimum.

12. Change of Address Processing Fee…….…..…..……$35.00

13. Federal Flood Plain Application Processing Fee…….…..……$15.00

14. Location permit……..……$25.00

~~*Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.~~

TABLE B – GRADING FEES

GRADING PLAN REVIEW FEES

50 cubic yards (38.2 m^3) or less……..……No Fee
51 to 100 cubic yards (40 m^3 to 76 m^3)…….…… $25.00 ~~23.50~~
101 to 1,000 cubic yards (77.2 m^3 to 764.6 m^3)……..…$40.00 ~~37.50~~
1,001 to 10,000 cubic yards (765.3m^3 to 7645 m^3)……...$50.00 ~~49.25~~
10,001 to 100,000 cubic yards (7646.3 m^3 to 76 455 m^3)…..$50.00 ~~49.25~~ for the first 10,000 cubic yards (7645.5 m^3), plus $25.00 ~~24.50~~ for each additional 10,000 cubic yards (7645.5 m^3) or fraction thereof.
100,001 to 200,000 cubic yards (76 456 m^3 to 152 911m^3).$275.00 ~~269.75~~ for the first 100,000 cubic yards (76 455 m^3), plus $13.00 ~~13.25~~ for each additional 10,000 cubic yards (7645.5 m^3) or fraction thereof.
200,001 cubic yards (152 912 m^3) or more……....$405.00 ~~402.25~~ for the first 200,000 cubic yards (152 911 m^3), plus $7.00 ~~7.25~~ for each additional 10,000 cubic yards (7645.5 m^3) or fraction thereof.
Other Fees: Additional plan review required by significant changes~~, additions or revisions~~ to the approved plans……..$40.00 30.00 per hour. ~~*~~

~~*Or the total hourly cost to the jurisdiction, whichever is the greatest. This cost shall include supervision, overhead, equipment, hourly wages and fringe benefits of the employees involved.~~

GRADING PERMIT FEES

50 cubic yards (38.2 m^3) or less……..$25.00 ~~23.50~~
51 to 100 cubic yards (40 m^3 to 76.5 m^3)…….…….$40.00 ~~37.00~~
101 to 1,000 cubic yards (77.2 m^3 to 764.6 m^3)$ 40.00 ~~37.00~~ for the first 100 cubic yards (76.5 m^3) plus $18.00 ~~17.50~~ for each additional 100 cubic yards (76.5 m^3) or fraction thereof.
1,001 to 10,000 cubic yards (765.3 m^3 to 7645.5 m^3)….$202.00 ~~194.50~~ for the first 1,000 cubic yards (746.6 m^3), plus $ 15.00 ~~14.50~~ for each additional 1,000 cubic yards (746.6 m^3) or fraction thereof.
10,001 to 100,000 cubic yards (7646.3 m^3 to 76 455 m^3)……...$337.00 ~~325.00~~ for the first 10,000 cubic yards (7645.5 m^3), plus $66.00 for each additional 10,000 cubic yards (7645.5 m^3) or fraction thereof.
100,001 cubic yards (76 456 m^3) or more…….…….$931.00 ~~919.00~~ for the first 100,000 cubic yards (76 455 m^3), plus $37.00 ~~36.50~~ for each additional 10,000 cubic yards (7645.5 m^3) or fraction thereof.
Other Inspections and Fees: See Table A above.

TABLE C - WRECKING PERMITS

Detached accessory structures: without water, sewer, gas or metered electrical service:

1,000 square feet or less…….$20.00

Other buildings

1,000 square feet or less……..$40.00

For each additional 1,000 square feet or fraction thereof, add……$20.00

TABLE D – MISCELLANEOUS

Air supported structures:

1,000 square feet or less in floor area……$~~20~~85.00

For each additional 1,000 square feet or fraction thereof……..$10.00

Applications for moving permit……$40.00

Moving permits….……$~~5~~100.00

Tents: (No building permit is required for tents of 200 square feet or less in size)

1,000 square feet or fraction ~~T~~thereof ……..…….$~~20~~85.00

For each additional 1,000 square feet ~~O~~or fraction thereof……$~~5~~10.00

Parking Lots (Plan Review fee assessed per Table A. Other Inspections and Fees)

Each permit issuance……$25.00

Additional Charge per parking space……..…….$~~1~~2.00

Automatic Sprinkler Systems and Standpipes: (permit issued as a plumbing permit)

Each permit issuance…….$25.00

Total valuation per $1,000 or fraction thereof……..$18.00

Plan review fee……..…(fee assessed per Table A. Other Inspections and Fees)

Towers, tanks, communications structures, wind generators and structures not specified above shall be taken on a valuation basis for issuance of the building permit.

SECTION 2. The original of section 18.08 of the Code of the City of Wichita, Kansas, is hereby amended.

SECTION 3. 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

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Ordinance Amending the Mechanical Code - Title 22 of the Code of the City of Wichita

INITIATED BY: Office of Central Inspection

AGENDA: New Business

Recommendations: Approve first reading of the ordinance amending Title 22 of the Code of the City of Wichita (City of Wichita Mechanical Code).

Background: The current City of Wichita Mechanical Code adopts the 2006 Edition of the International Mechanical Code, published by the International Code Council (ICC), with local amendments. Nationally, most jurisdictions with building and trade codes use model codes as the basis for local ordinances. Model codes, like those developed and published by the ICC, are generally updated and republished every three (3) years. For over 50 years, Wichita has reviewed, amended and adopted such model codes on a three (3) to six (6) year cycle. This helps ensure that Wichita is using current national codes, as well as current, nationally tested and certified installation practices, materials and products. The City of Wichita Mechanical Code also sets forth various administrative, contractor licensing, truth-in-advertising and tradesperson certification regulations, and includes a mechanical permit fee schedule.

Analysis: In May 2009, Office of Central Inspection (OCI) staff initiated review of the 2009 Edition of the International Mechanical Code (IMC) in conjunction with the City of Wichita Board of Appeals of Air Conditioning, Refrigeration and Warm Air Heating (Mechanical Board) and other stakeholders (trade association representatives, trade contractors and mechanical tradespersons). Because the IMC is closely related and intertwined with the City's Building Code, which adopts the International Building Code (IBC) and International Residential Code (IRC), the review schedule of the 2009 Edition of the IMC complemented the review schedule of the 2009 Editions of both the IBC and IRC. Staff and the Mechanical Board also reviewed the administrative, contractor licensing, truth-in-advertising and tradesperson testing/certification provisions of the Mechanical Code.

In December 2009, the Mechanical Board recommended that the Mechanical Code be amended to adopt the 2009 Edition of the IMC, with local amendments, and that various Mechanical Code administrative, contractor licensing, tradesperson testing/certification and fee schedule amendments also be adopted. However, in March 2010, after a several month review of proposed ordinances to adopt the 2009 Editions of the IBC and IRC, the Board of Code Standards and Appeals (BCSA) recommended that the City not move forward with adoption of the 2009 Editions of the IBC and IRC. The BCSA recommended instead that the City update the adopted 2006 Editions of the IBC and IRC to include many of the amendments and/or clarifications developed by staff/various code review committees between mid 2009 and early 2010, and to incorporate many new 2009 IBC and 2009 IRC Edition provisions. The BCSA further recommended that the City: (1) move from the currently adopted 2000 Edition of the International Fire Code (IFC) to the 2006 Edition of the IFC; (2) move from the currently adopted 2000 Edition of the Uniform Plumbing Code (UPC) to the 2006 Edition of either the UPC or the International Plumbing Code (IPC); and (3) retain the 2006 International Mechanical Code (IMC), with recommendations from the Mechanical Board for any suggested amendment***s***. The BCSA's expressed interest was to get all building, fire and trade codes under the 2006 Editions of the various national model building, fire and trade codes.

In April 2010, the current status of code review, and of building and trade board recommendations, was presented to the City Council during a Council workshop. Based on feedback received during and after the City Council workshop, OCI and Fire Department staff moved forward with development of ordinances as generally recommended by the BCSA in March 2010.

Since late April 2010, City staff, the BCSA and the Mechanical Board has re-reviewed the Building and Mechanical Codes, and have developed proposed ordinance amendments (while retaining the 2006 IBC, IRC and IMC Editions as the base). On September 23, 2010, the Mechanical Board voted to recommend adoption of the attached ordinance amending the Mechanical Code (Title 22).

Significant amendments to the current Mechanical Code include:

- reformatting to add titles into each code section and to provide a number of explanatory footnotes (to make reference to local code amendments more user-friendly);
- incorporating the 2006 International Fuel Gas Code as a reference document rather than as a formally adopted Code (as the International Mechanical Code suggests);
- increasing permit investigation/penalty fees for licensed mechanical contractors who fail to obtain mechanical permits as required by the Mechanical Code, with increasing permit investigation/penalty fees for repeat violators;
- increasing most mechanical permit fees, which have not been adjusted for over ten years; and
- modifying testing, certification and continuing education requirements for mechanical tradespersons (to mirror current Kansas Statutes).

Financial Considerations: There are no costs to the City associated with adoption of the ordinance. Adoption of the amended mechanical permit fee schedules will increase most mechanical permit fees in order to recover costs of services provided through these fees (permit review, processing and inspection, and code enforcement).

Goal Impact: This item impacts the Provide and Safe and Secure Community goal indicator by ensuring Wichita's use of the 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 ordinance as to form.

Recommendation/Actions: It is recommended that the City Council approve first reading of the proposed ordinance to amend Title 22 of the Code of the City of Wichita (City of Wichita Mechanical Code).

Attachment: Delineated ordinance amending the City of Wichita Mechanical Code (Title 22).

First Published in The Wichita Eagle on October 29,2010

CLEAN
09/29/2010

ORDINANCE NO.48-882

AN ORDINANCE REPEALING THE ORIGINALS OF SECTIONS 22.04.10 THROUGH 22.05.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS; CREATING SECTIONS 22.01.010, 22.01.020, 22.01.030, 22.01.040, 22.01.060, 22.01.070, 22.01.080, 22.01.090, 22.01.100, 22.01.110, 22.01.120, 22.01.130, 22.01.140, 22.01.160, 22.01.170, 22.01.180, 22.01.190, 22.01.200, 22.01.210, 22.01.220, 22.01.230, 22.01.240, 22.01.260, 22.01.270, 22.02.010, 22.02.020, 22.02.030, 22.02.040, 22.02.060, 22.02.070, 22.02.080, 22.02.090, 22.02.100, 22.02.110, 22.02.120, 22.02.130, 22.02.140, 22.02.160, 22.02.170, 22.02.180, 22.02.190, 22.02.200, 22.02.210, 22.02.220, 22.02.230, 22.02.240, 22.02.260, AND 22.02.270; OF THE CODE OF THE CITY OF WICHITA, KANSAS; ALL PERTAINING TO THE MECHANICAL CODE OF THE CITY OF WICHITA, KANSAS.

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

SECTION 1. Section 22.01.010 of the code of the City of Wichita, is hereby created to read as follows:

"Adoption of the International Mechanical Code. The International Mechanical Code, as published by the International Codes Council, Inc. 2006 Edition, excluding Appendix B and section (301.2) is hereby adopted and incorporated herein by reference, subject to such amendments thereto as are set forth hereinafter.**"**

SECTION 2. Section 22.01.020 of the code of the City of Wichita, is hereby created to read as follows:

"Title. Section101.1 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Title. These regulations shall be known as the Mechanical Code of the City of Wichita, Kansas, hereinafter referred to as "this Code"."

SECTION 3. Section 22.01.030 of the code of the City of Wichita, is hereby created to read as follows:

"Scope. Section 101.1 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: This Code shall regulate the design, installation, maintenance, alteration and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings. This Code shall also regulate those mechanical systems, system components, equipment and appliances specifically addressed herein. The installation of fuel gas equipment, fuel gas fired appliances and gas-fired appliance venting systems shall be regulated by the International Fuel Gas Code. **Exception:** Detached one- and two- family dwellings not more than three stories high with separate means of egress and their accessory structures shall comply with the 2006 International Residential Code."

SECTION 4. Section 22.01.040 of the code of the City of Wichita, is hereby created to read as follows:

"Building Code Provisions. Section 102.8.1 of the International Mechanical Code, as adopted by reference herein, shall be created to read as follows: The provisions of Title 18 of the Code of Wichita shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and

occupancy, location, maintenance removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.**"**

SECTION 5. Section 22.01.060 of the code of the City of Wichita, is hereby created to read as follows:

"Electrical. Section 102.8.2 of the International Mechanical Code, as adopted by reference herein, shall be created to read as follows: The provisions of Title 19 of the code of the City of Wichita shall apply to the installation of electrical systems, including alterations, repairs, replacement equipment, appliances, fixtures, fittings and appurtenances thereto.**"**

SECTION 6. Section 22.01.070 of the code of the City of Wichita, is hereby created to read as follows:

"Gas. Section 102.8.3 of the International Mechanical Code, as adopted by reference herein, shall be created to read as follows: The provisions of Title 21 of the Code of the City of Wichita shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this Code. These requirements apply to gas piping systems extending from point of delivery to the inlet connections of appliances and the installation and operation of residential and commercial gas appliances and related accessories.**"**

SECTION 7. Section 22.01.080 of the code of the City of Wichita, is hereby created to read as follows:

"Plumbing. Section 102.8.4 of the International Mechanical Code, as adopted by reference herein, shall be created to read as follows: The provisions of Title 21 of the Code of the City of Wichita shall apply to the installation, alterations, repairs and

replacement of plumbing systems, including equipment, appliances, fixtures and appurtenances, and where connected to water or sewage systems and all aspects of a medical gas system.**"**

SECTION 8. Section 22.01.090 of the code of the City of Wichita, is hereby created to read as follows:

"Fire Prevention. Section 102.8.5 of the International Mechanical Code, as adopted by reference herein, shall be created to read as follows: The provisions of Title 15 of the Code of the City of Wichita shall apply to matters affecting or relating to structures, processes and premises from the hazard of fire and explosion arising from storage, handling or use of structures, materials or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration or removal of fire suppression and alarm systems or fire hazards in the structure or on the premises from occupancy or operation.**"**

SECTION 9. Section 22.01.100 of the code of the City of Wichita, is hereby created to read as follows:

"Investigation Fee. Section 106.5.1 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Any person who commences work on mechanical system before obtaining the necessary permits shall be subject to a one hundred fifty dollar and investigation fee in addition to the required permit fees. If a contractor has a second investigation within a twelve month period from the first investigation fee, the fee will be three hundred dollars in addition to the required permit fees. If a contractor has a third investigation fee or any

thereafter, within a twelve month period, the fee shall be six hundred dollars in addition to the required permit fees.**"**

SECTION 10. Section 22.01.110 of the code of the City of Wichita, is hereby created to read as follows:

"Permit fees. Section106.5.2 of the International Mechanical Code is amended to read as follows: The fees for mechanical work shall be as indicated in the following schedule.

Issuance of permit 20.00

Forced air furnace (2,000 cfm or less) . . . 15.00

Forced air furnace (over 2,000 cfm) 20.00

Air handler (2,000 cfm or less) 15.00

Air handler (over 2,000 cfm) 20.00

Floor furnace 15.00

Wall Heater 15.00

Room heater 15.00

Infrared heater 15.00

Unit heater 15.00

Tube heater 15.00

Air conditioner (5 ton or less) 12.00

Air conditioner (over 5 ton) 18.00

Cooling coil only 10.00

Refrigeration (50 HP or less) 15.00

Refrigeration (greater than 50 HP) 20.00

Roof top: combination (2,000 cfm or less).27.00

Roof top: heat only (2,000 cfm or less) . . 15.00

Roof top: cooling only (2,000 cfm or less).15.00

Roof top: combination (over 2,000 cfm). . 38.00

Roof top: heat only (over 2,000 cfm) 20.00

Roof top: cooling only (over 2,000 cfm). . 18.00

Chiller/ Water Tower 35.00

Boilers 20.00

VAV boxes/Fan coils/Fan terminals/. 7.50

Heat Recovery Unit 35.00

Incinerator/crematory 35.00

Any equipment/appliance not listed 7.50

Gas fireplace 15.00

Solid fuel fireplace 15.00

Pellet stove 15.00

Gas logs/inserts 15.00

Chimney liners 10.00

Type one hood 40.00

Type two hood 20.00

Fume hood 20.00

Paint booth 20.00

Spray booth 20.00

Exhaust fan @ duct (under 500 cfm) 10.00

Exhaust fan @ duct (over 500 cfm) 15.00

Exhaust and/or ventilation systems 35.00

Residential dryer vent 15.00

Commercial dryer vent 30.00

Fire damper 1.00

Fire/Smoke combination damper 3.00

Hydronic piping 15.00

Flue and/or vent connector 10.00

Fire suppression for hoods 15.00

Repairs/alterations 10.00

Minimum Fee……...25.00

Provide, however, permit fees for one-and two family dwellings shall be in accordance with the fee schedule set forth at table 1-A shall be five percent (5%) of the total valuation of the one-or two-family dwelling as determined by the building official under authority of section 108.2 of the 2006 International Residential Code. Payment shall be made by the general contractor at the time a building permit is issued.

A separate heating and air-conditioning permit is required if work requiring a permit and inspection as defined in this Code is begun more than one hundred eighty (180) days from the date of the issuance of the building permit.

Exception: Every permit issued by the building official under the provisions of this Code shall expire by limitation and become null and void if the work authorized by such permit is not commenced within one hundred eighty days from the date of such permit, or if work authorized by such permit is suspended or abandoned at any time after work is commenced for a period of one hundred eighty days, or one hundred eighty days has elapsed

since an inspection as required in section 107.1 of this Code, was requested and such inspection was approved by the building official**."**

SECTION 11. Section 22.01.120 of the code of the City of Wichita, is hereby created to read as follows:

"Corrections and re-inspections. Section 108.4 of the International Mechanical Code is amended to read as follows: Corrections shall be completed and work rescheduled for inspection within thirty (30) days from the date of the correction notice. Corrections not completed within the thirty (30) days, shall be liable for the violation penalties set forth in Title 22.16 of the Code of the City of Wichita**.** Access shall be provided for re-inspection by the property owner**."**

SECTION 12. Section 22.01.130 of the code of the City of Wichita, is hereby created to read as follows:

"Stop work orders. Section 108.5 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Upon notice from the code official that mechanical work is being done contrary to the provisions of this Code or in a dangerous or unsafe manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work, or shall be posted in writing at the site of the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system 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 for the violation penalties set forth in Title 22.16 of the Code of the City of Wichita.**"**

SECTION 13 Section 22.01.140 of the code of the City of Wichita, is hereby created to read as follows:

"Electrical controls. Section 301.7 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Electrical wiring, controls, and connection to equipment and appliances regulated by this Code shall be in accordance with Title 19 of the Code of the City Wichita.**"**

SECTION 14. Section 22.01.160 of the code of the City of Wichita, is hereby created to read as follows:

"Plumbing connections. Section 301.8 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Potable water supply, building drainage system connections to equipment, and appliances regulated by this Code shall be in accordance with Title 21 of the Code of the City of Wichita.**"**

SECTION 15. Section 22.01.170 of the code of the City of Wichita, is hereby created to read as follows:

"Prohibited locations. Section 303.3 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Fuel fired appliances shall not be located in, or obtain combustion air from, any of the following rooms or spaces: 1. Sleeping rooms, 2. Bathrooms, Storage closets, Surgical rooms. Exception: This section shall not apply to the following appliances: 1. Direct-vent appliances that obtain all combustion air directly from the outdoors. 2. Solid fuel

appliances, provided that the room is not a confined space and the building is not of unusually tight construction. 3. Appliances installed in a dedicated enclosure in which all combustion is taken directly from the outdoors or other approved areas. Access to such enclosure shall be through a solid door, equipped with an approved self closing device, and weather-stripped in accordance with the exterior door and leakage requirements of the International Energy Conservation Code.**"**

SECTION 16. Section 22.01.180 of the code of the City of Wichita, is hereby created to read as follows:

"Clearances from grade. Section 304.10 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Equipment and appliances installed at grade level shall be supported on a level concrete slab or other approved material extending above adjoining grade or shall be suspended a minimum of 6 inches (152 mm) above adjoining grade. Supports for heat pumps shall be at least 3" and conform to the manufactures specifications**"**

SECTION 17. Section 22.01.190 of the code of the City of Wichita, is hereby created to read as follows:

"Equipment and appliances on roofs or elevated structures. Section 306.5 of the International Mechanical Code is amended to read as follows:

Where equipment and appliances requiring access are installed on roofs or elevated structures, at a height exceeding 16 feet (4877 mm), such access shall be provided by a permanent approved means of access, the extent of which shall be a minimum eight (8) feet above grade to the equipment and appliances' level service space. Such access shall not require climbing over obstructions greater than 30 inches

(762 mm) high or walking on roofs having a slope greater than 4 units vertical in 12 units horizontal (33-percent slope).

Permanent ladders installed to provide the required access shall comply with the following minimum design criteria:

1. The side railing shall extend above the parapet or roof edge not less than 30 inches (762 mm).

2. Ladders shall have a rung spacing not to exceed 14 inches (356 mm) on center.

3. Ladders shall have a toe spacing not less than 6 inches (152 mm) deep.

4. There shall be a minimum of 18 inches (457 mm) between rails.

5. Rungs shall have a minimum 0.75-inch (19 mm) diameter and be capable of withstanding 300-pound (136.1 kg) load.

6. Ladders over 30 feet (9144 mm) in height shall be provided with offset sections and landings capable of withstanding 100 pounds (488.2 kg/m2) per square foot.

7. Ladders shall be protected against corrosion by approved means. Catwalks installed to provide the required access shall be not less than 24 inches (610 mm) wide and shall have railings as required for service platforms.

Exception: This section does not apply to Group R-3 occupancies.**"**

SECTION 18. Section 22.01.200 of the code of the City of Wichita, is hereby created to read as follows:

"Auxiliary and secondary drain systems. In addition to the requirements of section 307.2.3, where damage to any building components could occur as a result of

overflow from the equipment primary condensate removal system, one of the following methods shall be provided for each cooling coil or fuel fired appliance that produces condensate and is located above a finished ceiling or furred space:

1. An auxiliary drain pan with a separate drain shall be provided under the coils on which condensation will occur. The auxiliary drain pan shall discharge to a conspicuous point of disposal to alert occupants in the event of a stoppage of the primary drain. The pan shall have a minimum depth of 1 ½ inches (38 mm), shall not be less than the unit or coil dimensions in width and length and shall be constructed of corrosion resistant material. Galvanized sheet steel pans shall have a minimum thickness of not less than 0.0236 inch (0.6010 mm) (No. 24 gage). Nonmetallic pans shall have a minimum thickness of not less than 0.0625 inch (1.6 mm).

2. A separate overflow drain line shall be connected to the drain pan provided with the equipment. Such overflow drain shall discharge to a conspicuous point of disposal to alert the occupants in the event of a stoppage in the primary drain. The overflow drain line shall connect to the drain pan at a higher level than the primary drain connection.

3. An auxiliary drain pan without a separate drain line shall be provided under coils on which condensate will occur. Such pan shall be equipped with a water-level detection device conforming to UL 508 that will shut off the equipment served prior to overflow of the pan. The auxiliary drain pan shall be constructed in accordance with Item 1 of this section.

4. A water-level detection device conforming to UL 508 shall be provided that will shut off the equipment served in the event that the primary drain is blocked. The

device shall be installed in the primary drain, the overflow drain line, or in the equipment-supplied drain pan, located at a point higher than the primary drain line connection and below the overflow rim of such pan.

Exception: Fuel fired appliances that automatically shut down operation in the event of a stoppage in the condensate drainage system.**"**

SECTION 19. Section 22.01.210 of the code of the City of Wichita, is hereby created to read as follows:

"Grease duct test. Section 506.3.3.1 of the International Mechanical Code is amended to read as follows: Prior to the use or concealment of any portion of a grease duct system, a leakage test shall be performed in the presence of the official. Ducts shall be considered to be concealed where installed in shafts or covered by coatings or wraps that prevent the ductwork from being visually inspected on all sides. The permit holder shall be responsible to provide the necessary equipment and perform the grease duct leakage test. A light test or an approved equivalent test method shall be performed to determine that all welded and brazed joints are liquid tight. A light test shall be performed by passing a halogen lamp having a power of not less than 100 watts through the entire section of the ductwork to be tested. The lamp shall be open so as to emit light equally in all directions perpendicular to the duct walls. A test shall be performed for the entire duct system, including the hood-to-duct connection. The ductwork shall be permitted to be tested in sections provided that every joint is tested. For listed factory-built grease ducts, this test shall be limited to duct joints assembled in the field and shall exclude factory welds.**"**

SECTION 20. Section 22.01.220 of the code of the City of Wichita, is hereby created to read as follows:

"Grease duct enclosure. Section 506.3.10.1 of the International Mechanical Code is amended to read as follows: Commercial kitchen grease ducts constructed in accordance with Section 506.3.1 shall be permitted to be enclosed in accordance with the International Building Code requirements for shaft construction. Such grease duct systems and type one hoods shall have a clearance to combustible construction of not less than 18 inches (457 mm), and shall have a clearance to noncombustible construction and gypsum wallboard attached to noncombustible structures of not less than 3 inches (76 mm). Duct enclosures shall be sealed around the duct at the point of penetration and vented to the outside of the building through the use of weather-protected openings**.** Exceptions: 1. The shaft enclosure provisions of this section shall not be required where a duct penetration is protected with a through-penetration fire stop system classified in accordance with ASTM E 814 and having an "F" and "T" rating equal to the fire-resistance rating of the assembly being penetrated and where the surface of the duct is continuously covered on all sides from the point at which the duct penetrates a ceiling, wall, or floor to the outlet terminal with a classified and labeled material, system, method of construction or product specifically evaluated for such purpose, in accordance with ASTM E 2336. Exposed duct wrap systems shall be protected where subject to physical damage. 2.The shaft enclosure provisions of this section shall not be required where a duct penetration is protected with a through-penetration fire stop system classified in accordance with ASTM E 814 and having an "F" and "T" rating equal to the fire resistance rating of the assembly being penetrated

and where a prefabricated grease duct enclosure assembly is protected on all sides from the point at which the duct penetrates a ceiling, wall, or floor to the outlet terminal with a classified and labeled prefabricated system specifically evaluated for such purposes in accordance with UL 2221. (3) A duct enclosure shall not be required for a grease duct that penetrates only a nonfire-resistance-rated roof/ceiling assembly.**"**

SECTION 21. Section 22.01.230 of the code of the City of Wichita, is hereby created to read as follows:

"Operation. Section 507.2.1.1 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Type 1 hood systems shall be designed and installed to automatically activate the exhaust fan whenever cooking operations occur. The activation of the exhaust fan shall occur through an interlock with the cooking appliances, by means of heat sensors or by means of other approved methods. The system shall be designed by a registered design professional and submitted for plan review with the complete construction document package.**"**

SECTION 22. Section 22.01.240 of the code of the City of Wichita, is hereby created to read as follows:

"Corridors. Section [B] 601.2.1 of the International Mechanical Code, as adopted by reference herein, shall be created to read as follows: . A corridor shall not be used as a plenum or integral part of a duct system to convey air to or from one part of a building to another if the corridor is required to be of fire-resistive construction by The Code of the City of Wichita. However, air may be supplied to such a corridor

for the purpose of comfort conditioning, ventilation, exhausting or other reasons and may be returned or exhausted provided all such supply, return or exhaust openings be protected as required by other parts of this Code and not be in violation of this provision.

Exception: Make up air for exhaust from rest rooms and janitors closets opening on to and adjacent to a corridor of fire resistant construction, may be transferred from the corridor provided such transfer means are protected in the manner prescribed by other parts of this Code and such corridor is supplied directly, or through the system supplying the corridor, with outdoor air at a rate greater than the rate of makeup air taken from the corridor.**"**

SECTION 23. Section 22.01.260 of the code of the City of Wichita, is hereby created to read as follows:

"**Return air systems.** Section 606.2.1 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Smoke detectors shall be installed in the return or the supply of air systems with a design capacity greater than 2,000 cfm (0.9 m3/s). On the return side it shall be located in the return air duct or plenum upstream of any filters, exhaust air connections, outdoor air connections, or decontamination equipment and appliances. On the supply side the smoke detector shall be located before the first branch or take off.

Exception: Smoke detectors are not required in the return or supply systems where all portions of the building served by the air distribution system are protected by area smoke detectors connected to a fire alarm system, approved by fire department, and the area smoke detection system shall comply with Section 606.4.**"**

SECTION 24. Section 22.01.270 of the code of the City of Wichita, is hereby created to read as follows:

"Hydronic piping- scope. Section 1201.1 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: The provisions of this chapter shall govern the construction, installation, alteration and repair of hydronic piping systems. This chapter shall apply to hydronic piping systems that are part of heating, ventilation and air-conditioning systems. Such piping systems shall include steam, hot water, chilled water, steam condensate and ground source heat pump loop systems. Potable cold and hot water distribution systems shall be installed in accordance with Title 21 of the Code of the City of Wichita.**"**

SECTION 25. Section 22.02.010 of the code of the City of Wichita, is hereby created to read as follows:

"Inspectors--Appointment; duties generally. One or more duly qualified mechanical inspectors shall be appointed by the city manager. Under the direction and supervision of the Superintendent of the Office of Central Inspection, such inspectors shall enforce the provisions of this Code, keep records, make reports and perform any other duties as are from the time to time imposed by the city manager or the Superintendent of the Office of Central Inspection.**"**

SECTION 26. Section 22.02.020 of the code of the City of Wichita, is hereby created to read as follows:

"Inspectors--Qualifications. All commercial mechanical inspectors shall have had a minimum of five years of practical experience in this field as a Journeyman or Master and shall be duly certified pursuant to the requirements set forth by the

Superintendent of the Office of Central Inspection. All combination inspectors shall be duly certified pursuant to the requirements set forth by the Superintendent of the Office of Central Inspection.**"**

SECTION 27. Section 22.02.030 of the code of the City of Wichita, is hereby created to read as follows:

"Board of appeals--Created; composition. There shall be and is authorized in the city a board of appeals of air conditioning, refrigeration and warm air heating, which shall consist of the Superintendent of the Office of Central Inspection or his duly authorized representative, who shall serve as secretary of the board, and seven other members, as follows:

(1) A refrigeration contractor;

(2) A journeyman heating and air conditioning mechanic;

(3) A boiler contractor;

(4) A master air conditioning and warm air heating contractor;

(5) A journeyman boiler;

(6) A public at large;

(7) A mechanical engineer.**"**

SECTION 28. Section 22.02.040 of the code of the City of Wichita, is hereby created to read as follows:

"Board of appeals--Qualifications and appointment of members. The contractor and Journeyman members of the Board shall, in the first instance, are those who have been established in their respective business so as to be qualified to obtain their certificates and licenses as provided in Sections 22.02.130 and 22.02.200. The mechanical engineer and

architect members shall be licensed by the state to engage in business in their respective fields and be independently engaged in business and not in the employ of an air conditioning, refrigeration or warm air heating contractor. All members shall be appointed and approved by the mayor and city council members.**"**

SECTION 29. Section 22.02.060 of the code of the City of Wichita, is hereby created to read as follows:

"Board of appeals--Same--Term of members; filling vacancies; compensation of members. The terms of office shall be as set forth in Section 2.12.020(1). No member of the Board shall receive any compensation whatsoever for his services, but the board may allow actual expenses in attending meetings and in carrying out duties of his office to any such member.**"**

SECTION 30. Section 22.02.070 of the code of the City of Wichita, is hereby created to read as follows:

"Board of appeals--Meetings; rules; records. The Board shall meet in conformance with Chapter 2.12 of the Code of the City of Wichita.**"**

SECTION 31. Section 22.02.080 of the code of the City of Wichita, is hereby created to read as follows:

"Board of appeals-- Appeals. Any decision by or action of the Board may be appealed in writing to the city council of the city by the party adversely affected; provided such appeal is filed in writing with the city clerk within twenty days after the issuance of the decision or action complained of.**"**

SECTION 32. Section 22.02.090 of the code of the City of Wichita, is hereby created to read as follows:

"Board of appeals-- Acting as arbitration board. The Board shall act as an arbitration board in deciding any question which may arise between an air conditioning, refrigeration, warm air heating and boiler contractors or Journeyman and the inspector.

When conditions exist which are not covered by this Code, or where it would be impracticable to follow this Code, the Board may grant a variance from the strict application of this Code. Those individuals asking for any such concession must make their request in writing, and give a complete description of all items involved. If the request is granted, a copy of the whole transaction must be placed on file in the Office of Central Inspection.

The Board shall pass upon materials or methods of installation not sufficiently provided for in this Code, and accept or reject the same as complying with the intent of the Code.

The Board is expressly given the responsibility of studying and making such rules as are required for new products being offered for use in air conditioning, refrigeration, warm air heating and boiler systems. All such rules shall be in writing and filed in the Office of Central Inspection.**"**

SECTION 33. Section 22.02.100 of the code of the City of Wichita, is hereby created to read as follows:

"Classifications. Class "A-C" (air conditioning and warm air heating) This class includes air handling equipment and air distributions, chilled water systems, warm air heating systems whereby heating is accomplished by distributing heated air by forced or gravity circulation or by radiation, including controls and other items pertaining thereto.

Class "RF" (refrigeration)--This class includes refrigeration systems and refrigeration equipment of all types.

Class "Journeyman sheet metal installer" is a classification for any individual working for a licensed contractor as defined in Section 22.02.110 and who is duly certified as herein set forth to engage in such occupation. Journeyman sheet metal installer is limited to perform the following types of installations

(1) The placement and installation of the furnace, air conditioning, or other air handling equipment, this does not include any connections of line voltage electricity, fuel gas piping or refrigeration piping;

(2) The installation of the complete air distribution system as defined in this code;

(3) The installation of the products of combustion venting systems as defined in this Code**.**

Exception 1: "Journeyman residential mechanic" is a limited classification for an individual working for a contractor of a class as set forth in section 22.02.100 and who is duly certified as herein set forth to engage in such occupation. Journeyman residential mechanic is limited to perform the following types of installations:

1. One and two family residential new construction only;
2. The placement and installation of the furnace, air conditioning or other air handling equipment that pertains to residential use. This does not include gas piping or line voltage electricity."

SECTION 34. Section 22.02.110 of the code of the City of Wichita, is hereby created to read as follows:

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

'Apprentice' means an individual who works as an employee in training under the direct supervision of a Journeyman or Master. An Apprentice is not a certified individual.

'Board' means the board of appeals appointed for air conditioning, refrigeration, warm air heating, and boilers. Their purpose is reviewing code interpretations taken by the building code enforcement division, granting or denying variances requested from the code, other matters pertaining to mechanical, reviewing license applications and license suspensions and revocation.

'Code' means the International Mechanical Code or Uniform Mechanical Code as adopted by the City, as the context of this article may require.

'Direct Supervision' means that the apprentice is limited to the same structure and/or building site as the Journeyman or Master, except in the case of one- and two-family residential development, where the apprentice may be on the job site within 100 feet of where the Journeyman or Master is working.

'Field Experience' means working under the direct supervision of a person having a valid Journeyman or Master certificate or attending trade related schooling. No more than one year of the requirement may be satisfied by trade related schooling. Schooling shall consist of a minimum of 240 hours classroom training.

'Journeyman' means an individual working for a licensed contractor as defined in Section 22.02.110 and engaged principally in the occupation of erecting, installing, altering, repairing, servicing or maintaining in any or all of the following classifications and who is duly certified as herein set forth to engage in such occupation: A Journeyman is responsible for the supervision of any apprentice assigned to work with him.

'Licensed Contractor' means a person, firm, partnership, corporation, limited liability company, association or combination thereof, who undertakes or offers to undertake for another, for hire, the planning, laying out, supervising and installing or making additions, alterations, and repairs in the installation of mechanical heating, ventilation, refrigeration and air conditioning systems.

'Licensed trade' or 'trade' means the mechanical, electrical, plumbing or gas fitting trade, as the context of this article may require.

'Master' means an individual that holds a Master certificate issued pursuant to this article evidencing such person to be qualified to lay out, install, maintain and repair work in his area of expertise. A Master is responsible for the supervision of any apprentice assigned to work with him.

'Qualified Master' means an individual who holds a Master certificate issued pursuant to this article evidencing such person to be qualified to control and have authority of all technical work performed under the authority of the licensed contractor's enterprise, and assures quality control and is responsible for complying with all applicable laws, codes and regulations. An individual shall not be the Qualified Master for more than one licensed contractors enterprise unless such individual receives approval from the Superintendent of the Office of Central Inspection or an authorized representative thereof.**"**

SECTION 35. Section 22.02.120 of the code of the City of Wichita, is hereby created to read as follows:

"Apprentice limitations. (a) Apprentices shall be permitted to work when accompanied by and under the direct supervision of a Master or Journeyman, who shall be responsible for the mechanical work performed by the Apprentice. At any given time, there

shall be a maximum of two Apprentices per one Master or one Journeyman for all one or two-family dwelling residential job sites. There shall be a maximum of three Apprentices per one Master or one Journeyman for all triplex or greater density residential job sites or commercial job sites. The on-site Master or Journeyman shall be responsible for maintaining the ratio of Master/Journeyman to Apprentices as required by this section. If an Apprentice works without the required supervision, both the Qualified Master, and the Apprentice may be held responsible for violation of this section.

(b) It shall be unlawful for any Qualified Master, to allow or permit an uncertified individual to engage in the business of erecting, installing, altering, repairing, servicing or maintaining air conditioning, warm air heating or refrigeration.**"**

SECTION 36. Section 22.02.130 of the code of the City of Wichita, is hereby created to read as follows

"Applicant requirements, examinations; issuance of certificates. Any person desiring to engage in or work at the business of air conditioning, refrigeration or warm air heating either as a Master or as a Journeyman, as defined in Section 22.02.110, or to do such work shall submit the prescribed application form to the Office of Central Inspection for a certificate, and if the applicant meets the following requirements or is approved by the Board, shall at such time and place as directed be subjected to an examination as to their qualifications. The qualifications are as follows:

a. A minimum score of seventy-five percent on the "Block Examination" Master/Journeyman Mechanical Certificate, which is administered by Prometric, or

b. A minimum score of seventy-five percent on the International Code Council Examination for a Master/Journeyman Mechanical Certificate, which is administered by International Code Council, or

c. A satisfactory score on any other standard examination to determine the qualification of a Master/Journeyman Mechanical that is approved and adopted by the state of Kansas, pursuant to state law, following the effective date of this Code.

Applicant requirements:

Journeyman Mechanical: One year Field Experience and completion of a technical heating and air conditioning school, or two years Field Experience. Schooling shall consist of a minimum of 240 hours.

Master Mechanical: Two years as Journeyman or a minimum of four years Field Experience.**"**

SECTION 37. Section 22.02.140 of the code of the City of Wichita, is hereby created to read as follows:

"Fees for examination, certificates, etc.; renewing and expiration of certificates. (a) The fee for the original certificate of a master mechanical, journeyman mechanical, or sheet metal installer shall be established by the Superintendent of the Office of Central Inspection to cover the administrative costs of issuing such certificates. This fee shall be paid to the Office of Central Inspection when the application for a certificate is made. Individuals not holding a certificate at the beginning of the certificate cycle, who obtain a certificate during such certificate cycle by the standardized test required by K.S.A. 12-1542 and any amendments thereto, will be issued the initial certificate without documentation of continuing education. Such certificate will be issued noting the test provider, specific test type and

grade. Such test shall be completed during the certificate cycle. All such certificates shall expire on the thirty-first of December of each odd numbered year. The biennial fee for all certificates shall be established by the Superintendent of the Office of Central Inspection to cover the administrative cost of issuing such certificates. All such certificates shall be renewed bi-annually upon payment established by the Superintendent of the Office of Central Inspection to cover the administrative costs of issuing such certificates. All certificates shall expire on the thirty-first day of December of each odd-numbered year and no reduction shall be made for part of the year being elapsed. Any holder of a certificate who fails to renew the same by March 1st after their expiration shall be required to submit one of the following: (1) Proof of passing a new examination in accordance with K.S.A. 12-1541 or; (2) Proof completing an additional 11/2 hours of continuing education for each 3 month period the renewal is late and only when the original certificate was issued pursuant to K.S.A. 12-1542. It is the total responsibility of the certificate holder to assure that his/her certificate has been renewed and is valid.

(b) Individuals passing the examination in the first year of a renewal cycle will need to provide documentation of 12 hours of approved continuing education when renewing their certificate. Not less than 6 hours shall consist of mechanical code education. The continuing education shall be attended during the certificate cycle. Individuals passing the examination in the second year of a renewal cycle will need to provide documentation of 6 hours approved continuing education when renewing their certificate. Not less than 3 hours shall consist of mechanical code education. The continuing education shall be attended during the second year of the certificate cycle. Individuals with an active certificate that passed the examination prior to the first year of the renewal cycle must provide written proof of having

completed biennially not less than 12 hours of continuing education approved by the Office of Central Inspection. Not less than 6 hours shall consist of mechanical code education. Continuing education shall be provided by the Office of Central Inspection or a nationally recognized trade association, community college, technical school, technical college or other provider approved by the Office of Central Inspection. All 12 hours of education shall comply with the Office of Central Inspections continuing education guidelines for mechanical.**"**

SECTION 38. Section 22.02.160 of the code of the City of Wichita, is hereby created to read as follows:

"Owner occupants--minor repairs. Regardless of the requirements of other sections of this title, the owner-occupant of a single-family dwelling may obtain permits to repair, replace, or maintain the existing air conditioning, refrigeration, or warm air heating systems in such single-family dwelling and the usual accessory buildings in connection with such dwelling; provided, however, that the owner-occupant shall perform all such work and that the work so performed is in accordance with the Code as verified by an inspection requested by such owner-occupant and performed by the Office of Central Inspection. No permit shall be required for minor repairs or alterations which do not exceed two hundred dollars as the price charged for such work, but such work shall comply with all requirements of this Code.**"**

SECTION 39. Section 22.02.170 of the code of the City of Wichita, is hereby created to read as follows:

"Owner-occupants permit, fee, examination, and requirements. The owner-occupant of a detached single-family dwelling occupied or to be occupied by the owner-occupant applying for the permit may be permitted to install air-conditioning, refrigeration,

and warm air heating systems in the main structure and accessory structures thereto provided all materials are purchased and all labor is performed by the applicant.

Owner-occupants applying for permits for installations as outlined above shall first qualify themselves by successfully passing a simplified open book examination dealing with relevant provisions of the Code. The fee for said examination shall be five dollars. Successful passage of the examination shall qualify the applicant for future permits until the time of adoption of another edition of the Code by the city.

Prior to permit approval, the applicant shall also submit a plan of the installation drawn in a format acceptable to and drawn in sufficient detail as to satisfy the Superintendent of the Office of Central Inspection of the overall code compliance of the anticipated installation.

Permit fees shall be as set forth elsewhere in this title and in Title 18 provided, however, that each additional inspection owing to detected code deficiencies requiring correction shall be billed at the rate of forty dollars each.

Permits for installations in completely new residences and/or total remodel permits shall be limited to one in three years to each applicant unless a waiver is obtained, upon written application, from the Board.**"**

SECTION 40. Section 22.02.180 of the code of the City of Wichita, is hereby created to read as follows:

"Revocation of certificates and licenses. The Board is authorized to cancel and recall the certificate of any air-conditioning, refrigeration, warm air heating or boiler contractor or Journeyman for any or all of the following reasons:

1. Committing of any act in violation of any provision of this Code or any other ordinance of the city or the refusal or failure to comply with any lawful and reasonable order of the Superintendent of the Office of Central Inspection or inspector.

2. Misrepresentation of a material fact by the applicant in obtaining a certificate.

3. Carelessness or negligence in providing reasonable safety measures for the protection of the public.

The Board is hereby authorized to cancel and recall the license of any air conditioning, refrigeration, warm air heating or boiler contractor for any or all of the following reasons:

1. Abandonment of any contract without legal cause.

2. Diversion of funds or property received for performance or completion of a specific contract or a specific purpose in the performance or completion of any contract, obligation or purpose, or the failure, neglect, or refusal to use such funds or property for the performance or completion of the contract.

3. Committing any act in violation of any provision of this Code or any other ordinance of the city or the refusal or failure to comply with any lawful and reasonable order of the superintendent of central inspection or inspector.

4. Misrepresentation of a material fact by the applicant in obtaining a license.

5. Failure of any contractor to fully certify all claims for labor and materials used in the performance of any work for which he has been engaged or for which he has been paid.

6. Fraudulent use of the license to obtain a permit for another.

7. Carelessness or negligence in providing reasonable safety measures for the protection of workmen and the public.

8. Failure to obtain permits as required in Section. 22.02.170

9. Unreasonable delay in the performance and carrying out of any contract.

10. Failure by the licensee to have at least one active member or officer deemed as the Qualified Master, as defined in 22.02.110

Upon presentation by the Superintendent of the Office of Central Inspection to the Board charges against any holder of any certificate as set forth in this section, the Board shall fix a time and a place for a meeting to consider such charges and shall notify the holder of such license to be present at such meeting. Such notification shall be in writing and shall be presented to the holder at least five days in advance of the meeting. If upon full hearing of all evidence by the Board, it shall be decided that such holder of a certificate has been guilty of the actions as herein before set forth in this section, then the board shall revoke or suspend the license or certificate of the holder thereof.

When a certificate of a person has been revoked, a new certificate shall not be granted until he shall have corrected the violation in accordance with this Code or any ordinance of the city and shall have made application and shall have passed an examination as required for the original certificate.**"**

SECTION 41. Section 22.02.190 of the code of the City of Wichita, is hereby created to read as follows:

"Certain persons exempt from license and bond requirements. Any person not engaged in the business of heating and/or air conditioning within the scope of this Code who has in his/her regular and permanent employment a person or persons who possess current and valid Journeyman or Master certificates shall be permitted to have such person or persons perform maintenance and repair work on buildings and premises that are owned,

leased, operated or managed by him shall be exempt from this Code, as pertains to license or bond, but shall be subject to all other requirements pertaining thereto.**"**

SECTION 42. Section 22.02.200 of the code of the City of Wichita, is hereby created to read as follows:

"Licenses. Anyone authorized individual or entity seeking to engage in the business of mechanical heating, air conditioning or refrigeration shall first designate an individual to be the Qualified Master for their license and then acquire a license from the Office of Central Inspection. Each such license shall expire on thirty-first day of December in the year the license was issued. The fee for such license shall be one hundred dollars.**"**

SECTION 43. Section 22.02.210 of the code of the City of Wichita, is hereby created to read as follows:

"Insurance required. Every air conditioning, refrigeration, warm air heating or boiler contractor licensed under this title shall procure and maintain a policy of general liability insurance covering the activities of the air conditioning, refrigeration, warm air heating or boiler contractor while engaged in contracting hereunder. Such insurance policy shall be written with an insurance company licensed to do business in the state and shall have minimum limits of coverage of three hundred thousand dollars per occurrence. In addition, every such air conditioning, refrigeration, warm air heating or boiler contractor shall procure and maintain worker's compensation insurance as required by law and automobile liability insurance as required by law. Every contractor licensed under this title shall, prior to the issuance of a license, file with the office of central inspection certificates of insurance evidencing the insurance coverage specified herein. All such certificates shall indicate that the city shall be given at least thirty days advance written notice of any cancellation or

material change in coverage of such insurance. Failure of an air conditioning, refrigeration, warm air heating or boiler contractor to either procure or maintain such insurance shall be a violation of law punishable as a general misdemeanor and shall be grounds for suspension or revocation of the air conditioning, refrigeration, warm air heating or boiler contractor's license and certificate.**"**

SECTION 44. Section 22.02.220 of the code of the City of Wichita, is hereby created to read as follows:

"Contractors--Established place of business required.

Every contractor who has obtained a license as set forth in this Code shall have and maintain an established place of business at a definite address and with his registered name and Wichita permit number displayed as it appears on his license.**"**

SECTION 45. Section 22.02.230 of the code of the City of Wichita, is hereby created to read as follows:

"Contractors--Marking of vehicles. Any person, firm or corporation required by this title to obtain a mechanical contractor's license shall be subject to the following:

(a) Vehicles used in performance of installations or service regulated under this title shall display contractors' permanent vehicle permit numbers. Such numbers shall be assigned by the superintendent of central inspection to a contractor duly licensed under the provisions of this title.

(b) Permanent vehicle permit numbers must be affixed to both sides of vehicle(s), in a conspicuous place, either by paint of a contrasting color or by the use of the permanent decal.

(c) Permanent vehicle permit numbers must be a minimum of two inches high with a one-half-inch-wide stroke per character.

(d) A contractor's employee(s) using their personal vehicles as transportation to or from the job site are exempted from the provisions of this section. A contractor's employee using a personal vehicle in any job-related capacity must display the permanent vehicle permit marking.

(e) The contractor shall be responsible for removing the permanent vehicle permit number at the time any vehicle is taken out of service.

(f) Violation of any provision of this section may result in a hearing before the board of appeals of air conditioning, refrigeration, warm air heating and boilers. The board may order any or all of the following:

(1) No further mechanical permits be issued to the contractor until such time as the violation is abated;

(2) All inspections of further work performed by the contractor will be suspended until such time as the violation is abated, excepting extreme hazard of life safety inspection;

(3) A license review, subjecting the contractor to possible suspension, recall or cancellation of the master certificate and/or license, in accordance with the provisions of Section 22.02.180.

Exception: If the contractor chooses to advertise his or her business on their vehicles and abides with Section 22.02.240, Truth in advertising requirements, then Section 22.02.230, marking of vehicles, does not apply.**”**

SECTION 46. Section 22.02.240 of the code of the City of Wichita, is hereby created to read as follows:

“Truth in advertising requirements. On or after July 1, 1993, any person, firm or corporation required by this title to obtain an air conditioning, refrigeration, warm air heating or boiler contractor's license shall be subject to the following:

(a) It shall be unlawful for any such person, firm or corporation to advertise as an air conditioning, refrigeration, warm air heating or boiler contractor unless, at the time such advertisement occurs, such person, firm or corporation has a then valid air conditioning, refrigeration, warm air heating or boiler contractor's license issued under the provisions of this chapter;

(b) Any advertisement by such person, firm or corporation as an air conditioning, refrigeration, warm air heating or boiler contractor which is placed or published in any publication or other print medium circulated, displayed or distributed within the city limits or which is broadcast by radio or television or any internet posting/publication, electronic billboard, or any electronic or telephonic transmission of information, or any other means to persons within the city limits shall include the full name of the licensed person, firm or corporation and the license number assigned by the office of central inspection to such person, firm or corporation;

(c) As used herein, the words "advertise" or "advertisement" shall mean and include, but not be limited to, a business card, contract bid proposal form, printed letterhead, any other printed or written material, or any internet posting/publication, electronic billboard, or telephonic transmission of information, designed to inform persons of the services offered by the advertising person, firm or corporation and to solicit business from such persons, or any broadcast statement designed to inform persons of the services offered by the advertising person, firm or corporation and to solicit business from such persons. Such words are

intended to include telephone directory display ads but not basic white and yellow page listings.**"**

SECTION 47. Section 22.02.260 of the code of the City of Wichita, is hereby created to read as follows:

"Compliance with titles, ordinances, laws. All air conditioning, refrigeration or warm air heating installations shall comply with existing laws and ordinances covering the construction and installation of cooling towers, the use of city water, sanitary and storm sewers, the requirements for recirculation of condenser water, as contained in the following parts of this Code, and any other that may apply:

Water conservation--Title 17;

Connection to sanitary sewer--Title 16;

Towers, spires and tanks--Title 18;

Gas burning warm air furnaces--Title 18;

Ducts and appurtenances--Title 18;

Cooling units over public property--Title 18;

Gas fittings--Title 21.**"**

SECTION 48. Section 22.02.270 of the code of the City of Wichita, is hereby created to read as follows:

"Electrical and plumbing work. All electrical work, plumbing and gas fitting done in connection with any work covered by this Code shall be in conformance with Title 19 and Title 21 respectively. It is also unlawful for a person holding a license, as set forth in this Code, to operate as a contractor or as a journeyman mechanic to do or otherwise perform any electrical, plumbing or gas fitting work except as provided in this section. Such contractor or

mechanic shall be permitted to do all water piping within the system, and make indirect connections to the city sewer, but shall not make direct connections to either the city water system or to city sewers.

It shall be permissible for a holder of a Class A-C or RF certificate to make original installations of package units of a capacity of seven and one-half horsepower or less on the load side of the disconnect means when such is not over five feet from the unit and is within sight thereof. It shall also be permissible for such a person to do all electrical work in connection with maintenance, repairs or replacement on any system from the load side of the disconnect means of the unit. All such electrical work shall conform in all respects to the requirements of Title 19.**"**

SECTION 49. 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 26th day of October, 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
09/29/2010

ORDINANCE NO._____

AN ORDINANCE REPEALING THE ORIGINALS OF SECTIONS 22.04.10 THROUGH 22.05.050 OF THE CODE OF THE CITY OF WICHITA, KANSAS; CREATING SECTIONS 22.01.010, 22.01.020, 22.01.030, 22.01.040, 22.01.060, 22.01.070, 22.01.080, 22.01.090, 22.01.100, 22.01.110, 22.01.120, 22.01.130, 22.01.140, 22.01.160, 22.01.170, 22.01.180, 22.01.190, 22.01.200, 22.01.210, 22.01.220, 22.01.230, 22.01.240, 22.01.260, 22.01.270, 22.02.010, 22.02.020, 22.02.030, 22.02.040, 22.02.060, 22.02.070, 22.02.080, 22.02.090, 22.02.100, 22.02.110, 22.02.120, 22.02.130, 22.02.140, 22.02.160, 22.02.170, 22.02.180, 22.02.190, 22.02.200, 22.02.210, 22.02.220, 22.02.230, 22.02.240, 22.02.260, AND 22.02.270; OF THE CODE OF THE CITY OF WICHITA, KANSAS; ALL PERTAINING TO THE MECHANICAL CODE OF THE CITY OF WICHITA, KANSAS.

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

SECTION 1. Section 22.01.010 of the code of the City of Wichita, is hereby created to read as follows:

"Adoption of the International Mechanical Code. The International Mechanical Code, as published by the International Codes Council, Inc. 2006 Edition, excluding Appendix B and sections (301.2),)[1] is hereby adopted and incorporated herein by reference, subject to such amendments thereto as are set forth hereinafter."

[1] (301.2) The mechanical board voted to stay with our local amendments instead of adopting the International Energy Conservation Code.

SECTION 2. Section 22.01.020 of the code of the City of Wichita, is hereby created to read as follows:

"Title. Section101.1 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Title. These regulations shall be known as the Mechanical Code of the City of Wichita, Kansas, hereinafter referred to as "this Code"."

SECTION 3. Section 22.01.030 of the code of the City of Wichita, is hereby created to read as follows:

"Scope. Section 101.1 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: This Code shall regulate the design, installation, maintenance, alteration and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings. This Code shall also regulate those mechanical systems, system components, equipment and appliances specifically addressed herein. The installation of fuel gas equipment, fuel gas fired appliances and gas-fired appliance venting systems shall be regulated by the International Fuel Gas Code. **Exception:** Detached one- and two- family dwellings not more than three stories high with separate means of egress and their accessory structures shall comply with the 2006 International Residential Code."[2]

SECTION 4. Section 22.01.040 of the code of the City of Wichita, is hereby created to read as follows:

[2] The mechanical board voted to go with the 2006 IRC for residential HVAC requirements.

"Building Code Provisions. Section 102.8.1 of the International Mechanical Code, as adopted by reference herein, shall be created to read as follows: The provisions of Title 18 of the Code of Wichita shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.**"**

SECTION 5. Section 22.01.060 of the code of the City of Wichita, is hereby created to read as follows:

"Electrical. Section 102.8.2 of the International Mechanical Code, as adopted by reference herein, shall be created to read as follows: The provisions of Title 19 of the code of the City of Wichita shall apply to the installation of electrical systems, including alterations, repairs, replacement equipment, appliances, fixtures, fittings and appurtenances thereto.**"**

SECTION 6. Section 22.01.070 of the code of the City of Wichita, is hereby created to read as follows:

"Gas. Section 102.8.3 of the International Mechanical Code, as adopted by reference herein, shall be created to read as follows: The provisions of Title 21 of the Code of the City of Wichita shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this Code. These requirements apply to gas piping systems extending from point of delivery to the inlet connections of appliances and the installation and operation of residential and commercial gas appliances and related accessories.**"**

SECTION 7. Section 22.<u>01.080</u> of the code of the City of Wichita, is hereby created to read as follows:

"Plumbing. Section 102.8.4 of the International Mechanical Code, as adopted by reference herein, shall be created to read as follows: The provisions of Title 21 of the Code of the City of Wichita shall apply to the installation, alterations, repairs and replacement of plumbing systems, including equipment, appliances, fixtures and appurtenances, and where connected to water or sewage systems and all aspects of a medical gas system.**"**

SECTION 8. Section 22.<u>01.090</u> of the code of the City of Wichita, is hereby created to read as follows:

"Fire Prevention. Section 102.8.5 of the International Mechanical Code, as adopted by reference herein, shall be created to read as follows: The provisions of Title 15 of the Code of the City of Wichita shall apply to matters affecting or relating to structures, processes and premises from the hazard of fire and explosion arising from storage, handling or use of structures, materials or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration or removal of fire suppression and alarm systems or fire hazards in the structure or on the premises from occupancy or operation.**"**

SECTION 9. Section 22.<u>01.100</u> of the code of the City of Wichita, is hereby created to read as follows:

"Investigation Fee. Section 106.5.1 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Any person who

commences work on mechanical system before obtaining the necessary permits shall be subject to a one hundred fifty dollar and investigation fee in addition to the required permit fees. If a contractor has a second investigation within a twelve month period from the first investigation fee, the fee will be three hundred dollars in addition to the required permit fees. If a contractor has a third investigation fee or any thereafter, within a twelve month period, the fee shall be six hundred dollars in addition to the required permit fees.**"**[3]

SECTION 10. Section 22.01.110 of the code of the City of Wichita, is hereby created to read as follows:

"Permit fees. Section106.5.2 of the International Mechanical Code is amended to read as follows: The fees for mechanical work shall be as indicated in the following schedule.

Issuance of permit 20.00

Forced air furnace (2,000 cfm or less) . . . 15.00

Forced air furnace (over 2,000 cfm) 20.00

Air handler (2,000 cfm or less) 15.00

Air handler (over 2,000 cfm) 20.00

Floor furnace 15.00

Wall Heater 15.00

Room heater 15.00

Infrared heater 15.00

Unit heater 15.00

Tube heater 15.00

Air conditioner (5 ton or less) 12.00

[3] The mechanical board voted to apply a three tiered penalty for those who fail to obtain mechanical permits.

Air conditioner (over 5 ton) 18.00

Cooling coil only 10.00

Refrigeration (50 HP or less) 15.00

Refrigeration (greater than 50 HP) 20.00

Roof top: combination (2,000 cfm or less).27.00

Roof top: heat only (2,000 cfm or less). . 15.00

Roof top: cooling only (2,000 cfm or less).15.00

Roof top: combination (over 2,000 cfm). . 38.00

Roof top: heat only (over 2,000 cfm) 20.00

Roof top: cooling only (over 2,000 cfm). . 18.00

Boiler 20.00

Water Tower/Chiller 35.00

VAV boxes/Fan coils/Fan terminals/. 7.50

Heat Recovery Unit 35.00

Incinerator/crematory 35.00

Any equipment/appliance not listed 7.50

Gas fireplace 15.00

Solid fuel fireplace 15.00

Pellet stove 15.00

Gas logs/inserts 15.00

Chimney liners 10.00

Type one hood 40.00

Type two hood 20.00

Fume hood 20.00

Paint booth 20.00

Spray booth 20.00

Exhaust fan @ duct (under 500 cfm) 10.00

Exhaust fan @ duct (over 500 cfm) 15.00

Exhaust and/or ventilation systems 35.00

Residential dryer vent 15.00

Commercial dryer vent 30.00

Fire damper 1.00

Fire/Smoke combination damper 3.00

Hydronic piping 15.00

Flue and/or vent connector 10.00

Fire suppression for hoods 15.00

Repairs/alterations 10.00

Minimum Fee……...25.00[4]

Provide, however, permit fees for one-and two family dwellings shall be in accordance with the fee schedule set forth at table 1-A shall be five percent (5%) of the total valuation of the one-or two-family dwelling as determined by the building official under authority of section 108.2 of the 2006 International Residential Code. Payment shall be made by the general contractor at the time a building permit is issued.

[4] The mechanical board voted to restructure the permit form as well as increase the fees to get closer to the national average. The fees have not been increased since the year 2000.

A separate heating and air-conditioning permit is required if work requiring a permit and inspection as defined in this Code is begun more than one hundred eighty (180) days from the date of the issuance of the building permit.

Exception: Every permit issued by the building official under the provisions of this Code shall expire by limitation and become null and void if the work authorized by such permit is not commenced within one hundred eighty days from the date of such permit, or if work authorized by such permit is suspended or abandoned at any time after work is commenced for a period of one hundred eighty days, or one hundred eighty days has elapsed since an inspection as required in section 107.1 of this Code, was requested and such inspection was approved by the building official**."**

SECTION 11. Section 22.01.120 of the code of the City of Wichita, is hereby created to read as follows:

"Corrections and re-inspections. Section 108.4 of the International Mechanical Code is amended to read as follows: Corrections shall be completed and work rescheduled for inspection within thirty (30) days from the date of the correction notice. Corrections not completed within the thirty (30) days, shall be liable for the violation penalties set forth in Title 22.16 of the Code of the City of Wichita.[5] Access shall be provided for re-inspection by the property owner**."**

SECTION 12. Section 22.01.130 of the code of the City of Wichita, is hereby created to read as follows:

"Stop work orders. Section 108.5 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Upon notice from

[5] The mechanical board voted to take out the language that would require a uniform criminal complaint to be mandatory.

the code official that mechanical work is being done contrary to the provisions of this Code or in a dangerous or unsafe manner, such work shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to the owner's agent, or to the person doing the work, or shall be posted in writing at the site of the work. The notice shall state the conditions under which work is authorized to resume. Where an emergency exists, the code official shall not be required to give a written notice prior to stopping the work. Any person who shall continue any work on the system 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 for the violation penalties set forth in Title 22.16 of the Code of the City of Wichita.**"**

SECTION 13 Section 22.01.140 of the code of the City of Wichita, is hereby created to read as follows:

"Electrical controls. Section 301.7 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Electrical wiring, controls, and connection to equipment and appliances regulated by this Code shall be in accordance with Title 19 of the Code of the City Wichita.**"**

SECTION 14. Section 22.01.160 of the code of the City of Wichita, is hereby created to read as follows:

"Plumbing connections. Section 301.8 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Potable water supply, building drainage system connections to equipment, and appliances regulated by this Code shall be in accordance with Title 21 of the Code of the City of Wichita.**"**

SECTION 15. Section 22.01.170 of the code of the City of Wichita, is hereby created to read as follows:

"Prohibited locations. Section 303.3 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Fuel fired appliances shall not be located in, or obtain combustion air from, any of the following rooms or spaces: 1. Sleeping rooms, 2. Bathrooms, Storage closets, Surgical rooms. Exception: This section shall not apply to the following appliances: 1. Direct-vent appliances that obtain all combustion air directly from the outdoors. 2. Solid fuel appliances, provided that the room is not a confined space and the building is not of unusually tight construction. 3. Appliances installed in a dedicated enclosure in which all combustion is taken directly from the outdoors or other approved areas. Access to such enclosure shall be through a solid door, equipped with an approved self closing device, and weather-stripped in accordance with the exterior door and leakage requirements of the International Energy Conservation Code."

SECTION 16. Section 22.01.180 of the code of the City of Wichita, is hereby created to read as follows:

"Clearances from grade. Section 304.10 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Equipment and appliances installed at grade level shall be supported on a level concrete slab or other approved material extending above adjoining grade or shall be suspended a minimum of 6 inches (152 mm) above adjoining grade. Heat pump supports shall conform to their manufacturer's specifications. "[6]

[6] The mechanical board voted that supports for heat pump shall conform to the manufacturer's instructions.

SECTION 17. Section 22.01.190 of the code of the City of Wichita, is hereby created to read as follows:

"Equipment and appliances on roofs or elevated structures. Section 306.5 of the International Mechanical Code is amended to read as follows:

Where equipment and appliances requiring access are installed on roofs or elevated structures, at a height exceeding 16 feet (4877 mm), such access shall be provided by a permanent approved means of access the extent of which shall be from eight (8) feet above grade to the equipment and appliances' level service space. Such access shall not require climbing over obstructions greater than 30 inches (762 mm) high or walking on roofs having a slope greater than 4 units vertical in 12 units horizontal (33-percent slope).

Permanent ladders installed to provide the required access shall comply with the following minimum design criteria:

1. The side railing shall extend above the parapet or roof edge not less than 30 inches (762 mm).

2. Ladders shall have a rung spacing not to exceed 14 inches (356 mm) on center.

3. Ladders shall have a toe spacing not less than 6 inches (152 mm) deep.

4. There shall be a minimum of 18 inches (457 mm) between rails.

5. Rungs shall have a minimum 0.75-inch (19 mm) diameter and be capable of withstanding 300-pound (136.1 kg) load.

6. Ladders over 30 feet (9144 mm) in height shall be provided with offset sections and landings capable of withstanding 100 pounds (488.2 kg/m2) per square foot.

7. Ladders shall be protected against corrosion by approved means. Catwalks installed to provide the required access shall be not less than 24 inches (610 mm) wide and shall have railings as required for service platforms.

Exception: This section does not apply to Group R-3 occupancies.**"**

SECTION 18. Section 22.01.200 of the code of the City of Wichita, is hereby created to read as follows:

"Auxiliary and secondary drain systems. In addition to the requirements of section 307.2.1, where damage to any building components could occur as a result of overflow from the equipment primary condensate removal system, one of the following methods shall be provided for each cooling coil or fuel fired appliance that produces condensate and is located above a finished ceiling or furred space:[7]

1. An auxiliary drain pan with a separate drain shall be provided under the coils on which condensation will occur. The auxiliary drain pan shall discharge to a conspicuous point of disposal to alert occupants in the event of a stoppage of the primary drain. The pan shall have a minimum depth of 1 ½ inches (38 mm), shall not be less than the unit or coil dimensions in width and length and shall be constructed of corrosion resistant material. Galvanized sheet steel pans shall have a minimum thickness of not less than 0.0236 inch (0.6010 mm) (No. 24 gage). Nonmetallic pans shall have a minimum thickness of not less than 0.0625 inch (1.6 mm).

[7] The mechanical board voted to add this to clarify exactly when secondary drains are required.

2. A separate overflow drain line shall be connected to the drain pan provided with the equipment. Such overflow drain shall discharge to a conspicuous point of disposal to alert the occupants in the event of a stoppage in the primary drain. The overflow drain line shall connect to the drain pan at a higher level than the primary drain connection.

3. An auxiliary drain pan without a separate drain line shall be provided under coils on which condensate will occur. Such pan shall be equipped with a water-level detection device conforming to UL 508 that will shut off the equipment served prior to overflow of the pan. The auxiliary drain pan shall be constructed in accordance with Item 1 of this section.

4. A water-level detection device conforming to UL 508 shall be provided that will shut off the equipment served in the event that the primary drain is blocked. The device shall be installed in the primary drain, the overflow drain line, or in the equipment-supplied drain pan, located at a point higher than the primary drain line connection and below the overflow rim of such pan.

Exception: Fuel fired appliances that automatically shut down operation in the event of a stoppage in the condensate drainage system.**"**

SECTION 19. Section 22.01.210 of the code of the City of Wichita, is hereby created to read as follows:

"Grease duct test. Section 506.3.2.5 of the International Mechanical Code is amended to read as follows: Prior to the use or concealment of any portion of a grease duct system, a leakage test shall be performed in the presence of the official. Ducts shall be considered to be concealed where installed in shafts or covered by coatings or

wraps that prevent the ductwork from being visually inspected on all sides. The permit holder shall be responsible to provide the necessary equipment and perform the grease duct leakage test. A light test or an approved equivalent test method shall be performed to determine that all welded and brazed joints are liquid tight. A light test shall be performed by passing a halogen.[8] lamp having a power of not less than 100 watts through the entire section of the ductwork to be tested. The lamp shall be open so as to emit light equally in all directions perpendicular to the duct walls. A test shall be performed for the entire duct system, including the hood-to-duct connection. The ductwork shall be permitted to be tested in sections provided that every joint is tested. For listed factory-built grease ducts, this test shall be limited to duct joints assembled in the field and shall exclude factory welds.**"**

SECTION 20. Section 22.01.220 of the code of the City of Wichita, is hereby created to read as follows:

"Grease duct enclosure. Section 506.3.10.1 of the International Mechanical Code is amended to read as follows: Commercial kitchen grease ducts constructed in accordance with Section 506.3.1 shall be permitted to be enclosed in accordance with the International Building Code requirements for shaft construction. Such grease duct systems and type one hoods shall have a clearance to combustible construction of not less than 18 inches (457 mm), and shall have a clearance to noncombustible construction and gypsum wallboard attached to noncombustible structures of not less than 3[9] inches (76 mm). Duct enclosures shall be sealed around the duct at the point

[8] The mechanical board voted to make a halogen light mandatory on a light test to help provide a better inspection.
[9] The mechanical board voted to reduce from 6" to 3" to prevent having to make costly framing changes for existing buildings. It has been 3 inches in the past and no problems have ever occurred.

of penetration and vented to the outside of the building through the use of weather-protected openings.**"**

SECTION 21. Section 22.<u>01.230</u> of the code of the City of Wichita, is hereby created to read as follows:

"Operation. Section 507.2.1.1 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Type 1 hood systems shall be designed and installed to automatically activate the exhaust fan whenever cooking operations occur. The activation of the exhaust fan shall occur through an interlock with the cooking appliances, by means of heat sensors or by means of other approved methods. The system shall be designed by a registered design professional and submitted for plan review with the complete construction document package.**"**

SECTION 22. Section 22.<u>01.240</u> of the code of the City of Wichita, is hereby created to read as follows:

"Corridors. Section [B] 601.2.1 of the International Mechanical Code, as adopted by reference herein, shall be created to read as follows: . A corridor shall not be used as a plenum or integral part of a duct system to convey air to or from one part of a building to another if the corridor is required to be of fire-resistive construction by The Code of the City of Wichita. However, air may be supplied to such a corridor for the purpose of comfort conditioning, ventilation, exhausting or other reasons and may be returned or exhausted provided all such supply, return or exhaust openings be protected as required by other parts of this Code and not be in violation of this provision.

Exception: Make up air for exhaust from rest rooms and janitors closets opening on to and adjacent to a corridor of fire resistant construction, may be transferred from the corridor provided such transfer means are protected in the manner prescribed by other parts of this Code and such corridor is supplied directly, or through the system supplying the corridor, with outdoor air at a rate greater than the rate of makeup air taken from the corridor.**"**

SECTION 23. Section 22.01.260 of the code of the City of Wichita, is hereby created to read as follows:

"**Return air systems.** Section 606.2.1 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: Smoke detectors shall be installed in the return or the supply[10] of air systems with a design capacity greater than 2,000 cfm (0.9 m3/s). On the return side it shall be located in the return air duct or plenum upstream of any filters, exhaust air connections, outdoor air connections, or decontamination equipment and appliances. On the supply side the smoke detector shall be located before the first branch or take off.

Exception: Smoke detectors are not required in the return or supply systems where all portions of the building served by the air distribution system are protected by area smoke detectors connected to a fire alarm system, approved by fire department, and the area smoke detection system shall comply with Section 606.4.**"**

SECTION 24. Section 22.01.270 of the code of the City of Wichita, is hereby created to read as follows:

[10] The mechanical board voted to allow smoke detectors on the supply side to reduce false alarms. This will also help keep owners from disconnecting them due to the nuisance of false alarms.

"Hydronic piping- scope. Section 1201.1 of the International Mechanical Code, as adopted by reference herein, shall be amended to read as follows: The provisions of this chapter shall govern the construction, installation, alteration and repair of hydronic piping systems. This chapter shall apply to hydronic piping systems that are part of heating, ventilation and air-conditioning systems. Such piping systems shall include steam, hot water, chilled water, steam condensate and ground source heat pump loop systems. Potable cold and hot water distribution systems shall be installed in accordance with Title 21 of the Code of the City of Wichita.**"**

SECTION 25. Section 22.02.010 of the code of the City of Wichita, is hereby created to read as follows:

" Inspectors--Appointment; duties generally. One or more duly qualified mechanical inspectors shall be appointed by the city manager. Under the direction and supervision of the superintendent of central inspection, such inspectors shall enforce the provisions of this Code, keep records, make reports and perform any other duties as are from the time to time imposed by the city manager or the superintendent of central inspection.**"**

SECTION 26. Section 22.02.020 of the code of the City of Wichita, is hereby created to read as follows:

"Inspectors--Qualifications. All mechanical inspectors shall have had a minimum of five years of practical experience in this field as a journeyman or master. Persons in the employ of the city who are duly certified as combination inspectors or mechanical inspectors by the International Conference of Building Officials shall also be qualified as mechanical

inspectors for the inspection of installations in one-and two-family residential structures. All inspectors shall be thoroughly familiar with the requirements of this Code.**"**

SECTION 27. Section 22.02.030 of the code of the City of Wichita, is hereby created to read as follows:

"Board of appeals--Created; composition. There shall be and is authorized in the city a board of appeals of air conditioning, refrigeration and warm air heating, which shall consist of the superintendent of central inspection or his duly authorized representative, who shall serve as secretary of the board, and seven other members, as follows:

(1) A refrigeration contractor;

(2) A journeyman heating and air conditioning mechanic;

(3) A boiler contractor;

(4) A master air conditioning and warm air heating contractor;

(5) A journeyman boiler;

(6) A public at large;

(7) A mechanical engineer.**"**

SECTION 28. Section 22.02.040 of the code of the City of Wichita, is hereby created to read as follows:

"Board of appeals--Qualifications and appointment of members. The contractor and journeyman members of board of appeals shall, in the first instance, be those who have been established in their respective business so as to be qualified to obtain their certificates and licenses as provided in Sections 22.02.130 and 22.02.200. The mechanical engineer and architect members shall be licensed by the state to engage in business in their respective fields and be independently engaged in business and not in the employ of an air conditioning,

refrigeration or warm air heating contractor. All members shall be appointed ~~by the mayor~~[11] and approved by the mayor and city council members.**"**

SECTION 29. Section 22.<u>02.060</u> of the code of the City of Wichita, is hereby created to read as follows:

"Board of appeals--Same--Term of members; filling vacancies; compensation of members. ~~The mayor, with the approval of the city council, shall designate and appoint the members.~~[12] The terms of office shall be as set forth in Section 2.12.020(1). No member of the board shall receive any compensation whatsoever for his services, but the board may allow actual expenses in attending meetings and in carrying out duties of his office to any such member.**"**

SECTION 30. Section 22.<u>02.070</u> of the code of the City of Wichita, is hereby created to read as follows:

"Board of appeals--Meetings; rules; records. The Board ~~of appeals of air conditioning, refrigeration and warm air heating~~ shall meet in conformance with Chapter 2.12 of the Code of the City of Wichita.**"**

SECTION 31. Section 22.<u>02.080</u> of the code of the City of Wichita, is hereby created to read as follows:

"Board of appeals-- Appeals. Any decision by or action of the Board ~~of appeals of air conditioning, refrigeration, warm air heating and boilers~~ may be appealed in writing to the city council of the city by the party adversely affected; provided such appeal is filed in writing with the city clerk within twenty days after the issuance of the decision or action complained of.**"**

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[11] Clarifying.
[12] Clarifying.

SECTION 32. Section 22.<u>02.090</u> of the code of the City of Wichita, is hereby created to read as follows:

"Board of appeals-- Acting as arbitration board. The Board ~~of appeals~~ shall act as an arbitration board in deciding any question which may arise between an air conditioning, refrigeration, warm air heating or boiler contractor or journeyman mechanic and the inspector.

When conditions exist which are not covered by this Code, or where it would be impracticable to follow this Code, the board of appeals may grant a variance from the strict application of this Code. The contractor asking for any such concession must make his request in writing, setting out plainly the location of all equipment installed or to be installed, and a complete description of items involved. If the request is granted, a copy of the whole transaction must be placed on file in the office of the superintendent of central inspection.

The Board ~~of appeals~~ shall pass upon materials or methods of installation not sufficiently provided for in this Code, and accept or reject the same as complying with the intent of the code.

The Board ~~of appeals~~ is expressly given the responsibility of studying and making such rules as are required for new products being offered for use in air conditioning, refrigeration, warm air heating and boiler systems. All such rules shall be in writing and filed in the office of the superintendent of central inspection.**"**

SECTION 33. Section 22.<u>02.100</u> of the code of the City of Wichita, is hereby created to read as follows:

"Classifications. Class "A-C" (air conditioning and warm air heating) This class includes air handling equipment and air distributions, chilled water systems, warm air heating

systems whereby heating is accomplished by distributing heated air by forced or gravity circulation or by radiation, including controls and other items pertaining thereto.

Class "RF" (refrigeration)--This class includes refrigeration systems and equipment of all types.

Class “Journeyman sheet metal installer” is a limited classification for any individual working for a licensed contractor as defined in Section 22.02.110 and who is duly certified as herein set forth to engage in such occupation. Journeyman sheet metal installer is limited to perform the following types of installations

(1) The placement and installation of the furnace, air conditioning, or other air handling equipment, this does not include any connections of line voltage electricity, fuel gas piping or refrigeration piping;

(2) The installation of the complete air distribution system as defined in this code;

(3) The installation of the products of combustion venting systems as defined in this Code**.**

Exception 2: Journeyman residential mechanic is a limited classification for an individual working for a contractor of a class as set forth in Section 22.02.100 and who is duly certified as herein set forth to engage in such occupation. Journeyman residential mechanic is limited to perform the following type of installations:

1. One and two-family residential new construction only;

2. The placement and installation of the furnace, air conditioning or other air handling equipment that pertains to residential use. This does not include gas piping or line voltage electricity.

~~(Note) This certificate will not be renewed after the ICBO examination becomes available.”~~[13]

SECTION 34. Section 22.02.110 of the code of the City of Wichita, is hereby created to read as follows:

“Definitions. Unless otherwise specified, the following terms, as used in this chapter, mean as follows:

'Apprentice' means an individual who works as an employee in training under the direct supervision of a journeyman or master. An Apprentice is not a certified individual.

'Board' means the board of appeals appointed for air conditioning, refrigeration, warm air heating, and boilers. Their purpose is reviewing code interpretations taken by the building code enforcement division, granting or denying variances requested from the code, other matters pertaining to mechanical, reviewing license applications and license suspensions and revocation.

'Code' means the International or Uniform Mechanical Code as adopted by the City, as the context of this article may require.

'Direct supervision' means that the apprentice is limited to the same structure and/or building site as the journeyman or master, except in the case of one- and two-family residential development, where the apprentice may be on the job site within 100 feet of where the journeyman or master is working.

'Field Experience’ means working under the direct supervision of a person having a valid Journeyman or Master certificate or attending trade related schooling. No more than

[13] The mechanical board voted to allow individuals to maintain their journeyman residential mechanic certificates even when a test becomes available.

one year of the requirement may be satisfied by trade related schooling. Schooling shall consist of a minimum of 240 hours classroom training.

'Journeyman' means an individual working for a licensed contractor as defined in Section 22.02.110 and engaged principally in the occupation of erecting, installing, altering, repairing, servicing or maintaining in any or all of the following classifications and who is duly certified as herein set forth to engage in such occupation: A journeyman is responsible for the supervision of any apprentice assigned to work with him.

'Licensed contractor' means a person, firm, co partnership, corporation, association or combination thereof, who undertakes or offers to undertake for another, for hire, the planning, laying out, supervising and installing or making additions, alterations, and repairs in the installation of mechanical heating, ventilation and air conditioning systems.[14]

'Licensed trade' or 'trade' means the mechanical, electrical, plumbing or gas fitting trade, as the context of this article may require.

'Master' means an individual that holds a master certificate issued pursuant to this article evidencing such person to be qualified to lay out, install, maintain and repair work in his area of expertise. A Master is responsible for the supervision of any Apprentice assigned to work with him.

'Qualified Master' means an individual who holds a Master certificate issued pursuant to this article evidencing such person to be qualified to control and have authority of all technical work performed under the authority of the licensed contractor's enterprise, and assures quality control and is responsible for complying with all applicable laws, codes and regulations. An individual shall not be the Qualified Master for more than one licensed

[14] The mechanical board voted to match the State's definition.

contractors enterprise unless such individual receives approval from the Superintendent of the Office of Central Inspection or an authorized representative thereof.**"**

SECTION 35. Section 22.02.120 of the code of the City of Wichita, is hereby created to read as follows:

"Apprentice limitations. (a) Apprentices shall be permitted to work when accompanied by and under the direct supervision of a master or journeyman mechanic, who shall be responsible for the mechanical work performed by the apprentice. At any given time, there shall be a maximum of two apprentices per one master or one journeyman mechanic for all one or two-family dwelling residential job sites. There shall be a maximum of three apprentices per one master or one journeyman mechanic for all triplex or greater density residential job sites or commercial job sites. The on-site master or journeyman shall be responsible for maintaining the ratio of master/journeyman to apprentices as required by this section. If an apprentice works without the required supervision, both the qualified master and the apprentice may be held responsible for violation of this section.

(b) It shall be unlawful for any qualified master to allow or permit an uncertified individual to engage in the business of erecting, installing, altering, repairing, servicing or maintaining air conditioning, warm air heating or refrigeration.**"**

SECTION 36. Section 22.02.130 of the code of the City of Wichita, is hereby created to read as follows

"Applicant requirements, examinations; issuance of certificates. Any person desiring to engage in or work at the business of air conditioning, refrigeration or warm air heating either as a master or as a journeyman mechanic, as defined in Section 22.02.110, or to do such work shall submit the prescribed application form to the office of central

inspection for a certificate, and if applicant meets the following requirements, shall at such time and place as directed be subjected to an examination as to their qualifications. The qualifications are as follows:

a. A minimum score of seventy-five percent on the "Block Examination" Master/Journeyman Mechanical Certificate, which is administered by Prometric or, ~~Experior Assessments, 1360 Energy Park Dr., St. Paul, MN 55108;~~[15]

b. A minimum score of seventy-five percent on the International Code Council Examination for a Master/Journeyman Mechanical Certificate, which is administered by International Code Council, or ~~900 Montclair Road, Birmingham, AL 35213;~~[16]

c. A satisfactory score on any other standard examination to determine the qualification of a Master/Journeyman Mechanic that is approved ~~and adopted~~ by the state of Kansas, pursuant to state law[17], following the effective date of this Code.

Documented proof of a minimum of two years' field experience required with proof of satisfactory score on one of the above-mentioned examinations.

Applicant requirements:

Journeyman Mechanical: One year Field Experience and completion of a technical heating and air conditioning school, or two years Field Experience. Schooling shall consist of a minimum of 240 hours.[18]

Master Mechanical: Two years as Journeyman or a minimum of four years Field Experience.**”**[19]

[15] The mechanical board voted to update to current information.
[16] The mechanical board voted to take out the address since the current information is easy to access.
[17] The mechanical board voted to add this language to keep our guidelines meeting the states.
[18] The mechanical board voted to add this language to keep our guidelines meeting the states.
[19] The mechanical board voted to add this language to keep our guidelines meeting the states.

SECTION 37. Section 22.<u>02.140</u> of the code of the City of Wichita, is hereby created to read as follows:

"Fees for examination, certificates, etc.; <u>renewing and</u> expiration of certificates. (a) The fee for the original certificate of a master mechanical, journeyman mechanical, or sheet metal installer shall be established by the superintendent of the office of central inspection to cover the administrative costs of issuing such certificates. This fee shall be paid to the office of central inspection when the application for a certificate is made. Individuals not holding a certificate at the beginning of the certificate cycle, who obtain a certificate during such certificate cycle by the standardized test required by K.S.A. 12-1542 and any amendments thereto, will be issued the initial certificate without documentation of continuing education. Such certificate will be issued noting the test provider, specific test type and grade. Such test shall be completed during the certificate cycle. All such certificates shall expire on the thirty-first of December of each odd numbered year. The biennial fee for all certificates shall be established by the superintendent of central inspection to cover the administrative cost of issuing such certificates. All such certificates shall be renewed bi-annually upon payment established by the superintendent of the office of central inspection to cover the administrative costs of issuing such certificates. All certificates shall expire on the thirty-first day of December of each odd-numbered year and no reduction shall be made for part of the year being elapsed. Any holder of a certificate who fails to renew the same by March 1st after their expiration may be required to take a new examination and/or provide proof of completion of the required continuing education hours set forth in subsection (b) and/or board appearance prior to reissuance of a certificate.

It is the total responsibility of the certificate holder to assure that his/her certificate has been renewed and is valid.

(b) Individuals passing the examination in the first year of a renewal cycle will need to provide documentation of 12 hours of approved continuing education when renewing their certificate. Not less than 6 hours shall consist of mechanical code education. The continuing education shall be attended during the certificate cycle. Individuals passing the examination in the second year of a renewal cycle will need to provide documentation of 6 hours approved continuing education when renewing their certificate. Not less than 3 hours shall consist of mechanical code education. The continuing education shall be attended during the second year of the certificate cycle. Individuals with an active certificate that passed the examination prior to the first year of the renewal cycle must provide written proof of having completed biennially not less than 12 hours of continuing education approved by the Office of Central Inspection. Not less than 6 hours shall consist of mechanical code education. Continuing education shall be provided by the Office of Central Inspection or a nationally recognized trade association, community college, technical school, technical college or other provider approved by the Office of Central Inspection. All 12 hours of education shall comply with the Office of Central Inspections continuing education guidelines for mechanical.**"**

SECTION 38. Section 22.02.160 of the code of the City of Wichita, is hereby created to read as follows:

"Owner occupants--minor repairs. Regardless of the requirements of other sections of this title, the owner-occupant of a single-family dwelling may obtain permits to repair, replace, or maintain the existing air conditioning, refrigeration, or warm air heating systems

in such single-family dwelling and the usual accessory buildings in connection with such dwelling; provided, however, that the owner-occupant shall perform all such work and that the work so performed is in accordance with the code as verified by an inspection requested by such owner-occupant and performed by the office of central inspection. No permit shall be required for minor repairs or alterations which do not exceed two hundred dollars as the price charged for such work, but such work shall comply with all requirements of this Code.**"**

SECTION 39. Section 22.02.170 of the code of the City of Wichita, is hereby created to read as follows:

"Owner-occupants permit, fee, examination, and requirements. The owner-occupant of a detached single-family dwelling occupied or to be occupied by the owner-occupant applying for the permit may be permitted to install air-conditioning, refrigeration, and warm air heating systems in the main structure and accessory structures thereto provided all materials are purchased and all labor is performed by the applicant.

Owner-occupants applying for permits for installations as outlined above shall first qualify themselves by successfully passing a simplified open book examination dealing with relevant provisions of the International Mechanical Code. The fee for said examination shall be five dollars. Successful passage of the examination shall qualify the applicant for future permits until the time of adoption of another edition of the International Mechanical Code by the city.

Prior to permit approval, the applicant shall also submit a plan of the installation drawn in a format acceptable to and drawn in sufficient detail as to satisfy the superintendent of central inspection of the overall code compliance of the anticipated installation. The fee for such plan review shall be fifteen dollars. Plan submissions requiring extensive review

and/or modification shall be billed at the rate of fifteen dollars for each additional half hour or portion thereof beyond the original half hour upon prior notification of the applicant of such additional charges.

Permit fees shall be as set forth elsewhere in this title and in Title 18 provided, however, that each additional inspection owing to detected code deficiencies requiring correction shall be billed at the rate of fifteen dollars each.

Permits for installations in completely new residences and/or total remodel permits shall be limited to one in three years to each applicant unless a waiver is obtained, upon written application, from the Board.**"** ~~of appeals of air-conditioning, refrigeration, warm air heating and boilers~~

SECTION 40. Section 22.02.180 of the code of the City of Wichita, is hereby created to read as follows:

"Revocation of certificates and licenses. The board of appeals is authorized to cancel and recall the certificate of any air-conditioning, refrigeration, warm air heating or boiler contractor or journeyman for any or all of the following reasons:

1. Committing of any act in violation of any provision of this Code or any other ordinance of the city or the refusal or failure to comply with any lawful and reasonable order of the superintendent of central inspection or inspector.

2. Misrepresentation of a material fact by the applicant in obtaining a certificate.

3. Carelessness or negligence in providing reasonable safety measures for the protection of the public.

The board of appeals is hereby authorized to cancel and recall the license of any air conditioning, refrigeration, warm air heating or boiler contractor for any or all of the following reasons:

1. Abandonment of any contract without legal cause.

2. Diversion of funds or property received for performance or completion of a specific contract or a specific purpose in the performance or completion of any contract, obligation or purpose, or the failure, neglect, or refusal to use such funds or property for the performance or completion of the contract.

3. Committing any act in violation of any provision of this Code or any other ordinance of the city or the refusal or failure to comply with any lawful and reasonable order of the superintendent of central inspection or inspector.

4. Misrepresentation of a material fact by the applicant in obtaining a license.

5. Failure of any contractor to fully certify all claims for labor and materials used in the performance of any work for which he has been engaged or for which he has been paid.

6. Fraudulent use of the license to obtain a permit for another.

7. Carelessness or negligence in providing reasonable safety measures for the protection of workmen and the public.

8. Failure to obtain permits as required in Section. 22.02.170

9. Unreasonable delay in the performance and carrying out of any contract.

10. Failure by the licensee to have at least one active member or officer deemed as the master mechanic qualified as defined in 22.02.110

Upon presentation by the superintendent of central inspection to the Board ~~of appeals~~ of charges against any holder of any certificate as set forth in this section, the Board ~~of~~

~~appeals~~ shall fix a time and a place for a meeting to consider such charges and shall notify the holder of such license to be present at such meeting. Such notification shall be in writing and shall be presented to the holder at least five days in advance of the meeting. If upon full hearing of all evidence by the Board ~~of appeals~~, it shall be decided that such holder of a certificate has been guilty of the actions as herein before set forth in this section, then the board shall revoke or suspend the license or certificate of the holder thereof.

When a certificate of a person has been revoked, a new certificate shall not be granted until he shall have corrected the violation in accordance with this Code or any ordinance of the city and shall have made application and shall have passed an examination as required for the original certificate.**"**

SECTION 41. Section 22.<u>02.190</u> of the code of the City of Wichita, is hereby created to read as follows:

"Certain persons exempt from license and bond requirements. Any person not engaged in the business of heating and/or air conditioning within the scope of this Code who has in his/her regular and permanent employment a person or persons who possess current and valid Journeyman or Master mechanical certificates shall be permitted to have such person or persons perform maintenance and repair work on buildings and premises that are owned, leased, operated or managed by him shall be exempt from this Code, as pertains to license or bond, but shall be subject to all other requirements pertaining thereto.**"**

SECTION 42. Section 22.<u>02.200</u> of the code of the City of Wichita, is hereby created to read as follows:

"Licenses. Anyone authorized individual or entity seeking to engage in the business of mechanical heating, air conditioning or refrigeration, shall first designate an individual to

be the Qualified Master for their license and then acquire a license from the office of central inspection. Each such license shall expire on thirty-first day of December in the year the license was issued. The fee for such license shall be one hundred dollars.**"**

SECTION 43. Section 22.02.210 of the code of the City of Wichita, is hereby created to read as follows:

"Insurance required. Every air conditioning, refrigeration, warm air heating or boiler contractor licensed under this title shall procure and maintain a policy of general liability insurance covering the activities of the air conditioning, refrigeration, warm air heating or boiler contractor while engaged in contracting hereunder. Such insurance policy shall be written with an insurance company licensed to do business in the state and shall have minimum limits of coverage of three hundred thousand dollars per occurrence. In addition, every such air conditioning, refrigeration, warm air heating or boiler contractor shall procure and maintain worker's compensation insurance as required by law and automobile liability insurance as required by law. Every contractor licensed under this title shall, prior to the issuance of a license, file with the office of central inspection certificates of insurance evidencing the insurance coverage specified herein. All such certificates shall indicate that the city shall be given at least thirty days advance written notice of any cancellation or material change in coverage of such insurance. Failure of an air conditioning, refrigeration, warm air heating or boiler contractor to either procure or maintain such insurance shall be a violation of law punishable as a general misdemeanor and shall be grounds for suspension or revocation of the air conditioning, refrigeration, warm air heating or boiler contractor's license and certificate.**"**

SECTION 44. Section 22.02.220 of the code of the City of Wichita, is hereby created to read as follows:

"Contractors--Established place of business required.

Every contractor who has obtained a license as set forth in this Code shall have and maintain an established place of business at a definite address and with his registered name and Wichita permit number displayed as it appears on his license.**"**

SECTION 45. Section 22.02.230 of the code of the City of Wichita, is hereby created to read as follows:

"Contractors--Marking of vehicles. Any person, firm or corporation required by this title to obtain a mechanical contractor's license shall be subject to the following:

(a) Vehicles used in performance of installations or service regulated under this title shall display contractors' permanent vehicle permit numbers. Such numbers shall be assigned by the superintendent of central inspection to a contractor duly licensed under the provisions of this title.

(b) Permanent vehicle permit numbers must be affixed to both sides of vehicle(s), in a conspicuous place, either by paint of a contrasting color or by the use of the permanent decal.

(c) Permanent vehicle permit numbers must be a minimum of two inches high with a one-half-inch-wide stroke per character.

(d) A contractor's employee(s) using their personal vehicles as transportation to or from the job site are exempted from the provisions of this section. A contractor's employee using a personal vehicle in any job-related capacity must display the permanent vehicle permit marking.

(e) The contractor shall be responsible for removing the permanent vehicle permit number at the time any vehicle is taken out of service.

(f) Violation of any provision of this section may result in a hearing before the board of appeals of air conditioning, refrigeration, warm air heating and boilers. The board may order any or all of the following:

(1) No further mechanical permits be issued to the contractor until such time as the violation is abated;

(2) All inspections of further work performed by the contractor will be suspended until such time as the violation is abated, excepting extreme hazard of life safety inspection;

(3) A license review, subjecting the contractor to possible suspension, recall or cancellation of the master certificate and/or license, in accordance with the provisions of Section 22.02.180.

Exception: If the contractor chooses to advertise his or her business on their vehicles and abides with Section 22.02.240, Truth in advertising requirements, then Section 22.02.230, Marking of vehicles, does not apply.**"**

SECTION 46. Section 22.02.240 of the code of the City of Wichita, is hereby created to read as follows:

"Truth in advertising requirements. On or after July 1, 1993, any person, firm or corporation required by this title to obtain an air conditioning, refrigeration, warm air heating or boiler contractor's license shall be subject to the following:

(a) It shall be unlawful for any such person, firm or corporation to advertise as an air conditioning, refrigeration, warm air heating or boiler contractor unless, at the time such advertisement occurs, such person, firm or corporation has a then valid air conditioning,

refrigeration, warm air heating or boiler contractor's license issued under the provisions of this chapter;

(b) Any advertisement by such person, firm or corporation as an air conditioning, refrigeration, warm air heating or boiler contractor which is placed or published in any publication or other print medium circulated, displayed or distributed within the city limits or which is broadcast by radio or television <u>or any internet posting/publication, electronic billboard, or any electronic or telephonic transmission of information</u>[20], or any other means to persons within the city limits shall include the full name of the licensed person, firm or corporation and the license number assigned by the office of central inspection to such person, firm or corporation;

(c) As used herein, the words "advertise" or "advertisement" shall mean and include, but not be limited to, a business card, contract bid proposal form, printed letterhead, any other printed or written material, or any internet posting/publication, electronic billboard, or telephonic transmission of information, designed to inform persons of the services offered by the advertising person, firm or corporation and to solicit business from such persons, or any broadcast statement designed to inform persons of the services offered by the advertising person, firm or corporation and to solicit business from such persons. Such words are intended to include telephone directory display ads but not basic white and yellow page listings.**"**

SECTION 47. Section 22.<u>02.260</u> of the code of the City of Wichita, is hereby created to read as follows:

"<u>Compliance with titles, ordinances, laws.</u> All air conditioning, refrigeration or warm air heating installations shall comply with existing laws and ordinances covering the

[20] The mechanical board voted to add new language to include electronic means of advertising.

construction and installation of cooling towers, the use of city water, sanitary and storm sewers, the requirements for recirculation of condenser water, as contained in the following parts of this Code, and any other that may apply:

Water conservation--Title 17;

Connection to sanitary sewer--Title 16;

Towers, spires and tanks--Title 18;

Gas burning warm air furnaces--Title 18;

Ducts and appurtenances--Title 18;

Cooling units over public property--Title 18;

Gas fittings--Title 21.**"**

SECTION 48. Section 22.02.270 of the code of the City of Wichita, is hereby created to read as follows:

"Electrical and plumbing work. All electrical work, plumbing and gas fitting done in connection with any work covered by this Code shall be in conformance with Title 19 and Title 21 respectively. It is also unlawful for a person holding a license, as set forth in this Code, to operate as a contractor or as a Journeyman to do or otherwise perform any electrical, plumbing or gas fitting work except as provided in this section. Such contractor or mechanic shall be permitted to do all water piping within the system, and make indirect connections to the city sewer, but shall not make direct connections to either the city water system or to city sewers.

It shall be permissible for a holder of a Class A-C or RF certificate to make original installations of package units of a capacity of seven and one-half horsepower or less on the load side of the disconnect means when such is not over five feet from the unit and is within

sight thereof. It shall also be permissible for such a person to do all electrical work in connection with maintenance, repairs or replacement on any system from the load side of the disconnect means of the unit. All such electrical work shall conform in all respects to the requirements of Title 19.

SECTION 49 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

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: ZON2010-00026 – City zone change from SF-5 Single-Family Residential ("SF-5") to TF-3 Two-Family Residential ("TF-3"); generally located north and east of the intersection of North Hoover Road and West Robinson Street. (District VI)

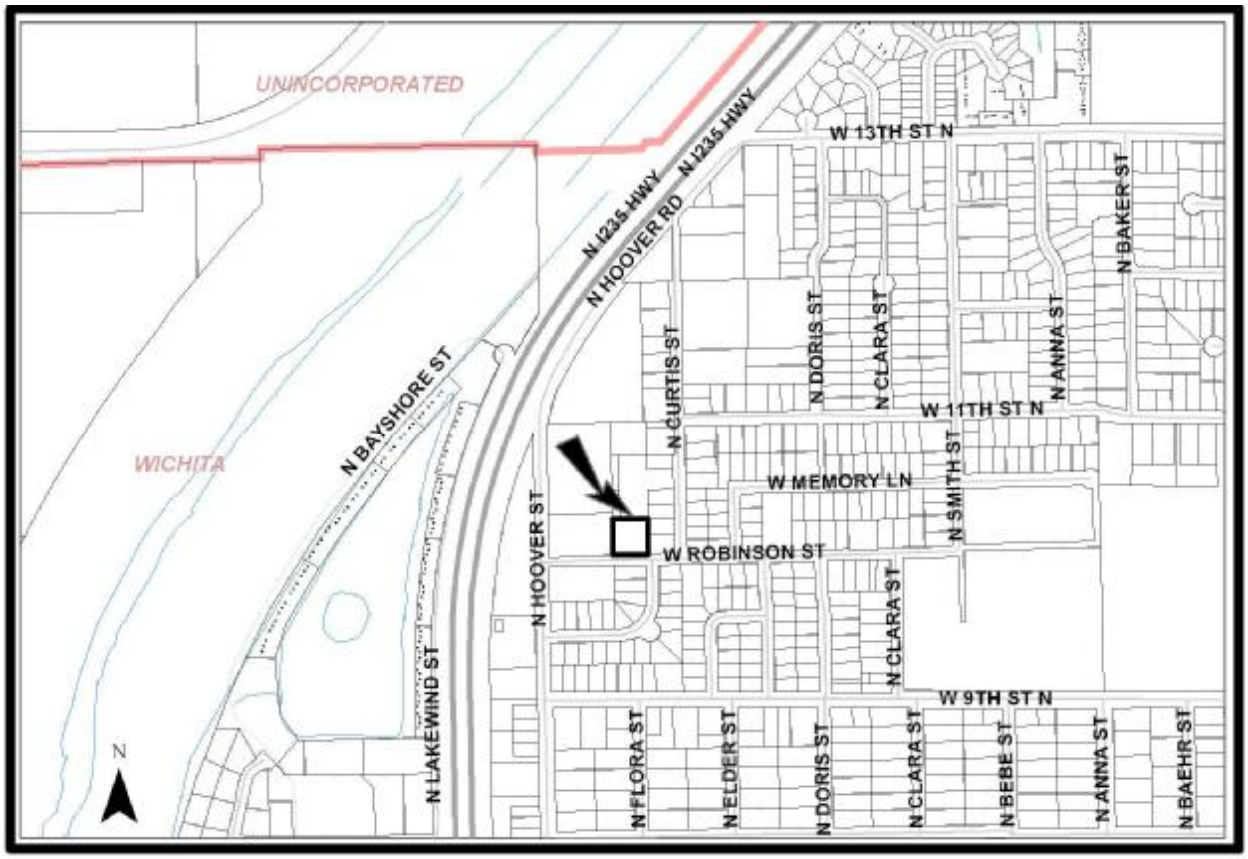
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

DAB VI Recommendation: Denial, (vote 3-2).

MAPC Recommendation: Approve, (vote 11-1); subject to the applicant submitting a "no protest" petition regarding the future paving of West Robinson Street.

MAPD Staff Recommendation: Approve.



Background: The applicant is seeking TF-3 Two-family Residential ("TF-3") zoning for a 0.70-acre platted vacant lot, currently zoned SF-5 Single-family residential ("SF-5"), located northeast of the intersection of North Hoover Street and West Robinson Street. The applicant proposes to develop the site for duplex uses. The *Unified Zoning Code* (UZC) defines a duplex as a lot used for "…two principal dwelling units within a single building." The code permits building heights up to 35 feet in TF-3, which is the same maximum height allowed in the SF-5 district. If the request were to be approved, the existing single lot would allow only one duplex structure with two living units or one single-family structure (permitted by right as TF-3 residential uses); however, it is possible to replat or lot split the existing 0.70-acre lot into smaller lots that could allow more than one structure. Even as currently zoned, the lot could be lot split into more than one single-family lot.

Property immediately surrounding the site to the north, south and east is zoned SF-5 and developed with single-family residences. The SF-5 zoned property to the west is currently undeveloped. Five hundred feet north of the subject site is a church, zoned SF-5. Six hundred feet to the south is property zoned MF-29 Multi-family Residential ("MF-29"), currently developed with duplexes. The nearest TF-3 zoned property to the subject site is located approximately 1,000 feet to the southeast. That property consists of two lots which are zoned TF-3 and both are developed with duplexes.

Analysis: At the DAB VI meeting held August 3, 2010, the DAB voted (3-2) to recommend denial of the request for TF-3 zoning. The major issues identified by DAB members were the unpaved road fronting the subject site, increased residential density caused by the project and if the applicant had considered single-family development instead of duplex development. One resident spoke in opposition of the application stating that there were already too many rentals in the area; there will be traffic problems because of the dirt roads; more trash and junk will be dumped in the area; the development will disrupt a bus stop and the properties that the applicant currently has are currently not maintained.

At the MAPC meeting held August 5, 2010, the MAPC voted (11-1) to recommend approval of the request for TF-3 zoning with the added provision that the applicant submit a "no protest" petition regarding the future paving of West Robinson Street. The commissioners' main concern was in regards to the unpaved condition of Robinson Street. Two residents spoke in opposition of the case stating the same concerns that were discussed at the DAB meeting.

During the subsequent two-week protest period following the MAPC meeting, staff received protests within the 200-foot protest area. These protests equal 59.55% of the total land area, which triggers a ¾ majority vote by the City Council to override neighborhood protest.

The case was previously heard during the September 14, 2010 Wichita City Council meeting. The action of the City Council was to defer the application so that staff could work with the applicant to identify the number of duplexes needed by the applicant to make the project economically effective. The applicant indicated to staff he could not limit the site to one duplex containing two units. The site is about three-quarters of an acre in size, and the lowest number of duplexes that the applicant could agree to would be two duplexes containing a total of four units. The applicant also noted that he did agree to a "no-protest" petition, in regards to the future paving of West Robinson Street, as a condition of approval during the MAPC meeting.

The case was heard by the Wichita City Council on October 5, 2010, however, there were only five members of the Council seated at the meeting and at least six members are needed for the ¾ majority vote needed to override the neighborhood protest. The case was deferred until the October 19, 2010 meeting of the Wichita City Council.

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 subject to the submission of a no protest petition for paving, withhold publication of the ordinance until the no protest petition has been submitted and authorize the Mayor to sign the ordinance (requires a three-fourths majority vote); or
2. Adopt the findings of the MAPC, approve the zone change subject to the submission of a no protest petition for paving and to a Protective Overlay limiting the development to no more than two duplexes or four units, withhold publication of the ordinance until the no protest petition has been submitted and authorize the Mayor to sign the ordinance (requires a three-fourths majority vote); or
3. Override the recommendation of the MAPC and deny the zone change (requires a two-thirds majority vote); or
4. Return the application to the MAPC for reconsideration (simple majority).

Attachments:

- Ordinance
- Protest Map
- Opposition Letter
- MAPC Minutes
- DAB VI Memo

OCA 150004

ORDINANCE NO. 48-856

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. ZON2010-00026

Zone change request from SF-5 Single-family Residential ("SF-5") to TF-3 Two-family Residential ("TF-3"), subject to the submission of a no protest paving petition on properties described as:

The East half of Lot 12, except the South 173 feet of the East 135 feet and except the North 132 feet, R.A. Morris Tracts, Wichita, Sedgwick County, Kansas; generally located north and east of the intersection of North Hoover Road and West Robinson Street.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 26th day of October, 2010.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

OCA 150004

ORDINANCE NO. _____

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:

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SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this _____ day of _____, 2010.

ATTEST:

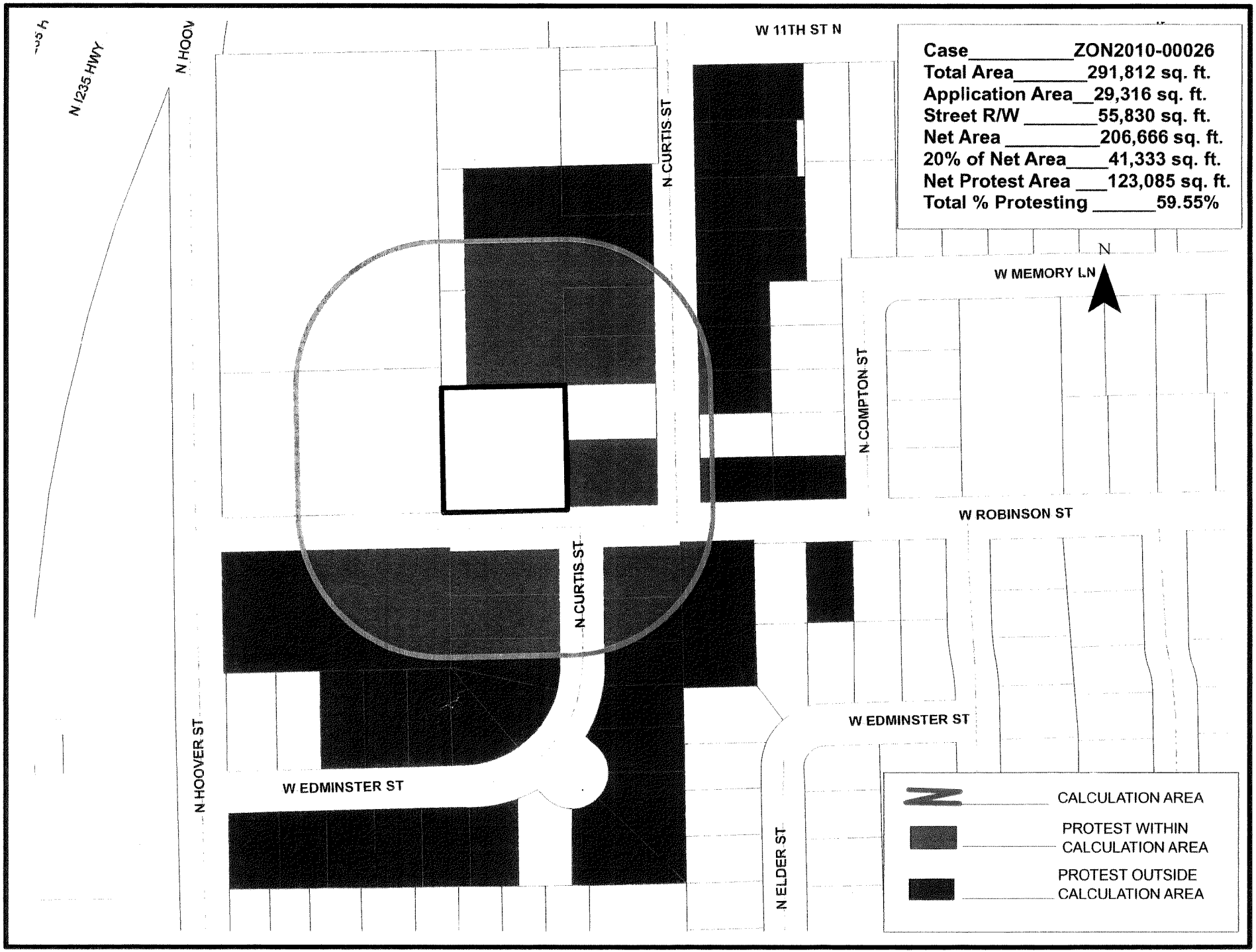
_____
Karen Sublett, City Clerk

_____
Carl Brewer, Mayor

(SEAL)

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law


Case ZON2010-00026
Total Area 291,812 sq. ft.
Application Area 29,316 sq. ft.
Street R/W 55,830 sq. ft.
Net Area 206,666 sq. ft.
20% of Net Area 41,333 sq. ft.
Net Protest Area 123,085 sq. ft.
Total % Protesting 59.55%
N
W 11TH ST N
N I235 HWY
N HOOV
N CURTIS ST
W MEMORY LN
N COMPTON ST
W ROBINSON ST
N CURTIS ST
W EDMINSTER ST
N HOOVER ST
W EDMINSTER ST
N ELDER ST
CALCULATION AREA
PROTEST WITHIN CALCULATION AREA
PROTEST OUTSIDE CALCULATION AREA

8-12-10

Dear Wichita City Planning Department

My name is Brian D. Kelly and I live at 5415 Edminster here in Wichita, I recently went before the Metropolitan Area Planning Commission on a zoning change issue number 2010-00026 MR. Derrick K. Slocum was to provide detailed maps ov the area showing the petitions in the area and the ones within a 200 ft. radius of the property, I had maps to show at the meeting as well as all petitions collected by each and every tax paying citizen in which you sent this letter to who strongly rejected this change this is why I went before the commission in the first place but they didn't show any of this evidence at this meeting as well as the other 1500 home owners that I represent from Orchard Park Neighborhood Association. I have to look these people in the eye and try to explain something that is so illogical how everyone around a site can be against a zoning change but a panel of people whom it doesn't affect leave a devastating mark on a neighborhood. There have been studies that show how property values drop when duplexes are integrated in with single family homes, just look at the properties behind the YMCA on West Central and you'll see what I am talking about, there is a place for duplexes but its not in with single family homes sorry, they should leave this sf-5 and build a couple of homes there we would welcome that. Thanks for your time.

Sincerely Brian D. Kelly (316-943-0771) bdkelly@cox.net

8-12-10

RECEIVED
AUG 16 2010
METROPOLITAN PLANNING
SITE

8-5-10 MAPC HAND OUT ITEM 7

TO: Wichita M.A.P.C. 8/4/10

RE: Zoning Change

CASE NO. ZON 2010-00026

Mr. Tim McCloud
1055 N Curtis St
Wichita, KS 67212

I have lived at Curtis & Robinson for about 5 years. Orchard Park is a nice middle class neighborhood where most People Work every day as I do. These are all Single family homes and have been Since at latest the 1985. There is absolutely NO good Reason to allow a "Developer" to have a Zoning Change to allow Junky Duplexes like the ones on the West Side of Hoover! Which he Built in 2009.

This would greatly DE-VALUE my Property and all Property in Orchard Park!

In fact it would be a Blight on all of West Wichita and unsightly from the Highway!

Mr. Brian Kelly is here to Convey not only My Views & Convictions But those So Shared By the large Majority of ORCHARD PARK Residents!!

PLEASE NO ZONING Change!! :)

Sincerely

Timothy McCloud

EXCERPT OF THE AUGUST 5, 2010 WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION HEARING

Case No.: ZON2010-26 - Roger Frank (Owner), Jeffery Niedens (Applicant) request a City zone change from SF-5 Single-Family Residential to TF-3 Two-Family Residential on property described as;

The East half of Lot 12, except the South 173 feet of the East 135 feet and except the North 132 feet, R.A. Morris Tracts, Sedgwick County, Kansas, generally located north and east of the intersection of N. Hoover Road and W. Robinson Street.

BACKGROUND: The applicant is seeking TF-3 Two-family Residential ("TF-3") zoning for a 0.70-acre platted vacant lot, currently zoned SF-5 Single-family residential ("SF-5"), located northeast of the intersection of North Hoover Street and West Robinson Street. The applicant proposes to develop the site for duplex uses. The *Unified Zoning Code* (UZC) defines a duplex as a lot used for "...two principal dwelling units within a single building." The code permits building heights up to 35 feet in TF-3, which is the same maximum height allowed in the SF-5 district. If the request were to be approved, the existing single lot would allow only one duplex structure with two living units or one single-family structure (permitted by right as TF-3 residential uses); however it is possible to replat or lot split the existing 0.70-acre lot into smaller lots that could allow more than one structure. Even as currently zoned the lot could be lot split into more than one single-family lot.

Property immediately surrounding the site to the north, south and east is zoned SF-5, and developed with single-family residences. The SF-5 zoned property to the west is currently undeveloped. Five-hundred feet north of the subject site is a church, zoned SF-5. Six-hundred feet to the south is property zoned MF-29 Multi-family Residential ("MF-29"), currently developed with duplexes. The nearest TF-3 zoned property to the subject site is located approximately 1,000-feet to the southeast. That property consists of two lots which are zoned TF-3 and both are developed with duplexes.

CASE HISTORY: The property is platted as the east half of Lot 12, except the south 173 feet of the east 135 feet and except the north 132 feet, R.A. Morris Tracts, which was recorded October 16, 1928.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family Residence
SOUTH:	SF-5	Single-family Residence
EAST:	SF-5	Single-family Residence
WEST:	SF-5	Vacant

PUBLIC SERVICES: The subject property has frontage along West Robinson Street, a two-lane, unpaved, local street without traffic counts. Just west of the subject site, Robinson intersects with North Hoover Street, which is a two-lane, unpaved, collector without traffic counts. Public water and sewer service are currently available to the subject property.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies this site as appropriate for "Major Institutional." The Major Institutional category includes institutional facilities of a significant size and scale of operation and could include a range of such uses as government facilities, military bases, libraries, schools, cemeteries, churches, hospital and medical treatment facilities. The requested zoning, TF-3, does allow the uses listed above either by-right or by Conditional Use.

Currently, single-family residences exist in this area that is identified as Major Institutional, the most recent being built in 1996. Property directly south of the subject site, across Robinson Street, is classified as "Urban Residential." Even though the subject site itself is classified as Major Institutional, the surrounding neighborhood is predominantly residential and the request for TF-3 zoning at this location is should not have a detrimental effect on the surrounding residential neighborhood.

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

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property immediately surrounding the site to the north, south and east is zoned SF-5, and is developed with single-family residences. The SF-5 zoned property to the west is currently undeveloped. Five- hundred feet north of the subject site is a church, zoned SF-5, and 600-feet to the south is property zoned MF-29 Multi-family Residential ("MF-29"), currently developed with duplexes. The nearest TF-3 zoned property to the subject site is located approximately 1,000-feet to the southeast. That property consists of two lots which are zoned TF-3 and both are developed with duplexes.

2. The suitability of the subject property for the uses to which it has been restricted: The site could be developed with a single-family residential use under the current zoning.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request would double the density at which the site could be developed. The effect on nearby residents could be increased traffic. However, single-family residences typically generate more traffic per unit than two-family residences. The minimum standards of the UZC should mitigate any other potential negative effects on the surrounding residential neighbors.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies this site as appropriate for "Major Institutional." The Major Institutional category includes institutional facilities of a significant size and scale of operation and could include a range of such uses as government facilities, military bases, libraries, schools, cemeteries, churches, hospital and medical treatment facilities. The requested zoning, TF-3, does allow the uses listed above either by-right or by conditional use.

5. Impact of the proposed development on community facilities: Traffic on the existing residential street could increase as a result of the proposed development. This site has access to North Hoover Street, a classified collector.

DERRICK SLOCUM, Planning Staff presented the Staff Report. He reported that DAB VI recommended denial of the application 3-2.

JEFF NIEDENS, APPLICANT commented that this was a vacant lot and his application was pretty straight forward. He said he would like to put one, possibly two duplexes (if he can obtain a lot split) at the location. He said the reason a single-family residence will not work at this location is its close proximity to I-235, which is less than one block away. He said this development should bring approximately $300,000 into the City tax base and added that he is not asking for any revenue or tax breaks.

BRIAN KELLY, 5415 W. EDMINSTER said he was in opposition to the planned zoning change from SF-5 Single-Family Residential to TF-3 Two-Family Residential. He said as Vice President of the Orchard Park Neighborhood Association he represented approximately 1,500 members. He said currently within a six square block area of the proposed site there are 11 homes for sale and three homes for rent, one of which is owned by the applicant's wife. He said he has obtained protest petitions from nearly every neighbor in the surrounding areas and everyone who has read the proposal is strongly opposed to the zoning change for the following reasons: there are too many rentals in area already that are unoccupied; this will cause more traffic problems in the area because it is located on a dirt road; this will cause surrounding property values to drop; this will impact the drainage and duplex residents may start using the area for dumping; renters do not take care of property; this impacts where the school bus stops on Robinson in front of the proposed site; there is no street lighting in the area and this proposal will increase vandalism. He said the same two men who want this proposal built duplexes in the 600 and 700 blocks on North Hoover. He referred to hand outs of pictures of properties at 751 North Hoover, 627 North Hoover, 619 North Hoover and 901 North Hoover. He said it should be clear why the neighbors don't want duplexes built on this property. He concluded by saying that he heard the applicant was telling petitioners that if the duplex is not allowed, low-income housing will go into the site to try to get them to change their petition.

BOB ALDRICH, 804 N. MAIN said is lives on Compton and that he has been involved with the neighborhood association in the area for at least 15 years. He said he spoke in opposition to this proposal at the DAB VI meeting. He commented on the dirt road this will be located on and mentioned that the big issue is there are more dirt roads in this part of the City than anywhere else. He said they want to revitalize and improve the neighborhood, and don't think this proposal is good. He said duplexes and lot splits will increase the density in the area which causes more problems. He mentioned vehicle traffic and said there were two school zones in the area -- Bryant and Hadley. He added that there is a very nice park and that this proposal will be extremely detrimental to the area. He mentioned that the same gentlemen who built the residences on Hoover wants to build these duplexes. He said when he was a member of the MAPC he brought up the shoddy construction of not paving the driveways on the previous developments, which he said the developer corrected. He concluded by recommending that the Commission take the DAB's advice and reject this proposal.

HILLMAN asked if there was a plan to pave the dirt roads in the area.

ALDRICH said there were no plans for paving and that the applicant would not foot the cost for that. He said this is an established neighborhood and that the City was not going to order paving in that area.

MILLER said as far as he knows, the City Council can either order paving in or as a petition project when property owners get a petition together.

ALDRICH said there was no petition to pave this street.

SHERMAN asked if there was anything the Planning Commission could do to support paving this area.

ALDRICH said he would love to see the area paved.

MILLER STEVENS asked for clarification on ownership of the drainage pond.

ALDRICH said the only drainage in the area is open drains because of the dirt roads. He said this is a retention pond north of the site and has been there since the area was developed. He said it has become a "dump" and there has been illegal dumping in the area. He said neighbors have notified the appropriate agencies. He said Robinson does get flooded out because it is pretty sandy in the area.

It was noted that Planning Staff had not recommended paving of the street in the Staff Report.

LEFFEW asked if other property owners have initiated petitions to get paving in the area.

ALDRICH said no, because of the rentals in the area. He said as landlords, property owners are not going to request paving and they have never been able to get the 51% required to pave the roadways. He said there has been discussion with various City Council representatives over the years; however, there is some controversy between the property owners that paid specials to get the roads paved. He said several options have been discussed including getting materials donated and taking that amount off property taxes and having the City install the roadways.

NEIDENS said he will voluntarily sign a no protest petition. He said he had no problem with the paving and added that he had been a big part of the paving of the 700 block of North Hoover. He also mentioned that he had offered to put up fencing around the drainage pond, which was not required by the City. He said he was not trying to rape and pillage the neighborhood, and added that this development should bring approximately 300,000 influx into the tax base.

DENNIS referenced the pictures provided by Mr. Kelly. He commented that past performance is often an indication of future performance.

NIEDENS said one situation he believes is a cultural issue, and he has spoken to the tenants about the condition of the front of the residence several times. He said when people pay rent on time, it is tough to get them out. He said the pile of dirt at the one location was because it was a brand new duplex that they just finished in March, 2010, but missed the spring planting. He said prior to construction, there was a trailer located on the property.

DENNIS commented that staff may have to ask the Office of Central Inspection take a look at the photos.

> **MOTION:** To approve subject to staff recommendation.
>
> **MARNELL** requested that the motion maker amend the motion to include that the owner agrees to sign a no protest petition.
>
> **AMENDED MOTION:** To approve subject to staff recommendation and that the owner agree to sign a no protest petition.
>
> **KLAUSMEYER** moved, **LEFFEW** seconded the motion, and it carried (10-1).
> **HILLMAN** – No.

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: MAPC Members

FROM: Terri Dozal, Neighborhood Assistant, District VI

SUBJECT: **ZON2010-00026** City zone change from SF-5 to TF-3 generally located north and east of the intersection of N. Hoover and W. Robinson St.

DATE: August 3, 2010

On Monday, August 2, 2010 the District VI Advisory Board (DAB) considered a City zone change from SF-5 to TF-3 generally located north and east of the intersection of N. Hoover and W. Robinson St.

The members were provided the MAPD staff report for review prior to the meeting. *Derrick Slocum,* Planner presented the case background, reviewed the staff recommendation and answered questions of members and the public.

The Board asked the following questions/comments:

- Will the applicant pave the street as this request is on a dirt road?
- The increased density will have a detrimental effect on the neighborhood
- Has the applicant considered putting in single family residential instead of duplexes?

Brian Kelly, resident spoke in opposition of the request stating:

- There are too many rentals in the area now.
- We will have traffic problems because of the dirt roads.
- More trash and junk will be dumped.
- No location for the school bus to stop and pick up the high school kids.
- The properties this applicant has now are not taken care of.

Brian Kelly also stated he was the Vice-President of the Orchard Park Neighborhood Association and was speaking for 41 residents who were also opposed to the request and they had already submitted the protest petitions on this case.

****Action:** The District VI Advisory Board members made a motion to recommend to City Council Denial (**3-2**) of the Zoning request due to due to it would be detrimental to the neighborhood

Please review this information when **ZON2010-00026** is considered.

mtd

City of Wichita
City Council Meeting
October 19, 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)

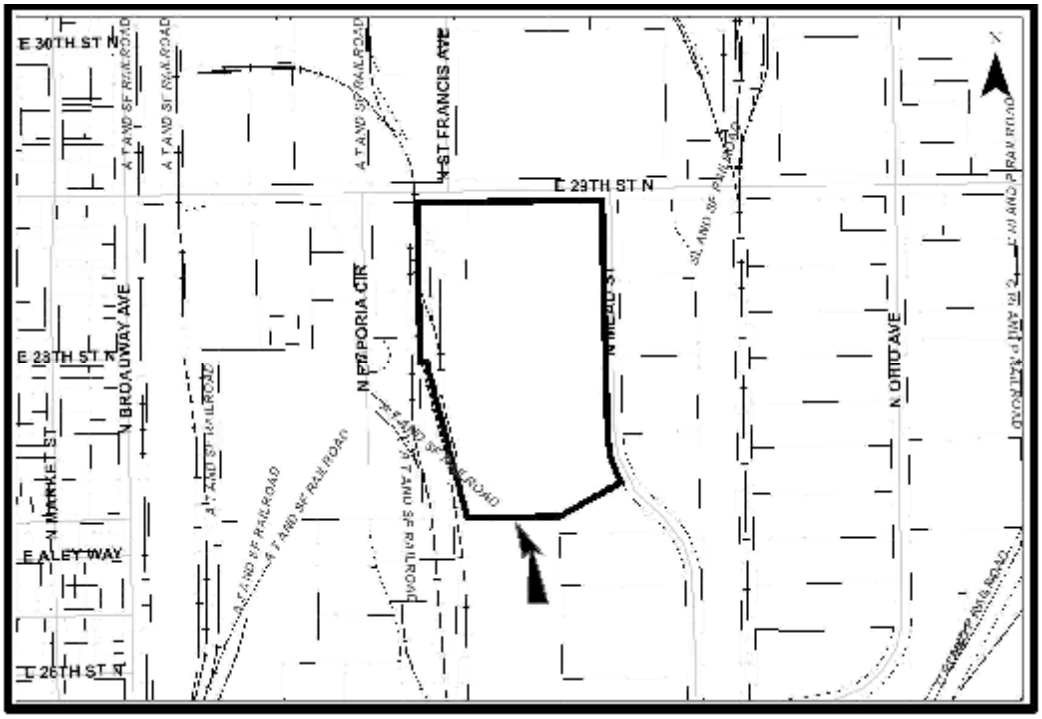
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

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, where a request was made by the applicant to defer the City Council hearing until all Council members are present. The City Council granted that request.)

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.

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).

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.

RESOLUTION No. 10-273

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

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

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

Case No. CON2010-00008

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

SUBJECT TO THE FOLLOWING CONDITIONS:

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

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

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

October 19, 2010.

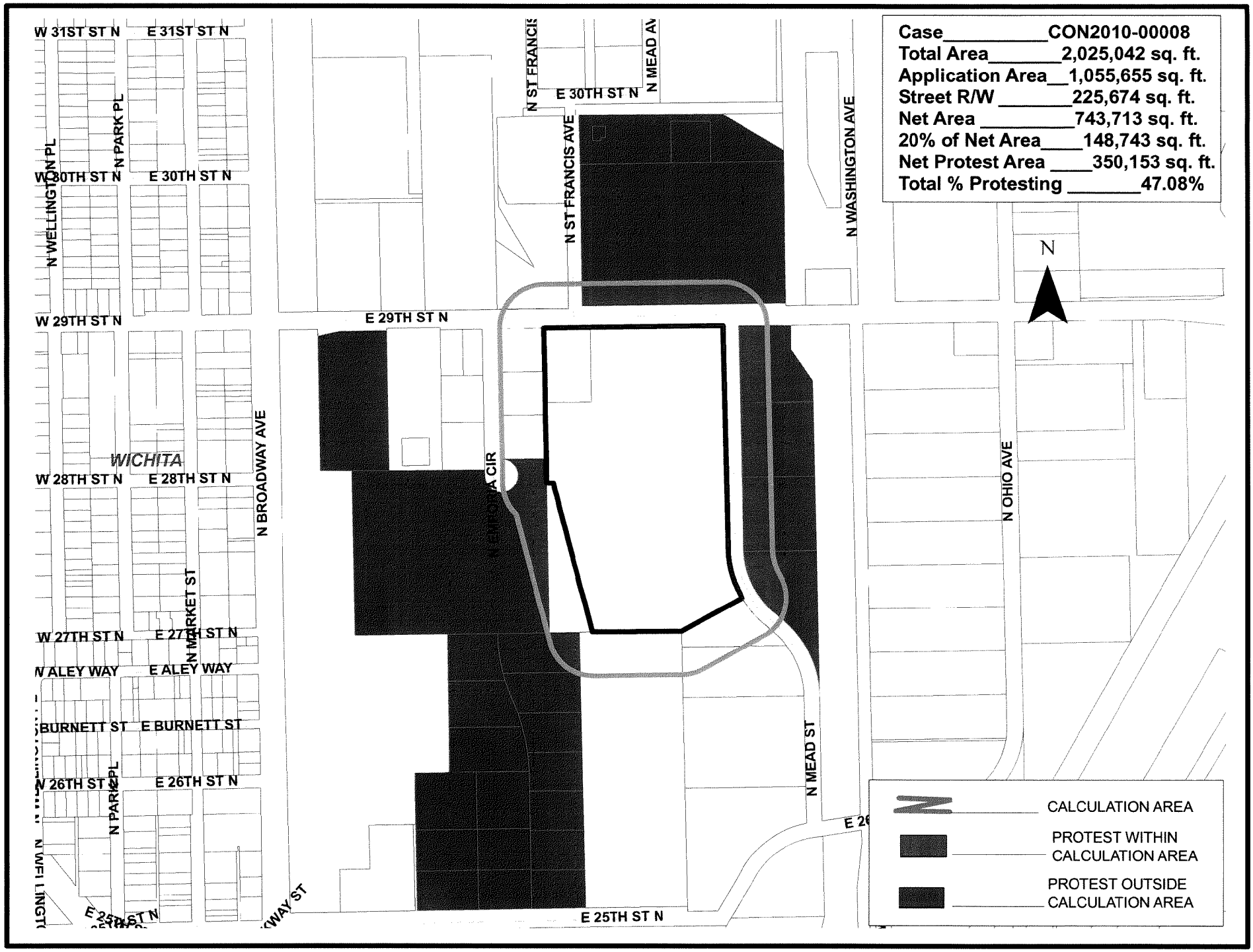
_____
Carl Brewer, Mayor

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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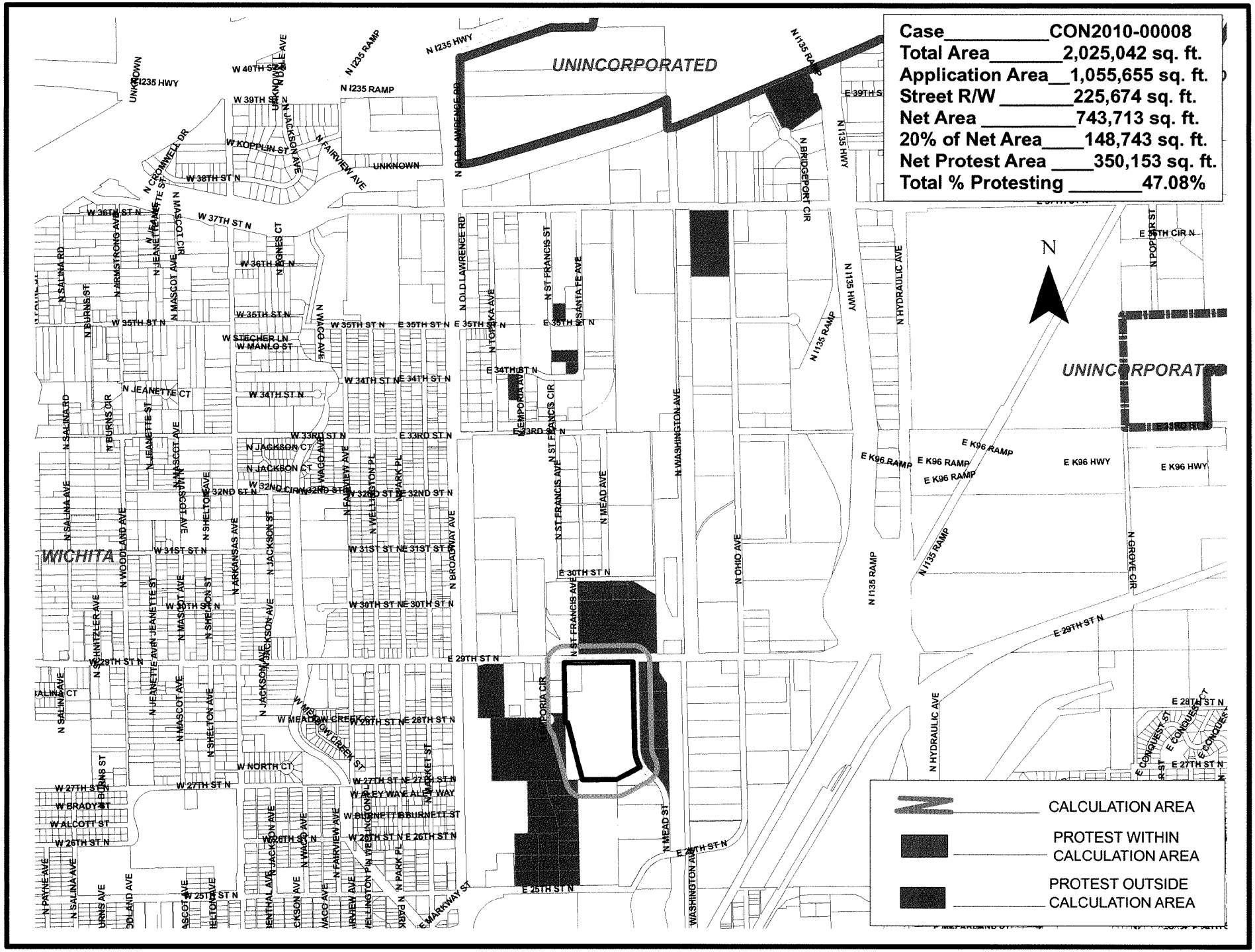
N MARKET ST
WICHITA
N ST FRANCIS AVE
N MEAD AV
N WASHINGTON AVE
N OHIO AVE
N MEAD ST


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%
UNINCORPORATED
UNINCORPORATED
WICHITA
N
CALCULATION AREA
PROTEST WITHIN CALCULATION AREA
PROTEST OUTSIDE CALCULATION AREA

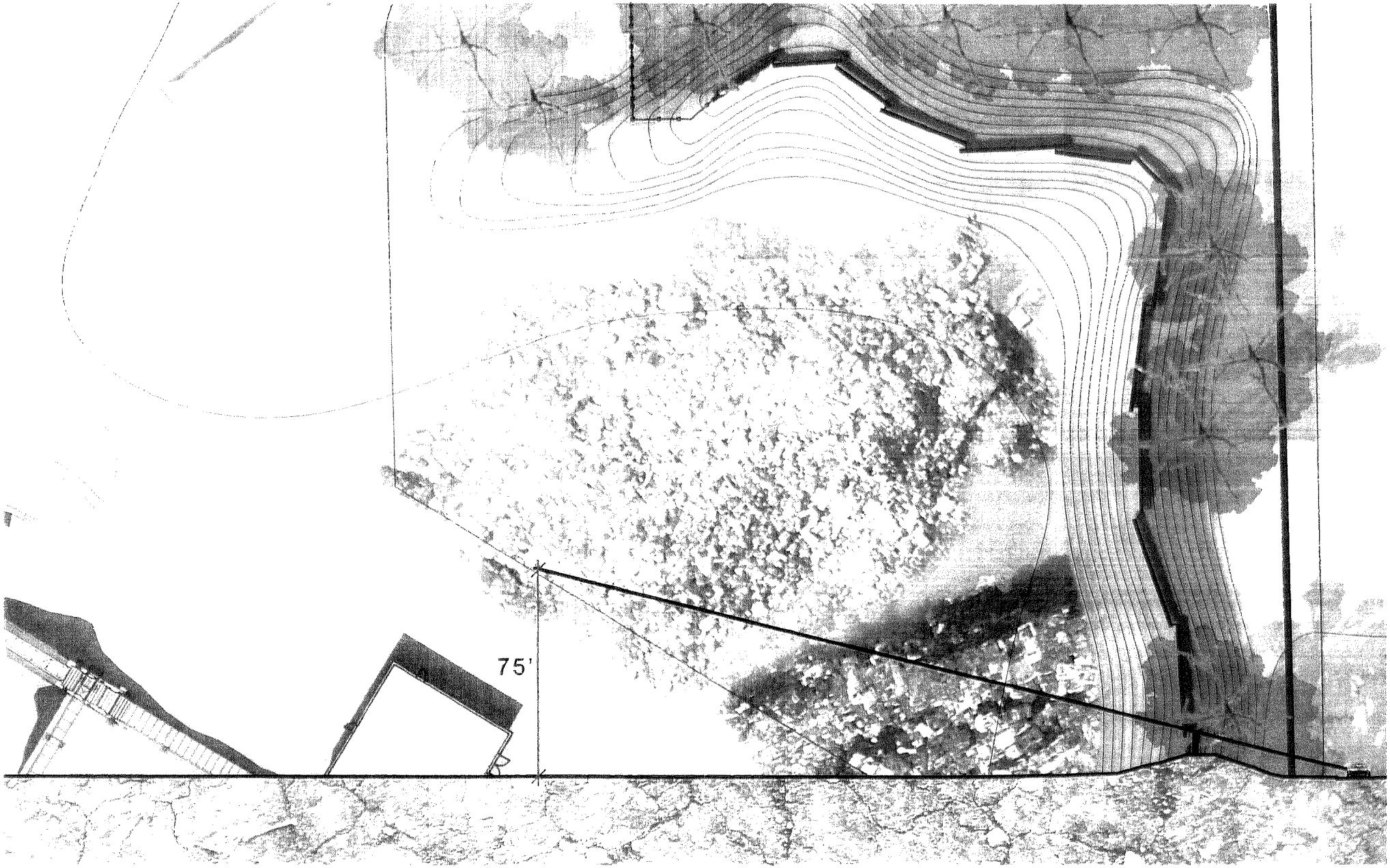
wdm ARCHITECTS

04.08.09

PROPOSED METAL RECYCLING FACILITY

MASTER PLAN - 2010

WICHITA, KANSAS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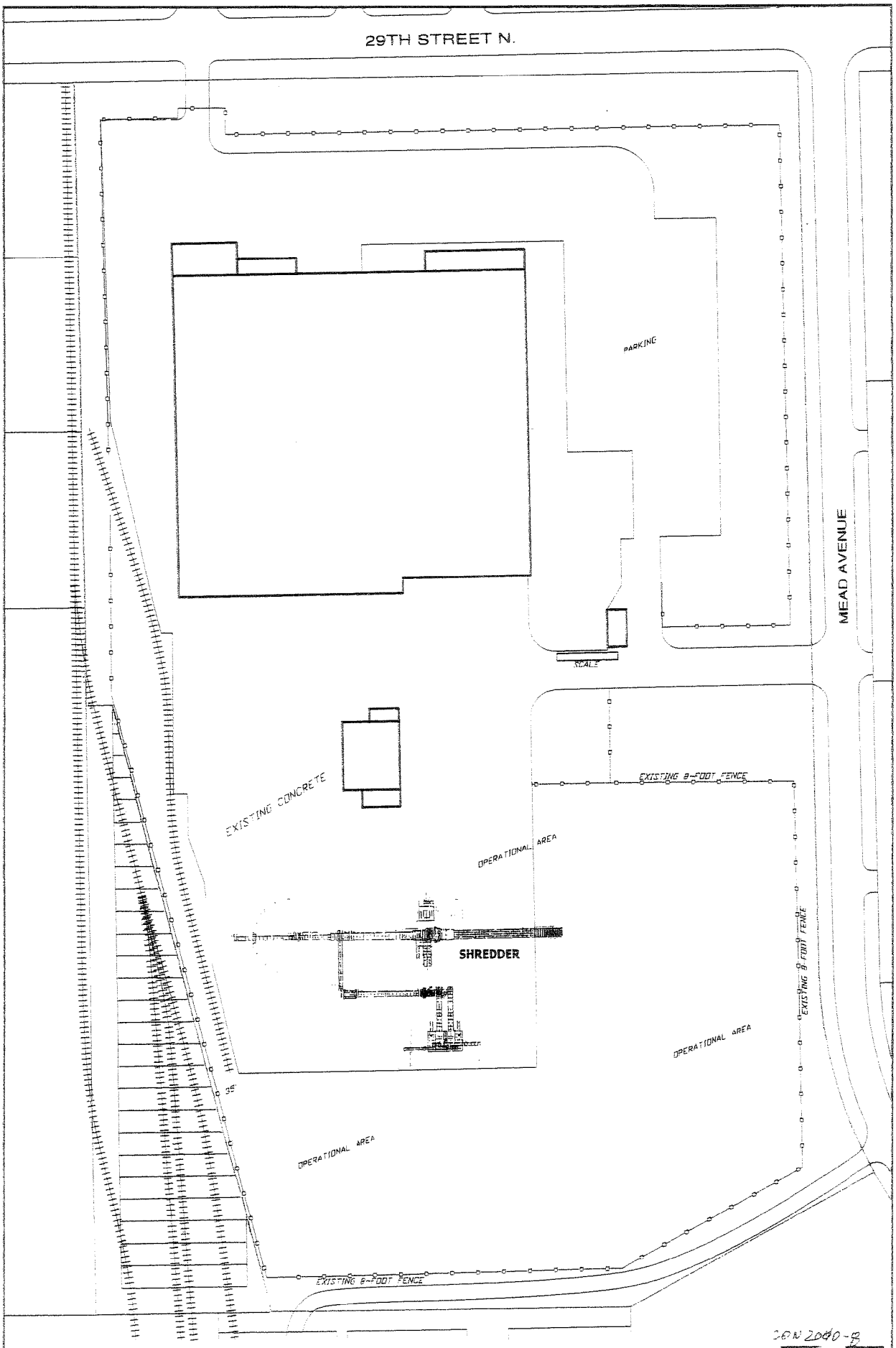


CON 2010-?

SITE PLAN - CON2010-??

MIDWEST SCRAP MANAGEMENT

SCALE: 1" = 100'

Baughman

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.

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

PO Box 1065
Wichita, Kansas 67201
P 316.838.7511 - F 316.838.2014

1111 East 37th St. North
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"".

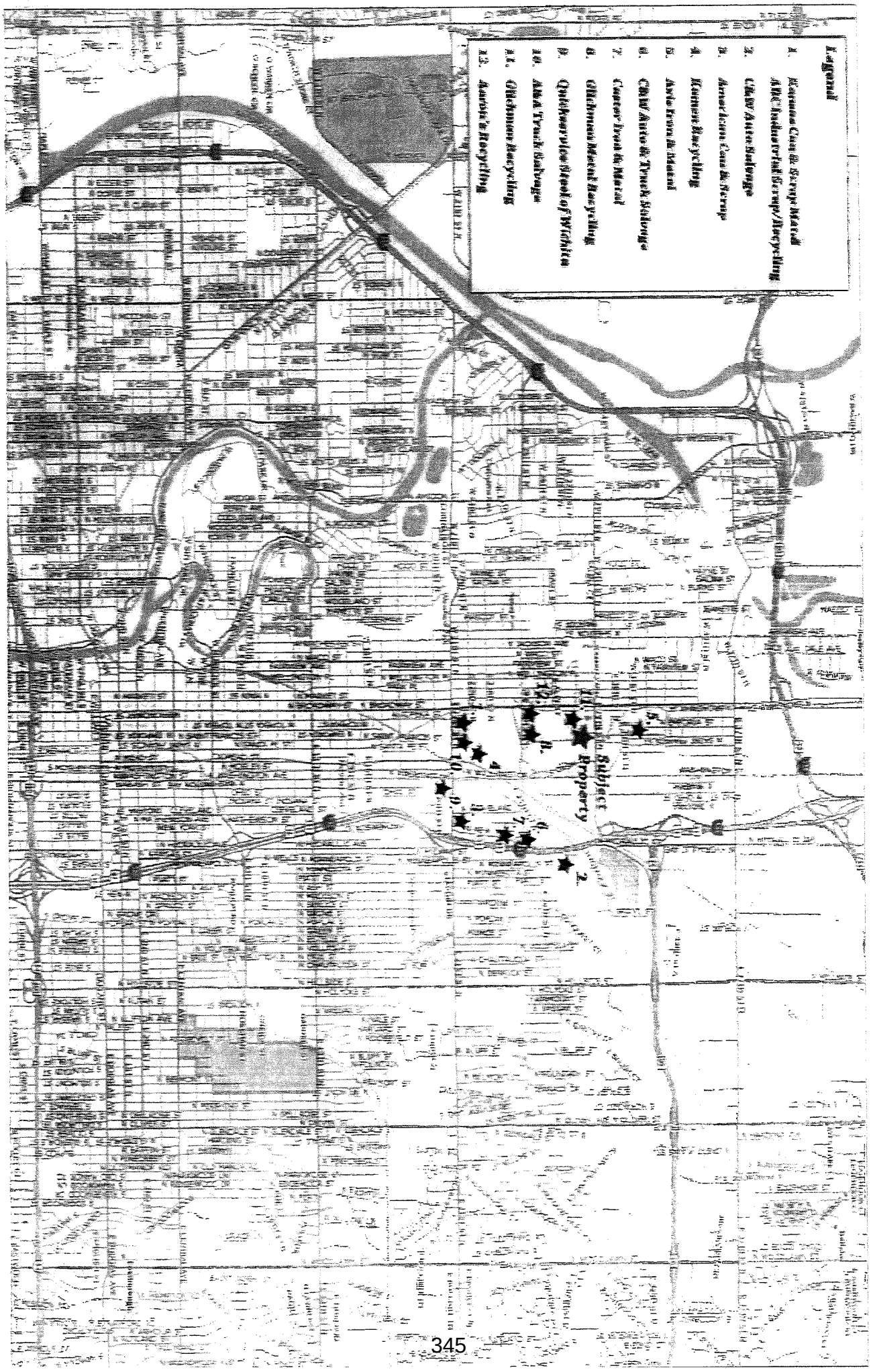
The Bridgeport Area Business Association has been working with the City of Wichita Planning department for over one year to develop a protective overlay for the Bridgeport Area. This protective overlay would support the 2030 Wichita Functional Land Use Guide. When the City of Wichita created the Bridgeport 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
AHC Industrial Scrap/Recycling
2. C&W Auto Salvage
3. American Can & Scrap
4. Kamen Recycling
5. Avis Iron & Metal
6. C&W Auto & Truck Salvage
7. Castor Iron & Metal
8. Glickman Metal Recycling
9. Quickservice Steel of Wichita
10. A&A Truck Salvage
11. Glickman Recycling
12. Aaron's Recycling
Subject Property

Agenda Item No. V-1

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

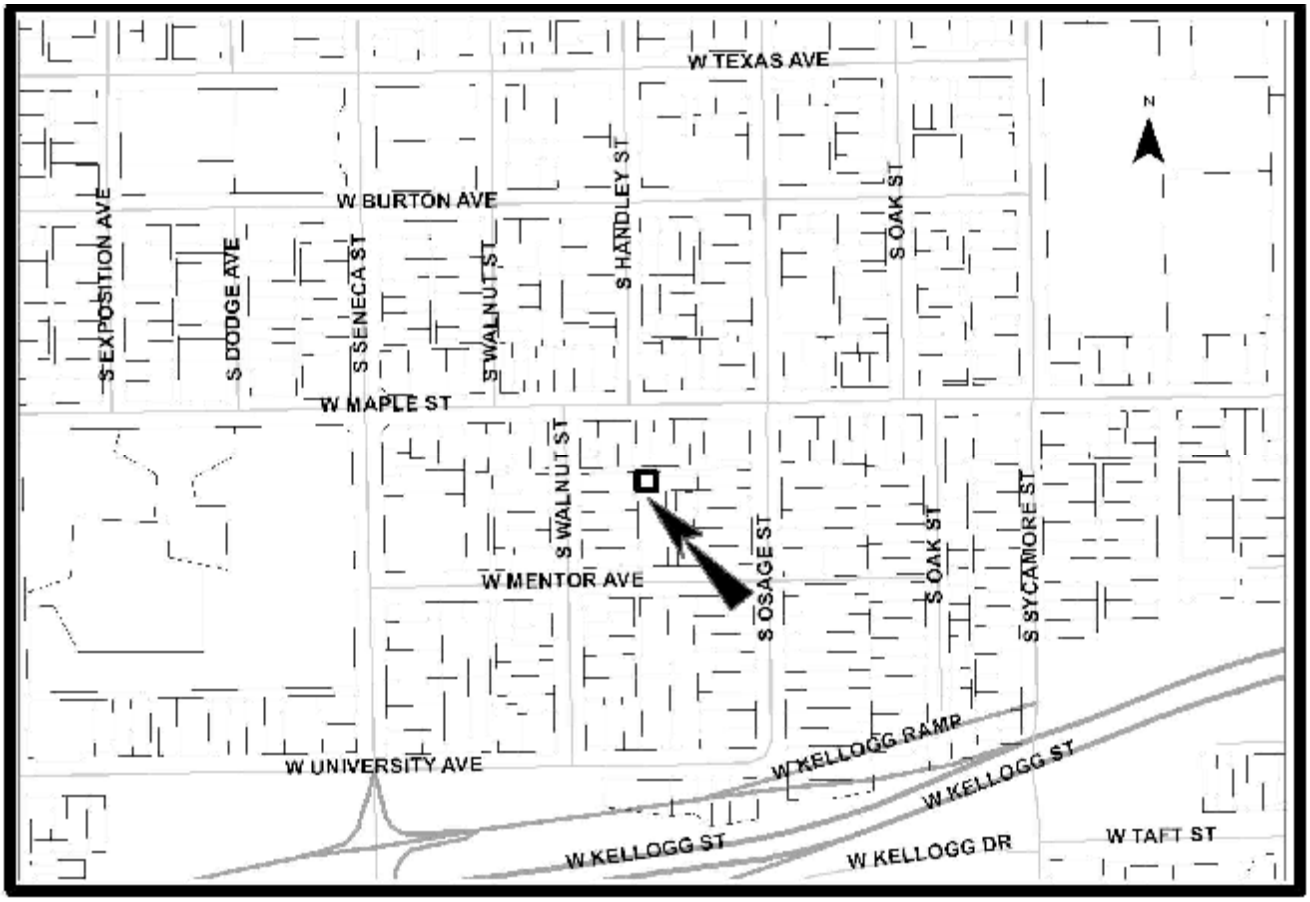
SUBJECT: ZON2010-00030 – City zone change from B Multi-Family Residential ("B") to LC Limited Commercial ("LC") for a greenhouse; generally located west of Osage Street and south of Maple Street. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendation: Approve, subject to the applicant submitting a "no-protest" petition regarding the possible future paving of the alleyway. Vote (13-0)

MAPD Staff Recommendation: Approve, subject to the applicant submitting a "no-protest" petition regarding the possible future paving of the alleyway.



Background: The applicant is requesting LC Limited Commercial ("LC") zoning on a portion of Reserve C, Campbell's Subdivision in Lawrence's Addition to Wichita, Sedgwick County, Kansas, located 125 feet south of West Maple Street and 260 feet west of Osage Street. The application area is a 50-foot by 48-foot tract zoned B Multi-family Residential ("B"), and is vacant. The site has 50 feet of frontage along an east-west unpaved alleyway located between Osage Street and Walnut Street. The east-west alley provides access to Osage and Walnut Streets. Both Osage and Walnut Streets access Maple Street, a minor arterial, located 125 feet north of the alleyway and application area.

This application is a case where the owner owns contiguous properties with different zoning, B and LC and proposes to have both properties zoned similarly. The property with the warehouse, 419 S. Osage Street, is already zoned LC. This proposed rezone would extend the LC zoning west of the warehouse to the western limits of the applicant's ownership.

The subject site is one of four properties that only have access off of an alley, which is how the property was platted back in 1887.

Property to the east of the site is zoned LC and is currently developed with a warehouse. Property located north of the site is zoned GC General Commercial ("GC"), and is currently developed with a mix of uses including: single-family residences, office and retail. Property south of the subject site is zoned B and MF-18 Multi-family Residential ("MF-18") and is developed with a single-family residence and duplex. Property west of the subject site is zoned SF-5 and is developed with a single-family residence. (Uses are based upon CAMA file descriptions.)

Any development on the subject property will be required to meet all compatibility setback, height, noise and design standards of the Unified Zoning Code (UZC), landscaping, screening and any other applicable codes and development standards.

Analysis: At the MAPC meeting held September 9, 2010, the MAPC voted (13-0) to recommend approval of the request for LC zoning, subject to the applicant submitting a "no-protest" petition regarding the possible future paving of the alleyway.

The only concern from the MAPC was if this operation was going to be retail, which could cause high traffic volumes down the unpaved alleyway. The applicant stated that the greenhouse would only be used for plant storage, and that no sales will be conducted from the greenhouse.

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 subject to the applicant submitting a "no-protest" petition regarding the possible future paving of the alleyway, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required).

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

Attachments:

- Ordinance

- MAPC Minutes

ORDINANCE NO. 48-857

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. ZON2010-00030

Zone change request from B Multi-family Residential ("B") to LC Limited Commercial ("LC") subject to the applicant submitting a "no-protest" petition regarding the possible future paving of the alleyway, on property described as:

> 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 said Lot 4; thence West 50 feet; thence South 7 feet; thence East 50 feet; thence North 7 feet to the point of beginning; generally located west of Osage Street and south of Maple Street.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 26th day of October, 2010.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION
September 9, 2010

Case No.: ZON2010-30 - Artistic Transformations, Kathleen Bagwell, request a City zone change from B Multi-family Residential to LC Limited Commercial on property described as; 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 said Lot 4; thence West 50 feet; thence South 7 feet; thence East 50 feet; thence North 7 feet to the point of beginning.

BACKGROUND: The applicant is requesting LC Limited Commercial ("LC") zoning on a portion of Reserve C, Campbell's Subdivision in Lawrence's Addition to Wichita, Sedgwick County, Kansas, located southwest of the intersection of Maple Street and Osage Street. (The application area is a 50-foot by 48-foot tract located 101 feet west of the northeast corner of Reserve D. The northeast corner of Reserve D is also the southwest corner of the north-south alley located just east of the residence located at 419 Osage Street.) The site is currently zoned B Multi-family Residential ("B"), and is vacant. The site has 50 feet of frontage along an east-west unpaved alleyway located between Osage Street and Walnut Street. The east-west alley provides access to Osage and Walnut Streets. Both Osage and Walnut Streets access Maple Street, a minor arterial, located 125 feet north of the alleyway and application area.

This application is a case where the owner owns contiguous properties with different zoning, B and LC, and proposes to have both properties zoned similarly. The property with the warehouse, 419 Osage, is already zoned LC. This proposed rezone would extend the LC zoning west of the warehouse to the western limits of the applicant's ownership.

The subject site is one of four properties that only have access off of an alley, which is how the property was platted back in 1887.

Property to the east of the site is zoned LC, and is currently developed with a warehouse. Property located north of the site is zoned GC General Commercial ("GC"), and is currently developed with a mix of uses including: single-family residences, office and retail. Property south of the subject site is zoned B and MF-18 Multi-family Residential ("MF-18"), and is developed with a single-family residence and duplex. Property west of the subject site is zoned SF-5, and is developed with a single-family residence. (Uses are based upon CAMA file descriptions.)

Any development on the subject property will be required to meet all compatibility setback, height, noise and design standards of the Unified Zoning Code (UZC), landscaping, screening and any other applicable codes and development standards.

CASE HISTORY: The site is a portion of Reserve C, Campbell's Subdivision in Lawrence's Addition to Wichita, Sedgwick County, Kansas that was recorded with the Register of Deeds on July 20, 1887.

ADJACENT ZONING AND LAND USE:

NORTH:	GC	Office
SOUTH:	B	Single-family Residence
EAST:	LC	Warehouse
WEST:	SF-5	Single-family Residence

PUBLIC SERVICES: Osage and Walnut Streets are classified as residential, local roads with no traffic counts. The nearest arterial, Maple Street, is just north of the subject site and is classified as a minor arterial. Maple Street at its intersection with Sycamore Street (northeast of the subject site) has a traffic count of approximately 10,200 ADT (Average Daily Trips). Since the alleyway that accesses the site is unpaved, the applicant may be required by traffic engineering to pave the alleyway up to their site. The subject site does have access to municipal services.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the requested rezoning tract and surrounding property as appropriate for "urban residential" even though the properties fronting Maple Street are zoned GC. The "urban residential" category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request for the LC Limited Commercial ("LC") zoning be **APPROVED,** subject to the applicant submitting a "no-protest" petition regarding the possible future paving of the alleyway.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Property to the east of the site is zoned LC, and is currently developed with a warehouse. Property located north of the site is zoned GC General Commercial ("GC"), and is currently developed with a mix of uses including: single-family residences, office and retail. Property south of the subject site is zoned B and MF-18 Multi-family Residential ("MF-18"), and is developed with a single-family residence and duplex. Property west of the subject site is zoned SF-5, and is developed with a single-family residence.

2. **The suitability of the subject property for the uses to which it has been restricted:** The site is currently zoned B. The B district permits a wide range of residential uses: single-family, duplex and multi-family as well as medical offices. Given the existence of commercial uses located immediately to the north, and the LC zoning that exists to the east of the application area, this site is less desirable for infill residential development.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The requested zone change of B to LC is in character with the area and would not detrimentally affect nearby property, of which most of it is zoned GC and LC and is developed with warehousing, retail or office type uses.

4. **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant:** Denial presumably could cause the applicant a loss in value and convenience since the property would have split zoning. Approval would allow the owner to have unified zoning on the entire reserve. If the site is rezoned the applicant will be required to comply with zoning screening, landscape buffering, compatibility building setbacks and building height limitations that should minimize anticipated detrimental effect on residences in the immediate vicinity of the application area.

5. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The "Wichita Land Use Guide, as amended May 2005" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the requested rezoning tract and surrounding property as appropriate for "urban residential." The "urban residential" category encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality.

6. **Impact of the proposed development on community facilities:** Approval of the request should not have a negative impact on community facilities. However, the applicant may be required to at least provide a "no-protest" petition for future paving of the alleyway.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

FOSTER commented that this was a 2,400 square foot facility with alley access for a plant nursery, which indicates retail to him. He asked how this will work. He also asked about the warehouse to the east of the site.

SLOCUM referred to an aerial of the site and the warehouse located on the east side of the property, which is already zoned Limited Commercial. He said basically this request is an extension of the current LC zoning owned by the same property owner.

FOSTER asked if this would be a retail operation.

SLOCUM said he understands that this will be used as a greenhouse with no retail sales; however, he said the applicant was present to answer any questions.

HENTZEN asked about the address, which was listed as 419 S. Osage Avenue. He said he couldn't find it.

SLOCUM said he understood that the building was addressed off of Osage Avenue.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **HENTZEN** seconded the motion.

HILLMAN asked if the applicant could answer Mr. Foster's question.

KATHY BAGWELL, 1042 N. COOLIDGE, PROPERTY OWNER said the facility will be used to store customers' plants. She said she may also start some plants at that location, but that has not been decided. She stated that there will be no retail sales at the facility.

The **MOTION** passed (13-0).

Agenda Item No. V- 2

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: ZON2010-00031 – City zone change from LI Limited Industrial to MF-18 Multi-Family Residential and LC Limited Commercial and amendment to Protective Overlay #74; generally located south of 29th Street North and one-fourth to one-half mile east of Greenwich Road. (District II)

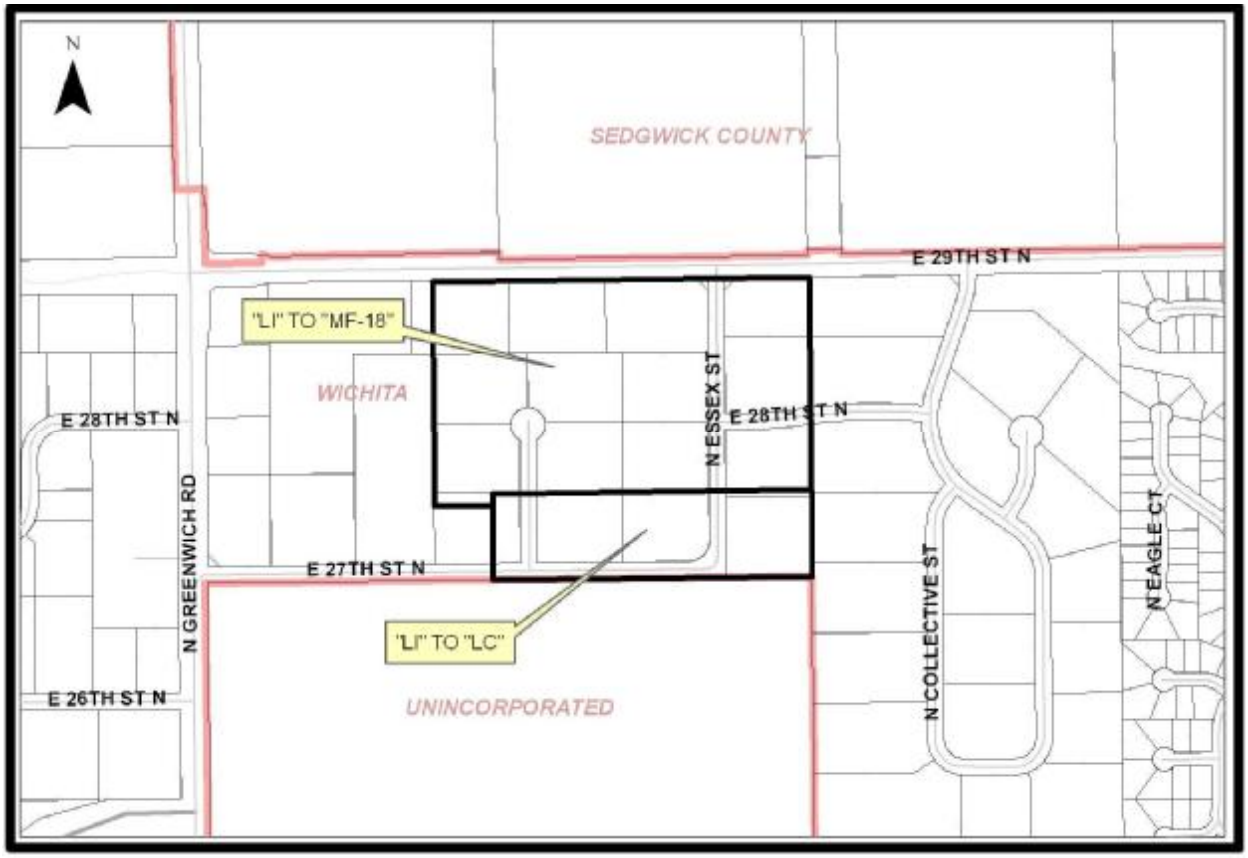
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

MAPC Recommendation: Approve subject to amendment of PO #74 and to replatting within one year and maintaining the improvements guaranteed by the original plat (13-0).

MAPD Staff Recommendation: Approve subject to amendment of PO #74 and to replatting within one year and maintaining the improvements guaranteed by the original plat.

DAB Recommendation: Approve subject to amendment of PO #74 and to replatting within one year and maintaining the improvements guaranteed by the original plat (8-0).



BACKGROUND: This is a request for a City zone change from LI Limited Industrial ("LI") to MF-18 Multi-Family Residential ("MF-18") and LC Limited Commercial ("LC") and to amend Protective Overlay #74 to correspond with the zone change request. The property is generally located south of East 29th Street North and one-fourth to one-half mile east of North Greenwich Road. It is 45.77 acres in size, with 34.16 acres requested for MF-18 zoning and 11.61 acres requested for LC zoning. The contract purchaser has submitted a thorough analysis of the site for development of the 34.16 acres requested for MF-18 zoning with 438 apartment units. As shown on the proposed garden apartment site plan, the overall density would be 12.8 dwelling units per acre, well below the allowable 18 dwelling units in the MF-18 zoning district. The proposed project incorporates the site characteristics and shows extensive earth berms and landscaping for screening of parking lots both within and off-site. The amount of parking proposed is well beyond Unified Zoning Code ("UZC") requirements. Please see the attached submittal.

The property currently is vacant. It was rezoned from RR Rural Residential ("RR") to LI subject to Protective Overlay #74 in 2000 and platted in 2007 as part of Greenwich Business Addition. The Greenwich Business Addition plat includes approximately 30 acres to the west between this proposed tract and Greenwich Road, which is being retained for future development by the current owner and would remain subject to the LI zoning with PO #74 provisions. The plat also includes the 80-acre tract to the east that was rezoned LI and is subject to PO #155.

The property to the north is a large agricultural tract zoned RR. USD #375 owns a large tract north of the agricultural land that has split zoning of LC and MF-18; a new elementary school is located on the LC portion, and the rest is vacant for future use. The land to the northeast is a Westar substation and two farmsteads on large acreages. A Westar transmission line separates the property from the vacant 80-acre LI property to the east. The remaining quarter-section lying one-fourth mile east of this site is zoned SF-5 and is being developed as a single-family residential subdivision. The land to the south is being developed with a medical office facility. A large industrial park zoned LI is located west of Greenwich Road. The industrial park includes some typical office-warehouse types of uses, a retail strip center at the corner of 29th Street North and Greenwich Road, a home improvement center (Star Lumber) and a City of Wichita park complex with soccer fields and baseball fields (on property zoned SF-5).

Analysis: At the District II Advisory Board meeting held September 13, 2010, the District Advisory Board voted (8-0) to recommend approval subject to staff recommendations. At the Metropolitan Area Planning Commission (MAPC) meeting held September 9, 2010, the MAPC voted (13-0) to approve subject to the staff recommendations. One citizen spoke about the impact of the development on her property and the increase in traffic on the road. No protests have been received.

The recommendations of MAPC are to **APPROVE** subject to the following:

A. Approve zone change from LI to MF-18 and LC, subject to replatting within one year and maintaining of the improvements guaranteed by the original plat.

B. Amend Protective Overlay #74 to add the following provisions for properties zoned MF-18 and LC:

1. Uses: Add: All uses permitted in the MF-18 zoning district as allowed by the Unified Zoning Code for property described by the rezoning application. The development shall be generally in conformance to the site plan and documentation attached to the case, or shall be of equivalent or lesser intensity. All uses permitted in the LC zoning district as allowed by Unified Zoning Code for property described by rezoning application.

2. Unless otherwise noted herein, all provisions of original Protective Overlay #74 shall not be applicable to land rezoning requested as noted by properties described by rezoning request (MF-18 & LC); instead to be governed by these protective overlay provisions contained herein. However, the provisions of original Protective Overlay #74 shall be binding to all properties not

requested for rezoning to MF-18 & LC or any portion of land included in the remaining portion of land zoned LI with existing Protective Overlay #74. Transfer of title on all or any portion of the land does not constitute a termination of the plan or any portion thereof; but said plan shall run with the land for development and be binding upon the present land owner, their successors and assigns and their lessees unless amended. However, the Planning Director, with the concurrence of the OCI Superintendent, may approve minor adjustments to the conditions of this overlay, consistent with the approved development plan, without filing a formal amendment.

3. Minimum setback requirements for the designated MF-18 parcel shall be as required by the Unified Zoning Code. Minimum setback requirements for the LC parcel shall have a front setback of 25 feet, rear – 35 feet, interior side- 15 feet and street side yard of 25 feet.

4. Outdoor storage and work areas shall not be located in front yard setback areas, and shall be screened from view of all internal and external streets and other ownerships within and abutting the property.

5. Height: Maximum height for structures in LC shall be 40 feet. Maximum height for MF-18 shall be 45 feet.

6. Signs: All property within Protective Overlay #74 (including those tracts zoned LI, LC and MF-18 zoned properties) shall be treated as one zoning lot, per the Wichita Sign Code Section 24.04.185.2.j. No signs with rotating or flashing lights shall be permitted, nor shall portable signs be permitted. An exception area(s) not greater than 35' x 35' shall be reserved in the LC parcel to allow identification signs for the MF-18 development. This exception area(s) shall be located along future 27th Street North at street(s) that connect from the MF-18 parcel to 27th Street North. All signs shall be monument signs internally illuminated or shielded external lighting. All signs shall comply with the standards of the City of Wichita Sign Code.

7. No certificate of occupancy shall be issued for any buildings without municipal water and sewer service.

8. Cross-lot circulation is to be provided for all lots development in the LC zoning classification for retail, commercial and office uses through the approval of site plans by the Director of Planning.

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 zone change and amendment to Protective Overlay #74; and authorize the Mayor to sign the ordinance, and withhold the publication of the ordinance until the plat is recorded (simple majority vote required).

Attachments:

- Ordinance
- Site plan
- MAPC Minutes
- DAB II report
- Booklet provided by contract purchaser

OCA150004

ORDINANCE NO. 48-858

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. ZON2010-00031

Zone change request from LI Limited Industrial to MF-18 Multi-Family Residential and LC Limited Commercial on property described as:

LI Limited Industrial to MF-18 Multi-Family Residential:

A tract of land lying within a portion of Greenwich Business Center Addition, an addition to Wichita, Sedgwick county, Kansas; said tract being described as Lots 8, 9, 10, 15, 16 and portions of Lots 11, 14, 17 and 18, Block 1, together with Lots 1 and 2, Block 2, together with a portion of Lot 16, Block 3 being more particularly described as follows:

Beginning at the Northeast corner of said Lot 1, Block 2, of said addition;
thence along the East line of Lots 1 and 2, Block 2 and extended along the East line of Lot 16, Block 3, on a platted bearing of S00°35’43”E 912.96 feet;
thence parallel with the Southerly line of said addition S89°14’33”W 1,366.03 feet;
thence parallel with the West line of Lot 18, S00°32’28”E 50.00 feet;
thence parallel with the Southerly line of said Addition S89°14’33”W 250.00 feet to said West line;
thence along the West line of Lots 18, 17 and 16, Block 1 and extended to the North line of said Lot 7, N00°32’28”W 963.95 feet;
thence along the North line of Lots 7, 8 and 9, Block 1 and extended along the North line of Lot 1, Block 2 and Reserves D and E, on a platted bearing of N89°16’15”E 1,615.17 feet to the point of beginning. Said tract contains 34.16 acres of land, more or less.

LI Limited Industrial to LC Limited Commercial:

A tract of land lying within a portion of Greenwich Business Center Addition, an addition to Wichita, Sedgwick County, Kansas; said tract being described as Lots 12, 13 and portions of Lots 11, 14, 17, and 18, Block 1, together with Lot 17 and a portion of Lot 16, Block 3 being more particularly described as follows:

Commencing at the Northeast corner of Lot 1, Block 2, said Addition;
thence along the east line of Lots 1 and 2, Block 2 and extended along the east line of Lot 16, Block 3, on a platted bearing of S00°35’43”E 912.96 feet to the place of beginning;
thence continuing S00°35’43”E 370.18 feet to the Southeast corner of said Lot 17, Block 3;
thence along the southerly line of said addition, S89°14’33”W 1,366.38 feet;
thence parallel with the West line of said Lot 18, N00°32’28”W 370.00 feet;
thence parallel with the Southerly line of said addition N89°14’33”E 1,366.03 feet to the point of beginning. Said tract contains 11.61 acres of land, more or less.

THE AMENDED PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #74 in effect for properties zoned MF-18 and LC:

Item 1 shall be amended to add: All uses permitted in the **MF-18** zoning district as allowed by the Unified Zoning Code for property described by the rezoning application. The development shall be generally in conformance to the site plan and documentation attached to the case, or shall be of equivalent or lesser intensity. All uses permitted in the **LC** zoning district as allowed by Unified Zoning Code for property described by rezoning application.

Item 2 shall be amended as follows: Unless otherwise noted herein, all provisions of original Protective Overlay #74 shall not be applicable to land rezoning requested as noted by properties described by rezoning request (MF-18 & LC); instead to be governed by these protective overlay provisions contained herein. However, the provisions of original Protective Overlay #74 shall be binding to all properties not requested for rezoning to MF-18 & LC or any portion of land included in the remaining portion of land zoned LI with existing Protective Overlay #74. Transfer of title on all or any portion of the land does not constitute a termination of the plan or any portion thereof; but said plan shall run with the land for development and be binding upon the present land owner, their successors and assigns and their lessees unless amended. However, the Planning Director, with the concurrence of the OCI Superintendent, may approve minor adjustments to the conditions of this overlay, consistent with the approved development plan, without filing a formal amendment.

Item 3 shall be amended to add: Minimum setback requirements for the designated MF-18 parcel shall be as required by the Unified Zoning Code. Minimum setback requirements for the LC parcel shall have a front setback of 25 feet, rear – 35 feet, interior side- 15 feet and street side yard of 25 feet.

Item 4 shall be retained as: Outdoor storage and work areas shall not be located in front yard setback areas, and shall be screened from view of all internal and external streets and other ownerships within and abutting the property.

Item 5 shall be amended to add: Height: Maximum height for structures in LC shall be 40 feet. Maximum height for MF-18 shall be 45 feet.

Item 6 shall be amended to add: Signs: All property within Protective Overlay #74 (including those tracts zoned LI, LC and MF-18 zoned properties) shall be treated as one zoning lot, per the Wichita Sign Code Section 24.04.185.2.j. No signs with rotating or flashing lights shall be permitted, nor shall portable signs be permitted. An exception area(s) not greater than 35’ x 35’ shall be reserved in the LC parcel to allow identification signs for the MF-18 development. This exception area(s) shall be located along future 27th Street North at street(s) that connect from the MF-18 parcel to 27th Street North. All signs shall be monument signs internally illuminated or shielded external lighting. All signs shall comply with the standards of the City of Wichita Sign Code.

Item 7 shall be amended to add: No certificate of occupancy shall be issued for any buildings without municipal water and sewer service.

Item 8 shall be amended to add: Cross-lot circulation is to be provided for all lots development in the LC zoning classification for retail, commercial and office uses through the approval of site plans by the Director of Planning.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this 26th day of June, 2010.

ATTEST:

_____ _____

Karen Sublett, City Clerk Carl Brewer, Mayor

(SEAL)

Approved as to form:

_____

Gary E. Rebenstorf, Director of Law

WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION
September 9, 2010

Case No.: ZON2010-31 - North Greenwich/29th, LLC c/o Kevin M. Mullen, Manager (owner); Edward Rose Development Company, LLC c/o James R. Hall, agent (contract purchaser) request a City zone change from LI Limited Industrial subject to Protective Overlay #74 to MF-18 Multi-Family Residential and LC Limited Commercial ("LC") and amendment to Protective Overlay #74 on property described as;

Beginning at the northeast corner of said Lot 1, Block 2, said addition; thence along the east line of Lots 1 and 2, Block 2, and extended along the east line of Lots 16 and 17, Block 3, on a platted bearing of S00°35'43"E, 1283.14 feet to the southeast corner of said Lot 17, Block 3, thence along the southerly line of said addition, S89°14'33"W, 1366.38 feet; thence parallel with the west line of said Lot 18, N00°32'28"W, 320.00 feet; thence parallel with the southerly line of said addition S89°14'33"W, 250.00 feet to said west line; thence along the west line of Lots 18, 17 and 16, Block 1 and extended to the north line of said Lot 7, N00°32'28"W, 963.95 feet; thence along the north line of Lots 7, 8, and 9, Block 1, and extended along the North line of Lot 1, Block 2, and Reserves D and E, on a platted bearing of N89°16'15"E, 1615.17 feet to the POINT OF BEGINNING, EXCEPT All Street Right of Way Dedications, as Platted in said addition.

BACKGROUND: This is a request for a City zone change from LI Limited Industrial ("LI") to MF-18 Multi-Family Residential ("MF-18") and LC Limited Commercial ("LC") and to amend Protective Overlay #74 to correspond with the zone change request. The property is generally located south of East 29th Street North and one-fourth to one-half mile east of North Greenwich Road. It is 45.77 acres in size, with 34.16 acres requested for MF-18 zoning and 11.61 acres requested for LC zoning. The contract purchaser has submitted a thorough analysis of the site for development of the 34.16 acres requested for MF-18 zoning with 438 apartment units. As shown on the proposed garden apartment site plan, the overall density would be 12.8 dwelling units per acre, well below the allowable 18 dwelling units in the MF-18 zoning district. The proposed project incorporates the site characteristics and shows extensive earth berms and landscaping for screening of parking lots both within and off-site. The amount of parking proposed is well beyond Unified Zoning Code ("UZC") requirements. Please see the attached submittal.

The property currently is vacant. It was rezoned from RR Rural Residential ("RR") to LI subject to Protective Overlay #74 in 2000 and platted in 2007 as part of Greenwich Business Addition. The Greenwich Business Addition plat includes approximately 30 acres to the west between this proposed tract and Greenwich Road, which is being retained for future development by the current owner and would remain subject to the LI zoning with PO #74 provisions. The plat also includes the 80-acre tract to the east that was rezoned LI and is subject to PO #155.

The property to the north is a large agricultural tract zoned RR. USD #375 owns a large tract north of the agricultural land that has split zoning of LC and MF-18; a new elementary school is located on the LC portion and the rest is vacant for future use. The land to the northeast is a Westar substation and two farmsteads on large acreages. A Westar transmission line separates the property from the vacant 80-acre LI property to the east. The remaining quarter-section lying one-fourth mile east of this site is zoned SF-5 and being developed as a single-family residential subdivision. The land to the south is being developed with a medical office facility. A large industrial park zoned LI is located west of Greenwich Road. The industrial park includes some typical office-warehouse types of uses, a retail strip center at the corner of 29th Street North and Greenwich Road, a home improvement center (Star Lumber) and a City of Wichita park complex with soccer fields and baseball fields (on property zoned SF-5).

CASE HISTORY: The property is platted as Greenwich Business Center Addition, recorded November 9, 2007.

ADJACENT ZONING AND LAND USE:

NORTH:	RR, SF-20, LC, MF-18	Agricultural, farmsteads, Westar substation
SOUTH:	SF-20	Vacant
EAST:	LI, SF-5	Transmission line, vacant, single-family residences
WEST:	LI, SF-5	Vacant, retail strip center, soccer and baseball fields, home improvement center, office-warehouse uses

PUBLIC SERVICES: As currently platted, the tract has one internal street (Essex) connecting to 29th Street North and looping into 27th Street North on the south edge of the tract. 27th Street North connects to Greenwich Road. Greenwich is improved as a four-lane arterial street with intersection improvements at 29th Street North and is classified as a minor arterial. 29th Street North is an unpaved two-lane section line road beyond the intersection improvements at 29th Street North. It is classified as a minor arterial also. Traffic counts are unavailable for 29th Street North and Greenwich Road. Counts at 21st Street North and Greenwich Road are not representative of the traffic north of the interchange of Greenwich with K-96. The 2004 Sedgwick County count of 2,313 along the mid-mile segment of Greenwich between 29th Street North and 37th Street North does not reflect new school construction in that location.

The original PO #74 set development limits to no more than 100,000 square feet of floor area for non-IP Industrial Park uses, allowing for ultimately raising this to 300,000 square feet by adjustment, but stipulating that the Traffic Engineer could require improvements to be guaranteed to support this traffic volume and that total average traffic shall not exceed 8,000 ADT based on projected traffic volumes or, in lieu of the limits, a traffic study. Subsequently, a series of development proposals along Greenwich Road from Central to 29th Street North led to a corridor traffic study, and to widening of Greenwich from 13th Street North to 29th Street North. Guarantees are in place for paving of 29th Street North. Projected traffic volumes are below this level based on construction of the apartment units and a modest build-out of the LC tract, with perhaps a range of offices and neighborhood support services oriented to serve the apartments and the office complex being constructed on the south. Additionally, the 8,000 ADT level may no longer be critical due to the traffic study and improvements completed along Greenwich Road.

Other public services are available but will require extension to serve the tract.

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." The existing zoning conforms to this recommendation but the rezoning request would be a departure. For the LC tract, the zone change reduces the intensity of commercial uses, eliminates most industrial uses and allows a full range of residential uses. For the MF-18 tract, it eliminates virtually all commercial and industrial uses and allows a range of residential uses. This may reflect a trend toward residential and compatible types of institutional uses in the vicinity, including the new single-family subdivision to the east along 127th Street North, the new school campus, and the nearby recreation facilities.

Commercial Objective III.B encourages future commercial areas to "complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses." The **Commercial Locational Guideline #3** of the Comprehensive Plan recommends the use should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. **Guideline #4** recommends compact clusters or nodes and **Guideline #5** recommends not feeding commercial traffic onto local residential streets. The location of the proposed LC tract is unusual, secluded between the apartment site and the surrounding LI zoned properties and without direct access onto Greenwich Road. It meets the requirements of not feeding traffic onto residential streets and is equivalent in site design features to the surrounding nonresidential tracts. **Commercial Objective III.**A1 for residential development encourages using zoning as a tool to promote higher density residential environments with buffers; this is accomplished through the proposed site plan and the protective overlay.

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

A. Approve zone change from LI to MF-18 and LC, subject to replatting within one year and maintaining of the improvements guaranteed by the original plat.

B. Amend Protective Overlay #74 to add the following provisions for properties zoned MF-18 and LC:

1. Uses: Add: All uses permitted in the MF-18 zoning district as allowed by the Unified Zoning Code for property described by the rezoning application. The development shall be generally in conformance to the site plan and documentation attached to the case, or shall be of equivalent or lesser intensity. All uses permitted in the LC zoning district as allowed by Unified Zoning Code for property described by rezoning application.

2. Unless otherwise noted herein, all provisions of original Protective Overlay #74 shall not be applicable to land rezoning requested as noted by properties described by rezoning request (MF-18 & LC); instead to be governed by these protective overlay provisions contained herein. However, the provisions of original Protective Overlay #74 shall be binding to all properties not requested for rezoning to MF-18 & LC or any portion of land included in the remaining portion of land zoned LI with existing Protective Overlay #74. Transfer of title on all or any portion of the land does not constitute a termination of the plan or any portion thereof; but said plan shall run with the land for development and be binding upon the present land owner, their successors and assigns and their lessees unless amended. However, the Planning Director, with the concurrence of the OCI Superintendent, may approve minor adjustments to the conditions of this overlay, consistent with the approved development plan, without filing a formal amendment.

3. Minimum setback requirements for the designated MF-18 parcel shall be as required by the Unified Zoning Code. Minimum setback requirements for the LC parcel shall have a front setback of 25 feet, rear – 35 feet, interior side- 15 feet and street side yard of 25 feet.

4. Outdoor storage and work areas shall not be located in front yard setback areas, and shall be screened from view of all internal and external streets and other ownerships within and abutting the property.

5. Height: Maximum height for structures in LC shall be 40 feet. Maximum height for MF-18 shall be 45 feet.

6. Signs: All property within Protective Overlay #74 (including those tracts zoned LI, LC and MF-18 zoned properties) shall be treated as one zoning lot, per the Wichita Sign Code Section 24.04.185.2.j. No signs with rotating or flashing lights shall be permitted, nor shall portable signs be permitted. An exception area(s) not greater than 35' x 35' shall be reserved in the LC parcel to allow identification signs for the MF-18 development. This exception area(s) shall be located along future 27th Street North at street(s) that connect from the MF-18 parcel to 27th Street North. All signs shall be monument signs internally illuminated or shielded external lighting. All signs shall comply with the standards of the City of Wichita Sign Code.

7. No certificate of occupancy shall be issued for any buildings without municipal water and sewer service.

8. Cross-lot circulation is to be provided for all lots development in the LC zoning classification for retail, commercial and office uses through the approval of site plans by the Director of Planning.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property currently is vacant. It was rezoned from RR Rural Residential ("RR") to LI subject to Protective Overlay #74 in 2000 and platted in 2007 as part of Greenwich Business Addition. The Greenwich Business Addition plat includes approximately 30 acres to the west between this proposed tract and Greenwich Road, which is being retained for future development by the current owner and would remain subject to the LI zoning with PO #74 provisions. The plat also includes the 80-acre tract to the east that was rezoned LI and is subject to PO #155. The property to the north is a large agricultural tract zoned RR. USD #375 owns a large tract north of the agricultural land that has split zoning of LC and MF-18; a new elementary school is located on the LC portion and the rest is vacant for future use. The land to the northeast is a Westar substation and two farmsteads on large acreages. A Westar transmission line separates the property from the vacant 80-acre LI property to the east. The remaining quarter-section lying one-fourth mile east of this site is zoned SF-5 and being developed as a single-family residential subdivision. The land to the south is being developed with a medical office facility. A large industrial park zoned LI is located west of Greenwich Road. The industrial park includes some typical office-warehouse types of uses, a retail strip center at the corner of 29th Street North and Greenwich Road, a home improvement center (Star Lumber) and a City of Wichita park complex with soccer fields and baseball fields (on property zoned SF-5).

2. The suitability of the subject property for the uses to which it has been restricted: The property could be used as currently zoned. But, the requested zone change would be viewed as a decrease in intensity from currently approved zoning, and therefore would also be suitable.

3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval allows residential use on the rezoning tract. Residential development is what is recommended by the Comprehensive Plan for the property to the north (shown as "urban development mix"). It eliminates the potential for less compatible industrial activity that could have been located upon the tract today.

4. Length of time the subject property has remained vacant as zoned: The property was platted three years ago, although the original zone change to LI was ten years ago.

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." The existing zoning conforms to this recommendation but the rezoning request would be a departure. For the LC tract, the zone change reduces the intensity of commercial uses, eliminates most industrial uses and allows a full range of residential uses. For the MF-18 tract, it eliminates virtually all commercial and industrial uses and allows a range of residential uses. This may reflect a trend toward residential and compatible types of institutional uses in the vicinity, including the new single-family subdivision to the east along 127th Street North, the new school campus, and the nearby recreation facilities. **Commercial Objective III.B** encourages future commercial areas to "complement existing commercial activities, provide convenient access to the public and minimize detrimental impacts to other adjacent land uses." The **Commercial Locational Guideline #3** of the Comprehensive Plan recommends the use should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas. **Guideline #4** recommends compact clusters or nodes and **Guideline #5** recommends not feeding commercial traffic onto local residential streets. The location of the proposed LC tract is unusual, secluded between the apartment site and the surrounding LI zoned properties and without direct access onto Greenwich Road. It meets the requirements of not feeding traffic onto residential streets and is equivalent in site design features to the surrounding nonresidential tracts. **Commercial Objective III.**A1 for residential development encourages using zoning as a tool to promote higher density residential environments with buffers; this is accomplished through the proposed site plan and the protective overlay.

6. Impact of the proposed development on community facilities: The projected traffic volumes are within the range permitted by the original protective overlay, and the traffic improvements on Greenwich Road have increased the capacity of the roads to accommodate traffic from this site. The road network and public facilities should be adequate with the improvements (already guaranteed) in place or extended to serve the site.

   Attachments:
   Booklet provided by contract purchaser

DONNA GOLTRY, Planning Staff presented the Staff Report.

FOSTER referenced a previous case heard by the Commission near this location and said he was concerned about the narrow right-of-way on 27th Street. He said the site plan indicates 908 parking spaces at the site with only one exit point. He asked when City Traffic Engineering will review the site plan and provide input.

GOLTRY commented that Traffic Engineer will evaluate traffic issues at the time of platting. She said there will be some access out of the southern area of the site; however, the final configuration has not been determined yet.

FOSTER clarified so ingress/egress from the site and right-of-way issues will be addressed at platting.

MILLER commented that he understood from the applicant that Traffic Engineering preliminarily approved the site plan prior to the applicant filing the zoning application.

JIM HALL, 601 NEWPORT ROAD, KALAMAZOU, MICHIGAN commented that they are a private company and that all financing for the project will be done internally or through conventional lending sources. He said no government programs or tax incentives or credits will be used to finance the project. He said it will be their own investment, their own product and that they plan on staying in Wichita after the complex is built. He said they do not plan on building or putting all 438 units on the market at one time. He said they plan on building one or two buildings at a time which will take approximately 3½ years. He said they will act as the general contractor and that they will use local trades to assist them. He said this is a $21,000,000 investment into the Wichita tax base and that they will also have between 9-10 employees, but that will spin off into lawn contractors and other maintenance services. He said a one-bedroom will rent for $700.00 and a two bedroom will rent for $800.00. He concluded by saying that they are in agreement with the Staff Report and the conditions listed.

MARILYN MESSINGER, 12100 E. 29th STREET NORTH said they live north and east of this area. She said they are very concerned about the amount of units and the amount of traffic they will generate. She said 438 units with two people per unit will push 900 more people into the area which will create horrendous traffic. She said it is becoming more and more difficult to get off of Greenwich Road onto 29th Street as it is. She also commented that there was no mention of a tornado shelter for people in the development and that they are also concerned about widening of the road, installation of street lights and paving.

CHAIRMAN MILLER STEVENS asked if Planning Staff could speak to what would occur during the platting phase.

GOLTRY said there were guarantees for paving of the street and they will be required to pave to the first entrance to County road standards before building any units. She commented that the City holds petitions and has control of the entire right-of-way.

HALL said they understand they will be required to have some kind of tornado shelter.

MOTION: To approve subject to staff recommendation.

HENTZEN moved, **KLAUSMEYER** seconded the motion.

HILLMAN asked if there were plans to install left or right turn lanes in the area.

HALL said they will do whatever is required. He mentioned possible addition of acceleration and deceleration lanes. He also mentioned that there will be two access roads to the south onto a commercial property which they believe is the direction most of traffic from the complex will go. He said 27th Street will also be improved and widened.

The **MOTION** passed (13-0).

CITY OF WICHITA

INTEROFFICE MEMORANDUM

TO: MAPC Members

FROM: Antione Sherfield, Neighborhood Assistant, District II

SUBJECT: **ZON2010-00031**

DATE: September 13, 2010

On Monday, September 13, 2010, the District II Advisory Board considered a request for a City zone change from LI limited Industrial ("LI") to MF – 18 Multi-Family Residential ("MF -18") and LC Limited Commercial ("LC") and to amend Protective Overlay #74 to correspond with the zone change request.

BACKGROUND: This is a request for a City zone change from LI Limited Industrial ("LI") to MF-18 Multi-Family Residential ("MF-18") and LC Limited Commercial ("LC") and to amend Protective Overlay #74 to correspond with the zone change request. The property is generally located south of East 29th Street North and one-fourth to one-half mile east of North Greenwich Road. It is 45.77 acres in size, with 34.16 acres requested for MF-18 zoning and 11.61 acres requested for LC zoning. The contract purchaser has submitted a thorough analysis of the site for development of the 34.16 acres requested for MF-18 zoning with 438 apartment units. As shown on the site proposed garden apartment site plan, the overall density would be 12.8 dwelling units per acre, well below the allowable 18 dwelling units in the MF-18 zoning district. The proposed project incorporates the site characteristics and shows extensive earth berms and landscaping for screening of parking lots both within and off-site. The amount of parking proposed is well beyond Unified Zoning Code ("UZC") requirements. Please see the attached submittal.

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The property to the north is a large agricultural tract zoned RR. USD #375 owns a large tract north of the agricultural land that has split zoning of LC and MF-18; a new elementary school is located on the LC portion and the rest is vacant for future use. The land to the northeast is a Westar substation and two farmsteads on large acreages. A Westar transmission line separates the property from the vacant 80-acre LI property to the east. The remaining quarter-section lying one-fourth mile east of this site is zoned SF-5 and being developed as a single-family residential subdivision. The land to the south is being developed with a medical office facility. A large industrial park zoned LI is located west of Greenwich Road. The industrial park includes some typical office-warehouse types of uses, a retail strip center at the corner of 29th Street North and Greenwich Road, a home improvement center (Star Lumber) and a City of Wichita park complex with soccer fields and baseball fields (on property zoned SF-5).

CASE HISTORY: The property is platted as Greenwich Business Center Addition, recorded November 9, 2007.

ADJACENT ZONING AND LAND USE:

NORTH:	RR, SF-20, LC, MF-18	Agricultural, farmsteads, Westar substation
SOUTH:	SF-20	Vacant
EAST:	LI, SF-5	Transmission line, vacant, single-family residences
WEST:	LI, SF-5	Vacant, retail strip center, soccer and baseball fields, home improvement center, office-warehouse uses

The District Advisory Board Members had the following concerns.

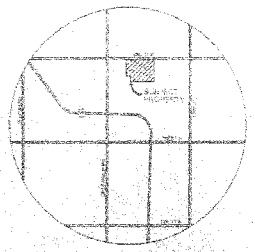
- **Where is project in relation to Circle Elementary?**
- **Where will additional traffic be placed?**
- **Will traffic lanes be reformatted?**
- **Left turns at Webb Road have not been addressed.**
- **Is study ongoing?**
- **Is there a need for development in the area?**
- **Who is typical resident?**

Recommended Action: The DAB voted (8-0) to **accept** the Planning Departments recommendation to approve the project.

Antione Sherfield
Neighborhood Assistant - District II

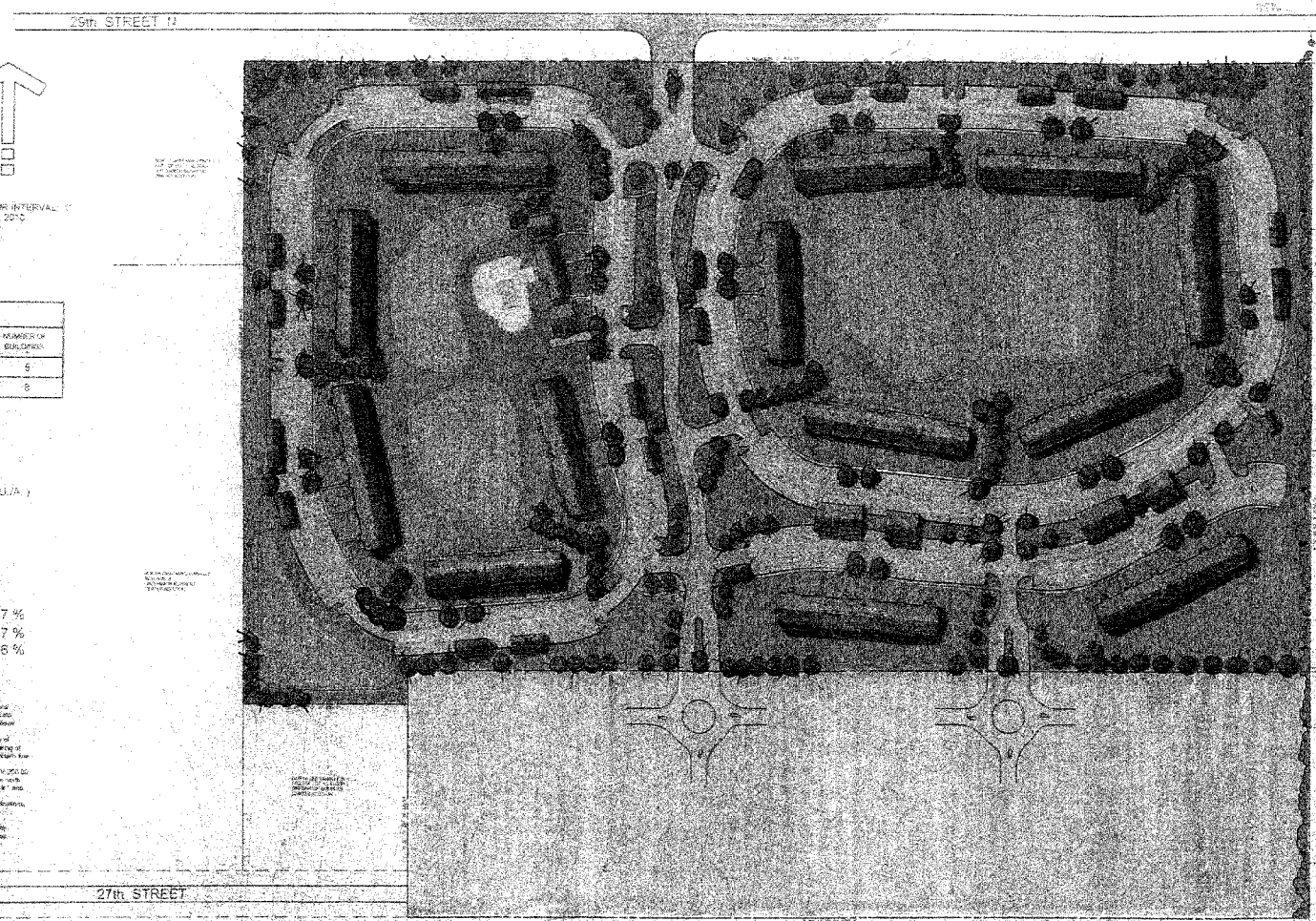
PROPOSED GARDEN APARTMENTS
WICHITA, KANSAS
PRELIMINARY SITE PLAN

PREPARED BY:
EDWARD ROSE PROPERTIES, INC.
6101 NEWPORT ROAD
KALAMAZOO, MICHIGAN 49002
269/323-9454



LOCATION MAP

NONE
CONTOUR INTERVAL: 0'
JUNE 30, 2010



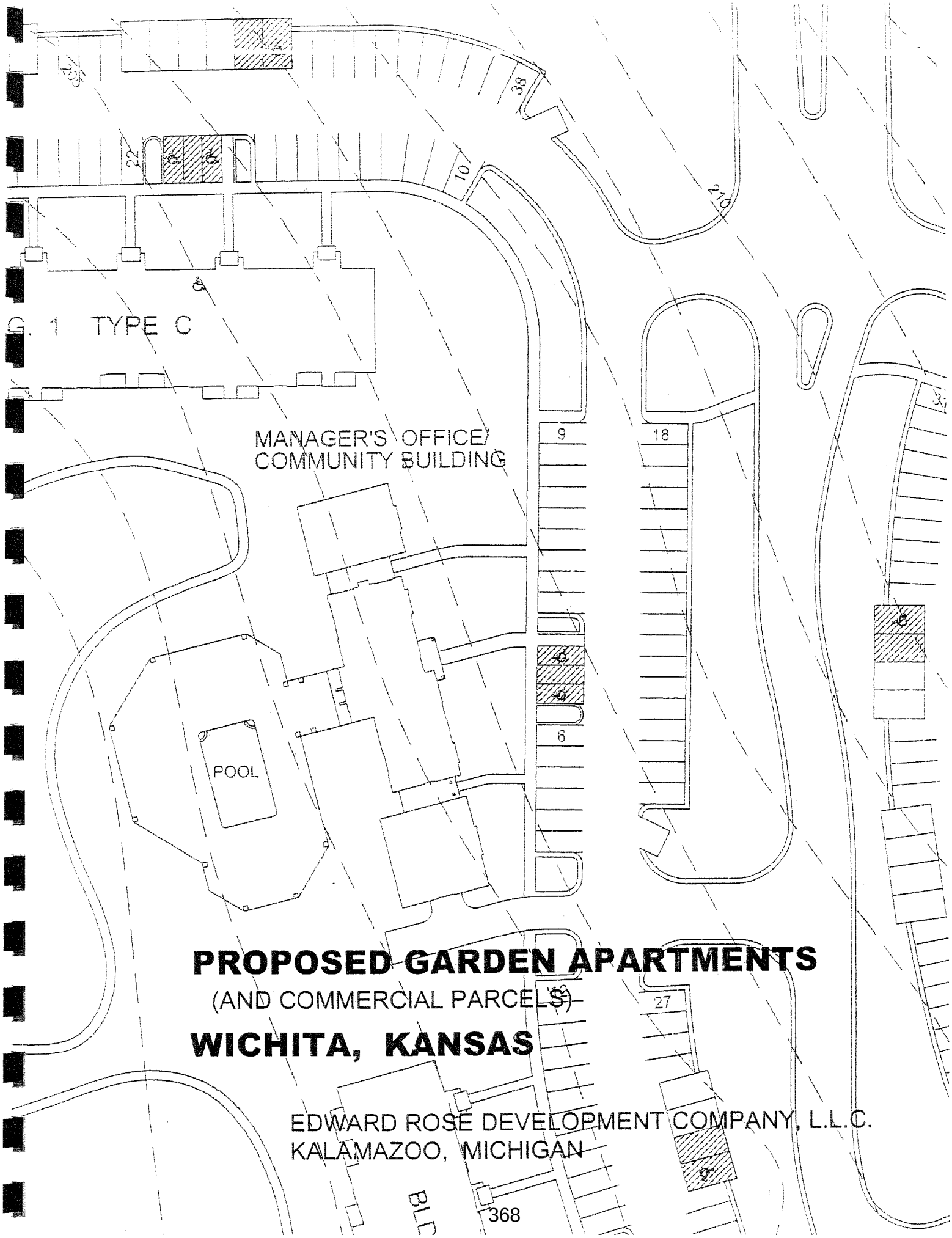
BUILDING SCHEDULE					
BUILDING TYPE	2 BEDROOM	TWO BEDROOM	TOTAL UNITS	TYPE OF BUILDING	NUMBER OF BUILDINGS
B-3	19	11	30	3 STORY	5
C-3	22	14	36	3 STORY	8

NOTE:
[illegible]

TOTAL UNITS ..... 438 (12.82 D.U./A.)
ONE BEDROOM 271
TWO BEDROOM 167
SITE SIZE ..... 45.77 ACRES
APARTMENTS ..... 34.16 ACRES
COMMERCIAL ..... 11.61 ACRES
PARKING SPACES 911
BUILDING COVERAGE ..... 11.87 %
PARKING LOT & DRIVE COVERAGE ..... 21.47 %
OPEN SPACE ..... 66.66 %

Legal Description:

[illegible]



PROPOSED GARDEN APARTMENTS

(AND COMMERCIAL PARCELS)

WICHITA, KANSAS

EDWARD ROSE DEVELOPMENT COMPANY, L.L.C.
KALAMAZOO, MICHIGAN

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COMPANY PROFILE

Edward Rose Development Company, L.L.C. is one of the companies within Edward Rose and Sons Building Enterprises, a privately owned firm engaged in development, construction and management of primarily residential properties. The company is headquartered in Farmington Hills, Michigan with additional offices in Indianapolis, Indiana and in Flint and Kalamazoo, Michigan. The firm has been actively engaged in residential construction without interruption since 1921 and has built over 65,000 single-family and multifamily dwellings.

The majority of new construction at this time is of rental units and is being financed internally or by conventional lending sources. The company acts as developer, general contractor, and property manager and retains ownership of the multifamily developments after completion of construction. The Kalamazoo office of Edward Rose and Sons Building Enterprises will be responsible for this development. The Kalamazoo office has developed or is developing apartment communities in Alabama, Illinois, Indiana, Iowa, Michigan, Missouri, Nebraska, Ohio and Wisconsin.

OBJECTIVE

The information in this booklet and on the accompanying site plan pertains to a 45.77 acre site located approximately 1,000 feet east of Greenwich Road on the south side of 29th Street North within what is known as the Greenwich Business Center Addition.

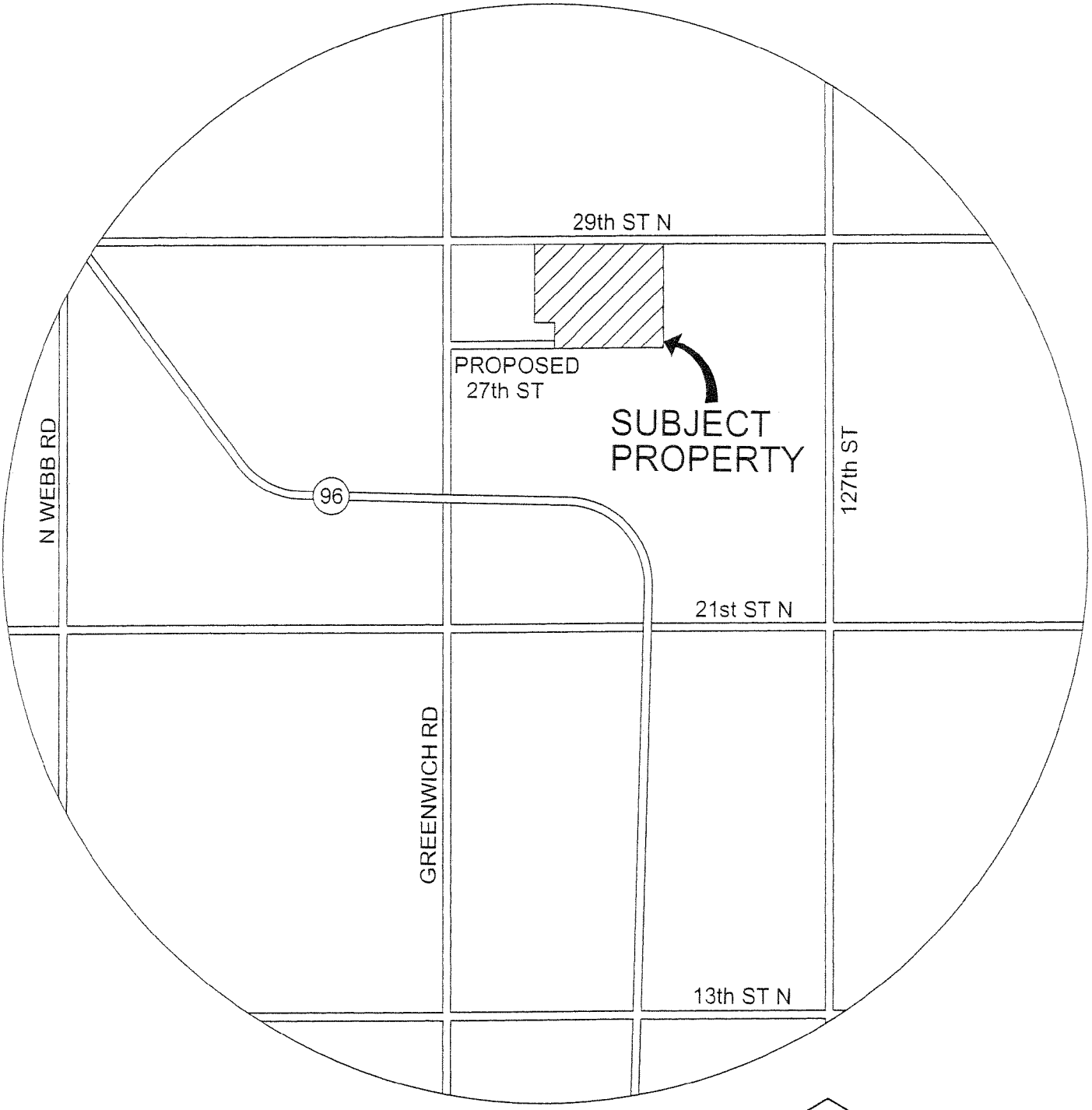
The applicant, Edward Rose Development Company, L.L.C., has entered into an agreement to purchase the property. The present zoning is LI (Limited Industrial).

This request is for a mixed use development. The northerly 34.16 acres with frontage on 29th Street North is proposed for MF-18 (Multifamily) and the southerly 11.61 acres with frontage on (to be built) 27th Street is proposed LC (Limited Commercial).

If this request is approved, Edward Rose Development Company, L.L.C. proposes to develop the multifamily portion of this proposal with one- and two-bedroom apartments. Edward Rose Development Company, L.L.C. will install the infrastructure for the commercial area, however its future development will be by other developer(s).

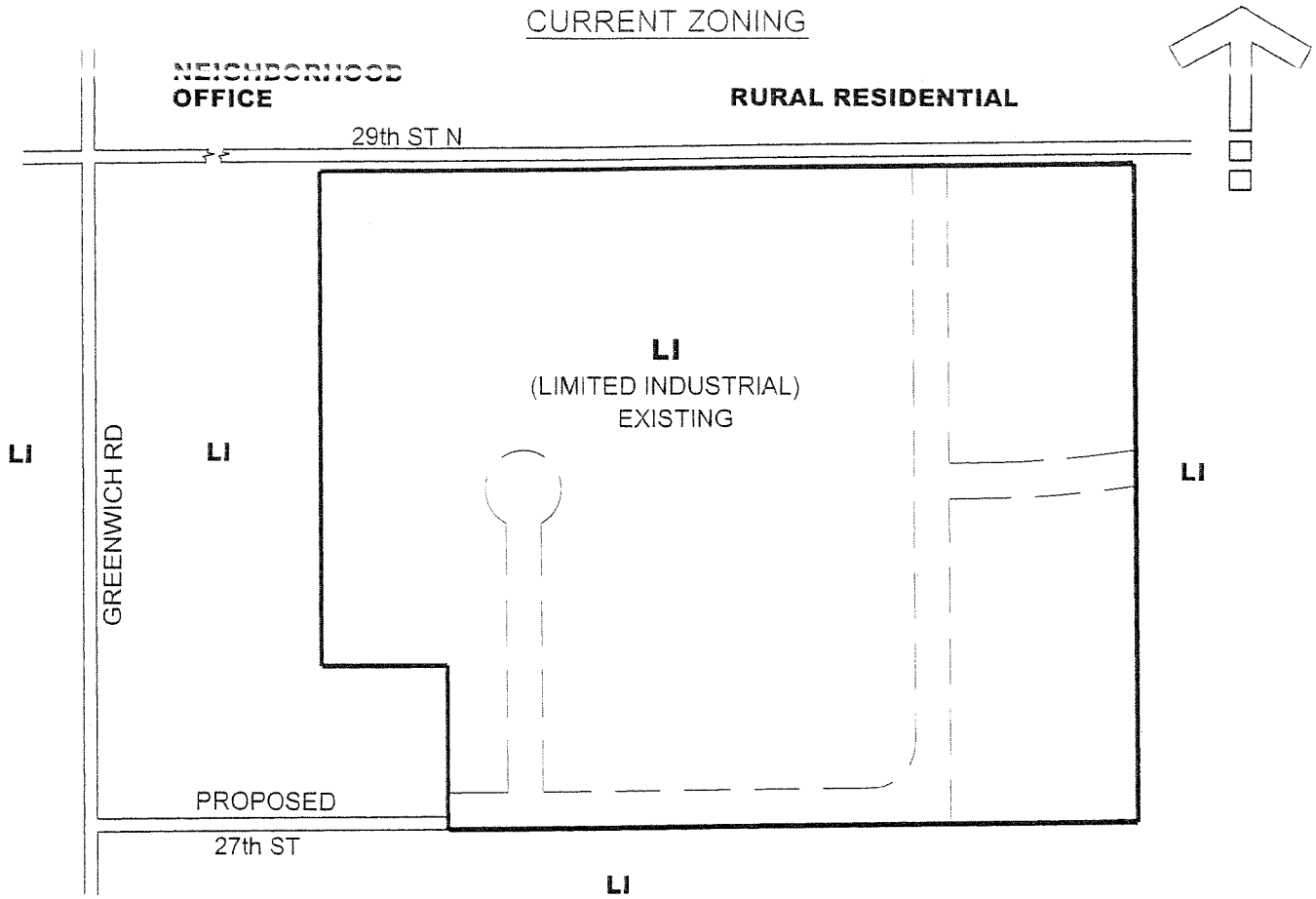
The proposed multifamily development is for 438 units with approximately two-thirds being one-bedroom units and one-third two-bedroom units. Public water and sewer of adequate capacity are available to serve the site.

The multifamily portion of the development will be privately financed. Edward Rose Development Company, L.L.C. will act as developer, general contractor, and property manager and will remain the owner of the multifamily development after completion of construction.

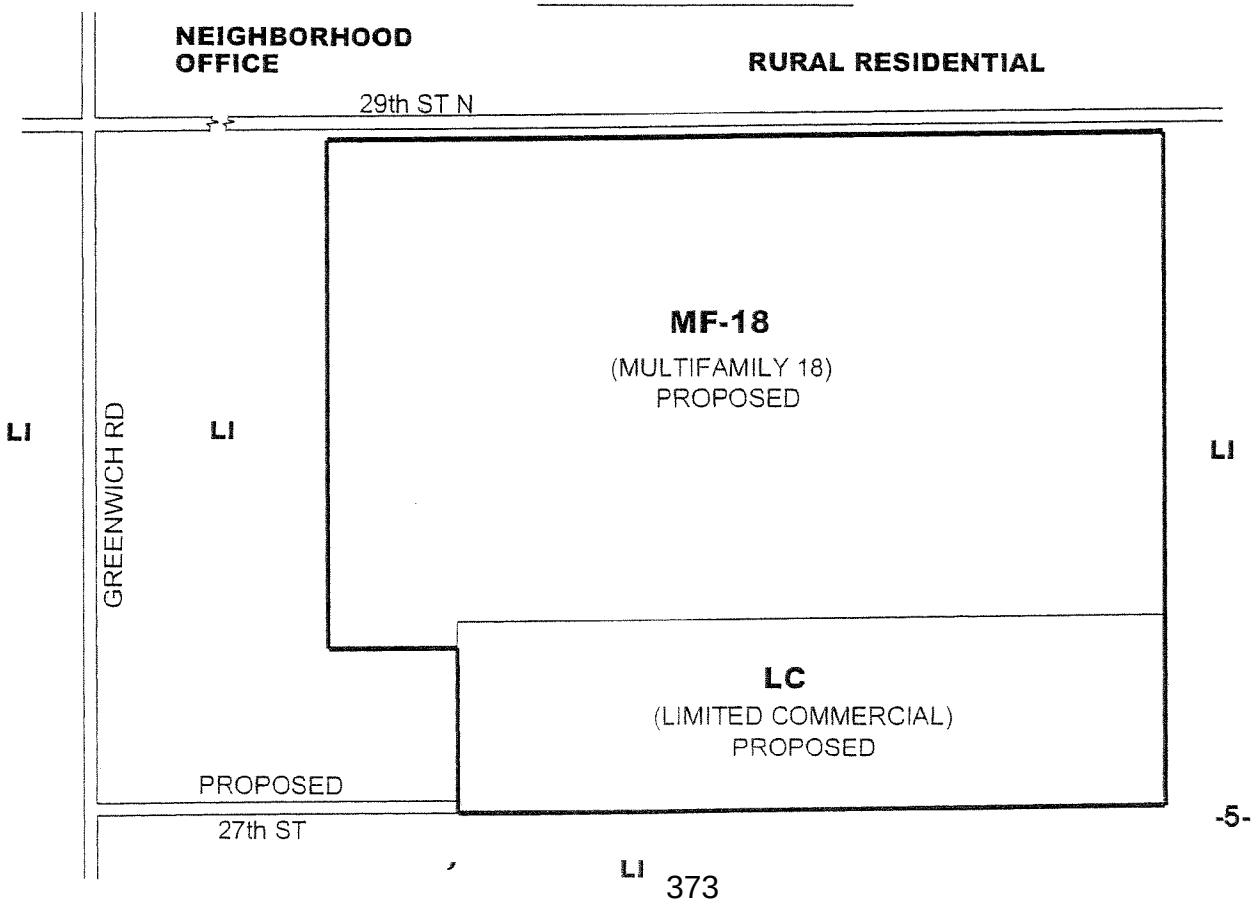


LOCATION MAP

CURRENT ZONING



PROPOSED ZONING



SITE INFORMATION

A site, with its physical attributes and its relationship to its environs, suggests--often dictates--how that site should be developed. Therefore, before a conceptual design is done, a site inventory and a site analysis are undertaken and studied.

A brief description of each of these processes follows.

SITE INVENTORY

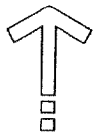
The site is a rectangular shaped parcel of 45.77 acres with a 250' x 320' lot held out of the southwest corner. Frontage along 29th Street North is 1,615.17 feet with a north-south depth of 1,284 ± feet. It is part of the Greenwich Business Center Addition with the westerly edge of the property beginning approximately 1,000 feet east of Greenwich Road.

The site slopes generally from the northeast to the southwest with a total topographical relief of about 30 feet. The site gradually slopes in this direction with grades in the 1.5 - 3.0% range. There is a more pronounced swale area in the southeast corner but again slopes are in the 1.5 - 3.0% range.

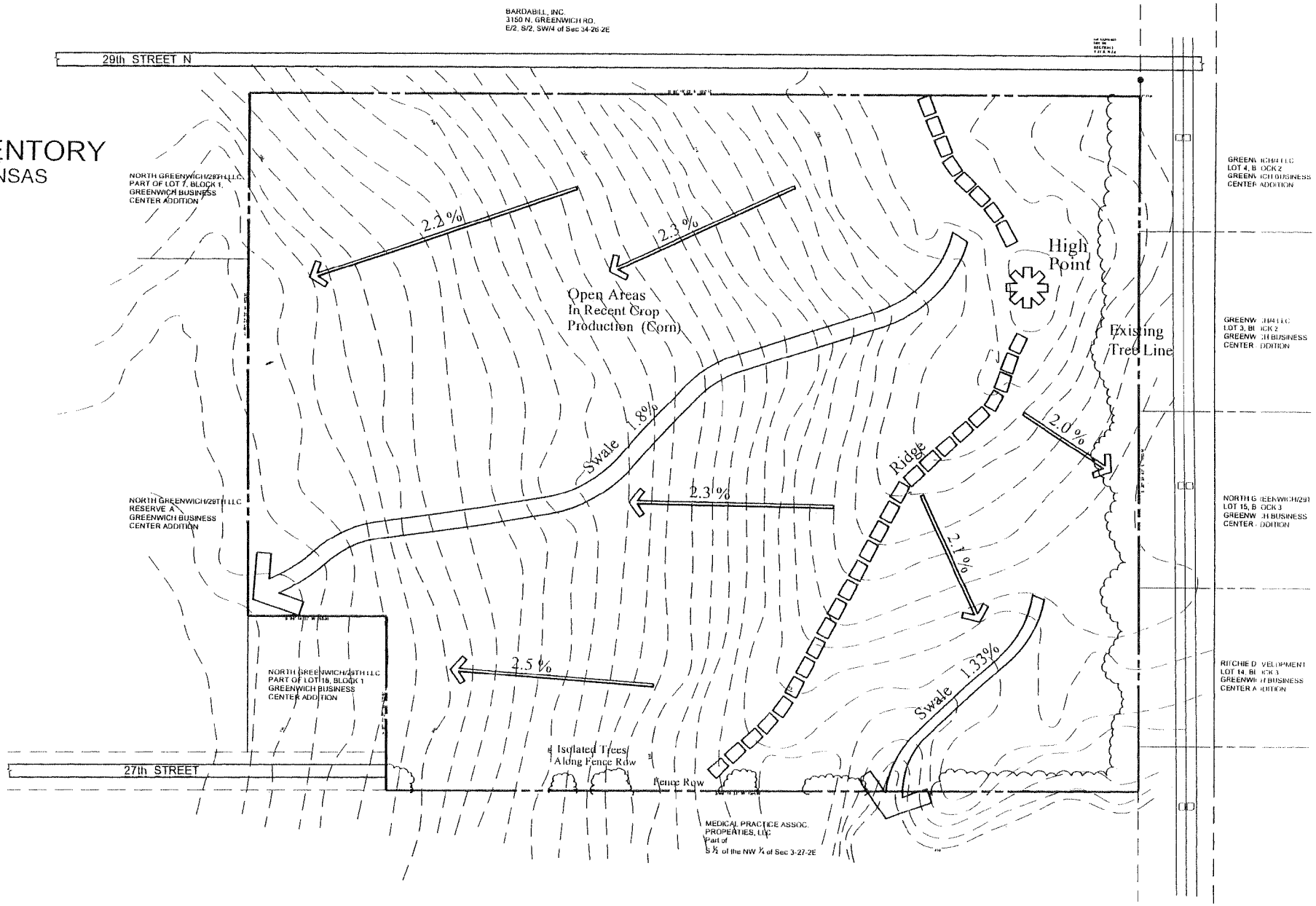
High point of the property is in the northeast corner approximately 350 feet south of 29th Street North. A large tree line runs the length of the east property line with heights in the 40 - 50 foot range. Off the property just east of this tree line is a high-tension power line and just northeast of the property is a large electrical substation. The south property line is defined by a fence row with scattered volunteer tree growth. Again, off the property there is a wooded area near the southwest corner where the storm water flows to and through.

Utilities are available to the site.

SITE INVENTORY
WICHITA, KANSAS



NO SCALE



SITE ANALYSIS

The site is located on the northeast side of Wichita. Access to Highway 96 via 21st Street North and consequently other highways is very good. It is anticipated that an ingress/egress to Greenwich Road will be constructed. Major shopping and entertainment areas are within a few miles of the site.

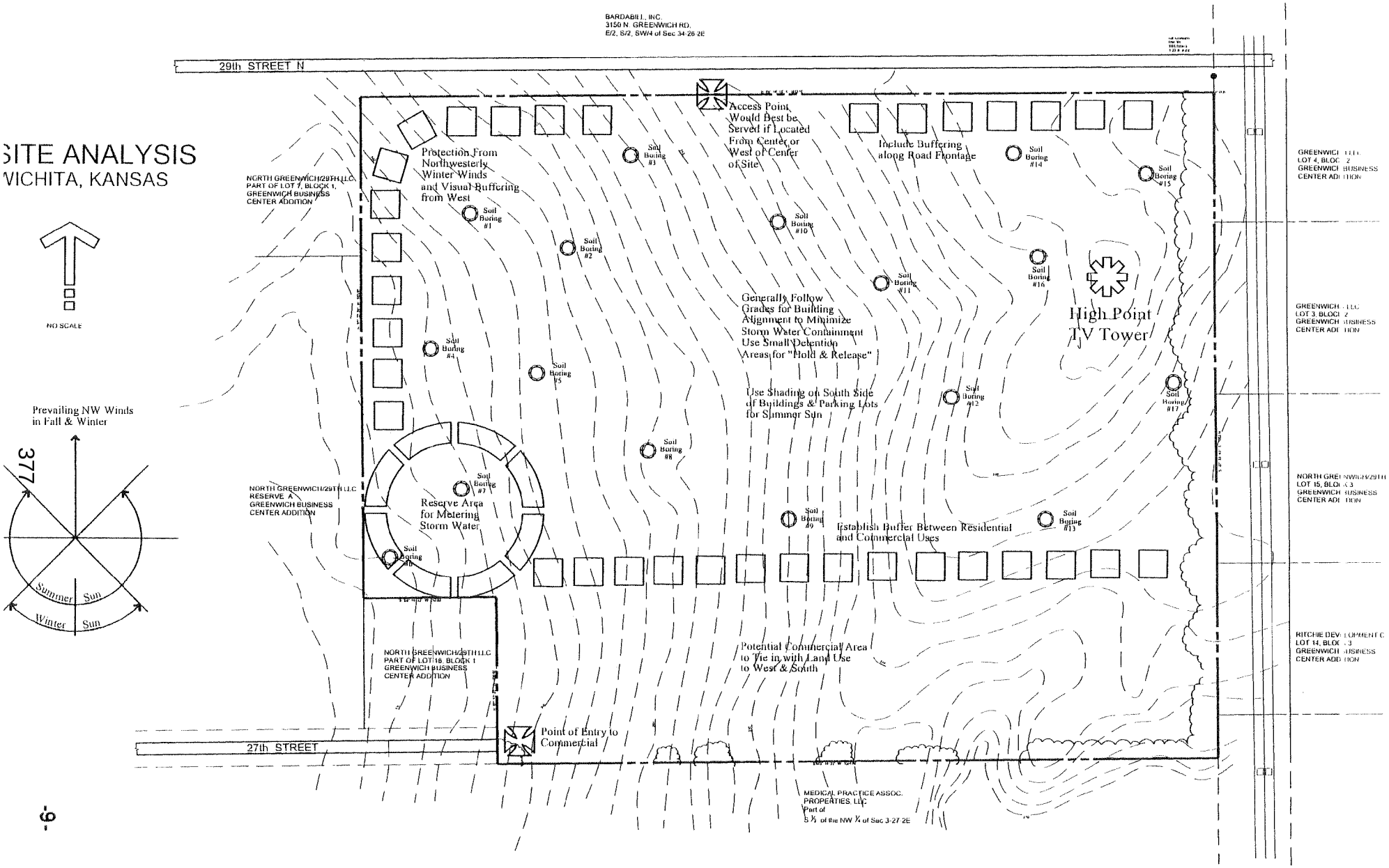
The wood line along the east property line has some weak-wooded trees in it. The trees individually are not that desirable but collectively provide a good natural dividing line from future uses to the east. The property to the south is owned by KU Medical Practice Association. The land is presently vacant, but plans are for a future medical facility. 27th Street which would abut the property is not yet constructed. A similar use along the north side of this future road might be appropriate.

Storm water flows will influence the building orientation. Although not dominant, the general flow for storm water should be incorporated into the design.

The site has been in agricultural production for many years. A preliminary environmental assessment indicates that the site is free of contamination. Soil borings indicate the soil structure to be suitable for the proposed buildings.

The parcel is zoned LI (Limited Industrial). The city zoning classification of MF-18 would allow a typical Edward Rose Development Company, L.L.C. multifamily development.

SITE ANALYSIS
WICHITA, KANSAS



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SITE DEVELOPMENT

The proposed site plan is for a mixed use.

- The northerly 3/4 of the property is proposed for Multifamily.
- The southerly 1/4 of the property is proposed for Limited Commercial.

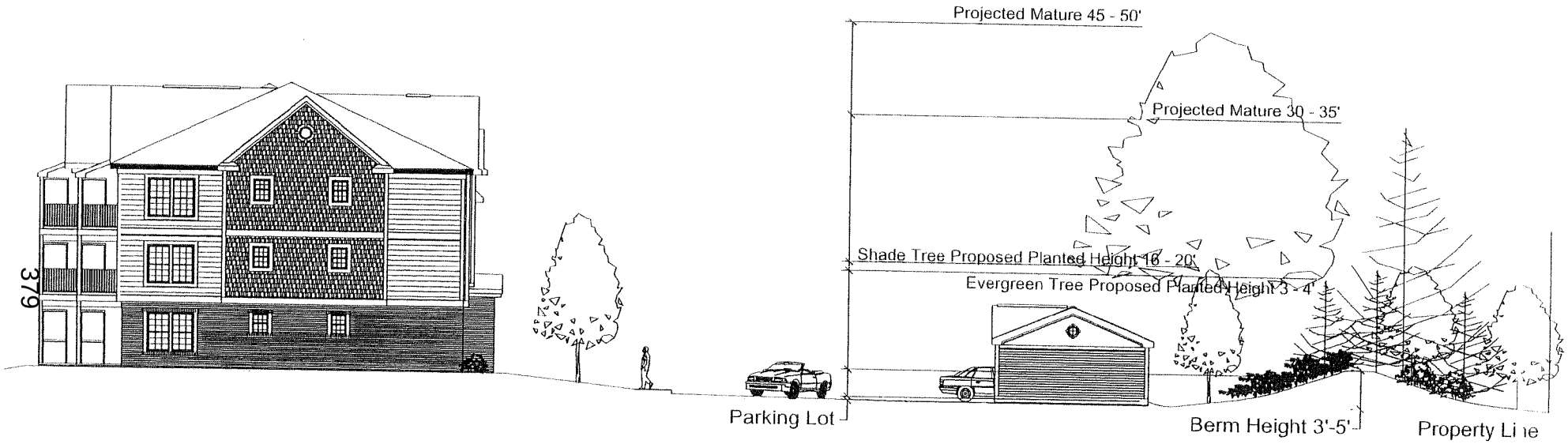
As stated in the objective, Edward Rose Development Company, L.L.C. would develop the multifamily portion of the site and is requesting rezoning for that purpose. The Limited Commercial portion would likely be sold at a future date to someone with expertise in that area. With that in mind, the following pertains only to the multifamily portion of the development:

The site plan for the multifamily portion is for 438 units on 34.16 acres for a density of 12.82 units per acre. There will be 13 buildings each containing 30 or 36 units. The 438 units will consist of 271 one-bedroom apartments (62%) and 167 two-bedroom apartments (38%). The apartment buildings will be three-stories with entries on the ground floor. The buildings are oriented such that they allow for the natural drainage of storm water, are "clustered" around open spaces or aligned to take advantage of water features in rain garden areas. Storm water will be collected on site and held in ponds and/or directed to rain gardens which will act as on site storm water controls. Storm water will not leave the site at a rate greater than predevelopment.

Extensive earth berms and landscaping will be used for screening of parking lots for vehicles both within the site and off site.

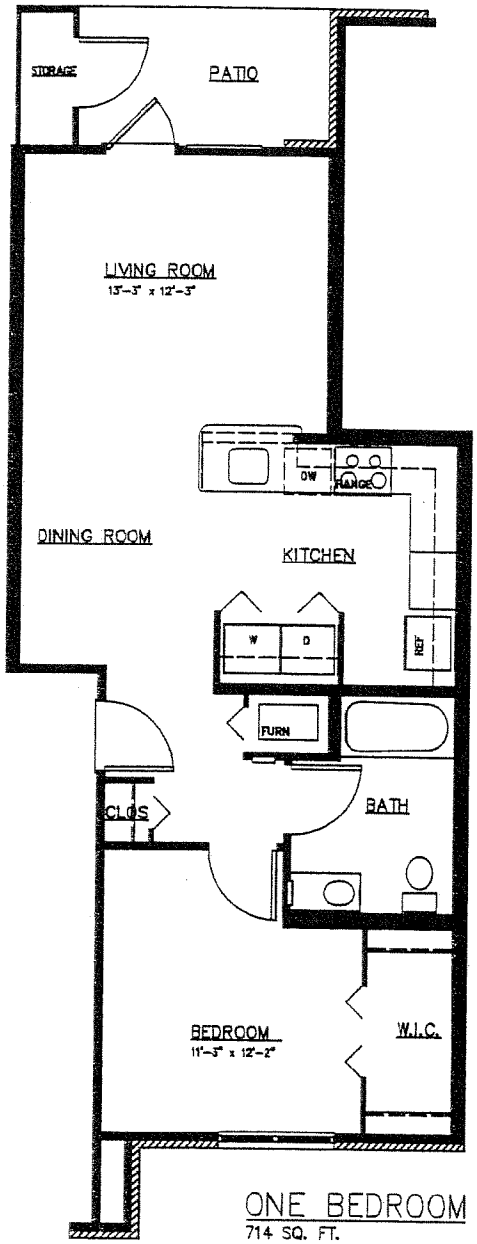
Building coverage for the multifamily portion of the site will be 11.87%, parking lots and drives will cover 21.47% and the remaining 66.66% will be maintained open space or left natural where possible and practical.

TYPICAL BERM DETAIL

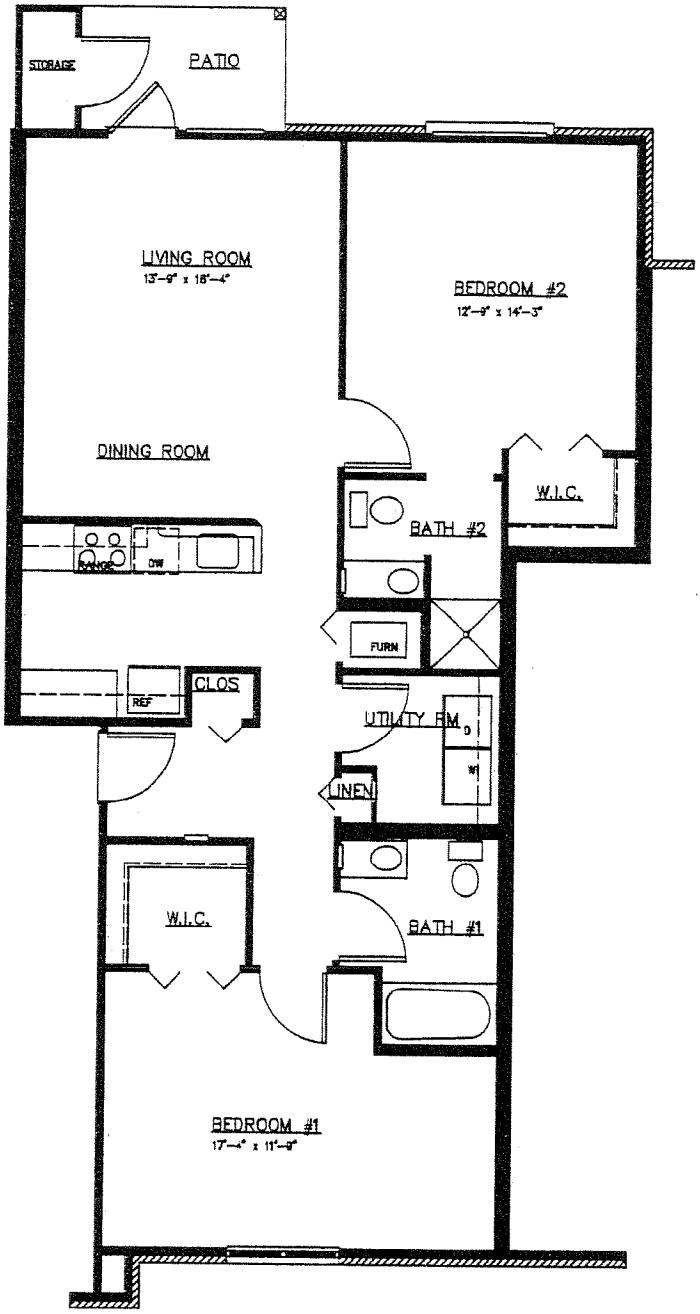


This illustration demonstrates:
- the use of earth berms to screen parked cars from view.
- the spatial relationship between the building, parking lots and typical property line.

FIRST LEVEL FLOOR PLANS

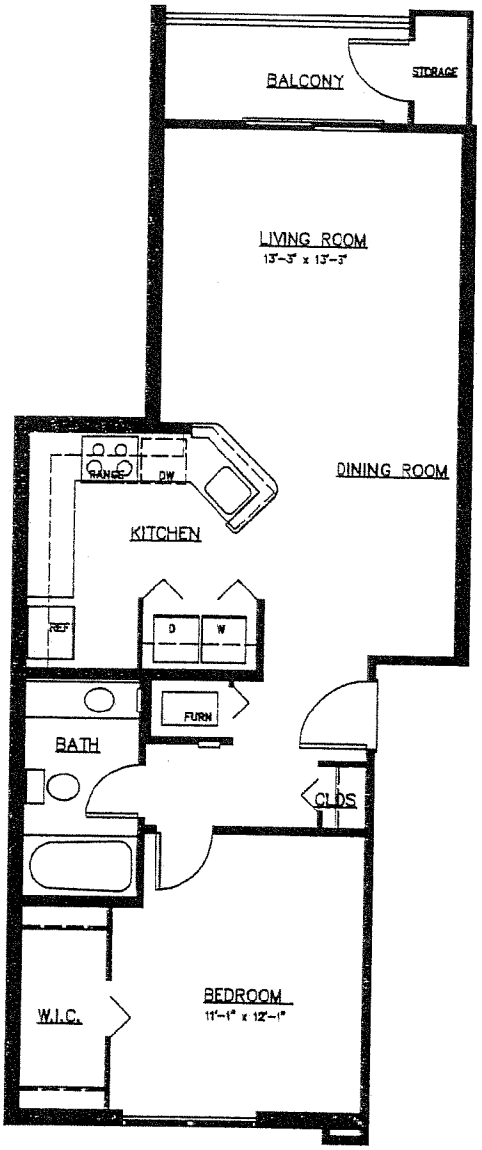


ONE BEDROOM
714 SQ. FT.

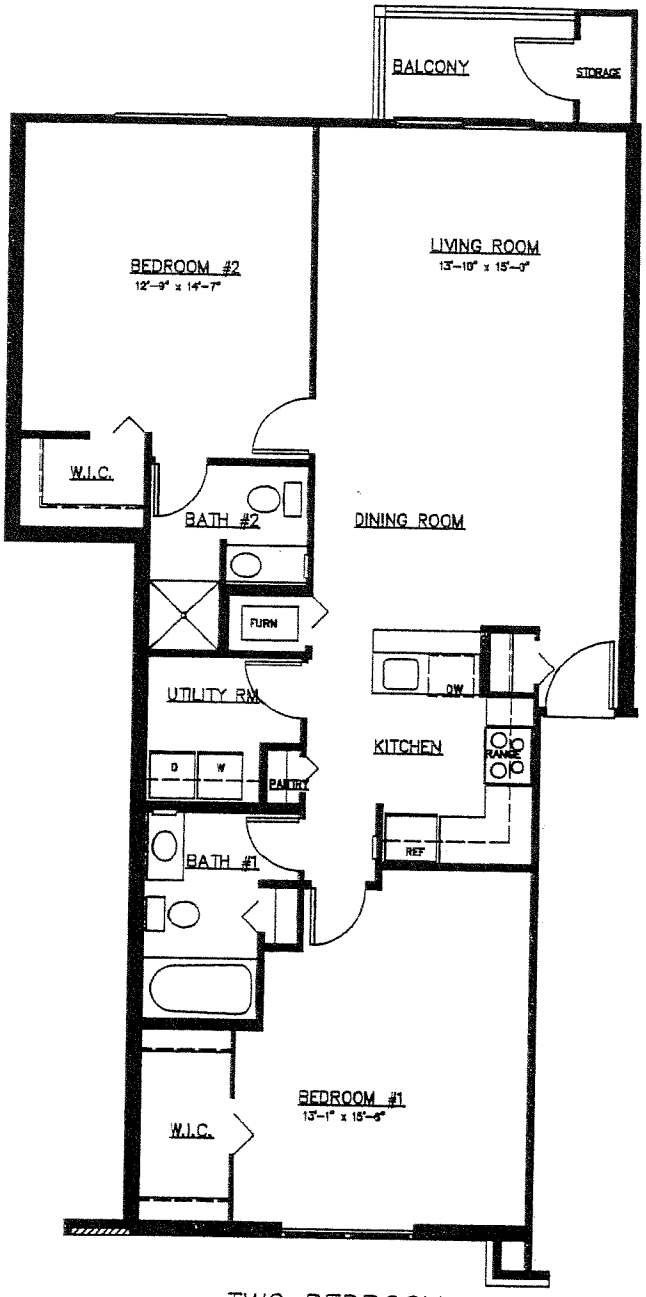


TWO BEDROOM
1104 SQ. FT.

SECOND/THIRD LEVEL FLOOR PLANS



ONE BEDROOM
724 SQ. FT.

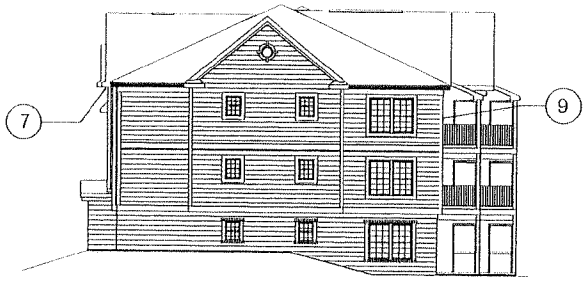


TWO BEDROOM
1104 SQ. FT.

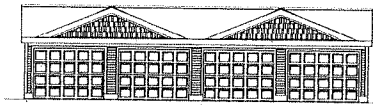
TYPICAL ELEVATIONS AND EXTERIOR MATERIALS

FRONT ELEVATION

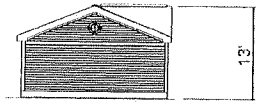
1. FIBERGLASS SHINGLES
2. BRICK
3. CULTURED STONE
4. VINYL SIDING
5. CEDAR SHAKES
6. EXTERIOR TRIM BOARDS
7. EXTERIOR PANEL SOFFITS
8. THERMALLY BROKEN SINGLE SLIDING EXTERIOR WINDOWS
9. SGD-R2071 x 96 RATED SLIDING GLASS DOORS



END ELEVATION



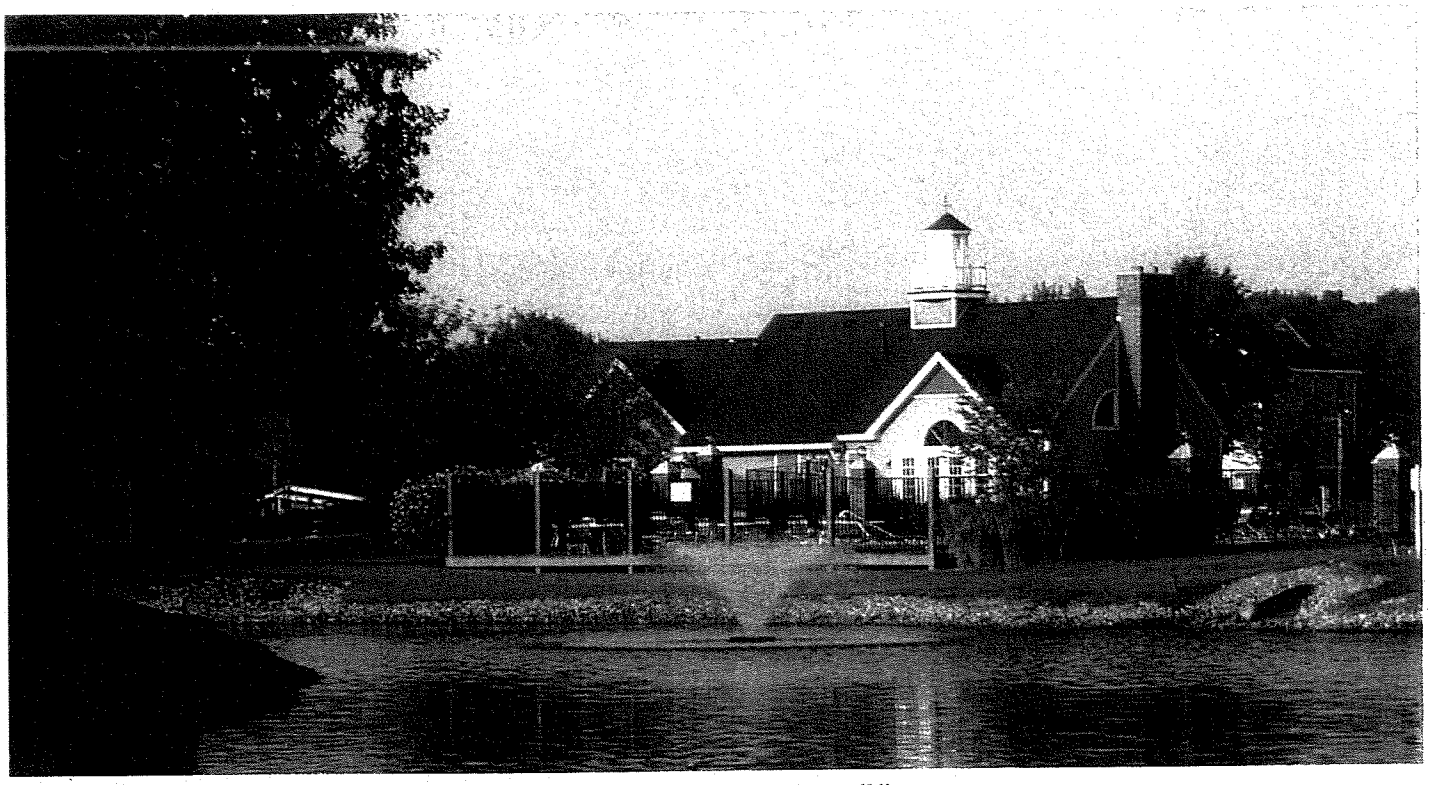
GARAGE ELEVATION



SIDE ELEVATION

PHOTOGRAPHS

The following photographs are of other Edward Rose developments.



NORTH POINTE (Elkhart, IN)

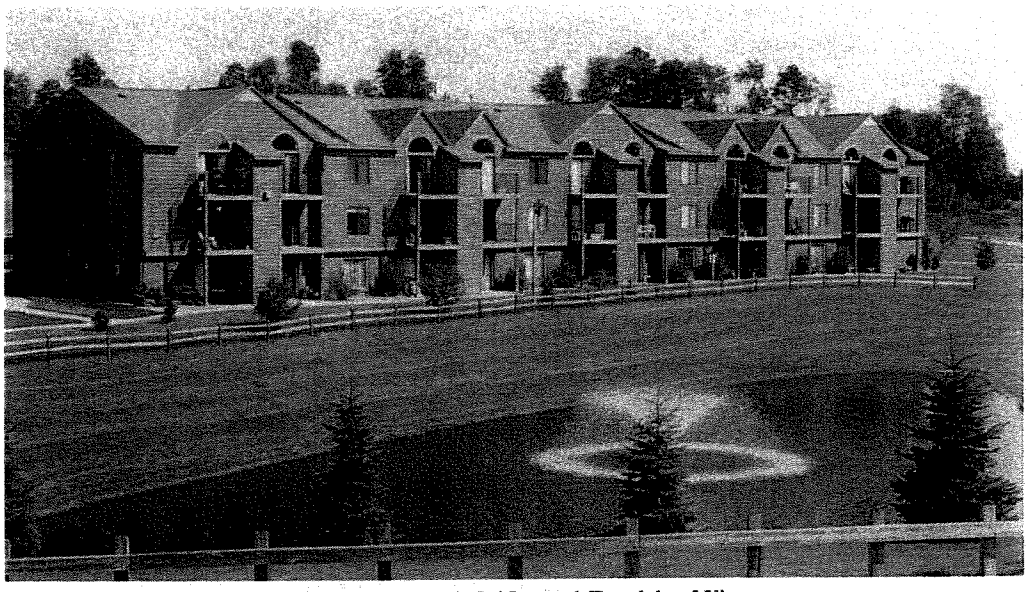
LIBERTY MILLS (Fort Wayne, IN)

LIBERTY MILLS (Fort Wayne, IN)

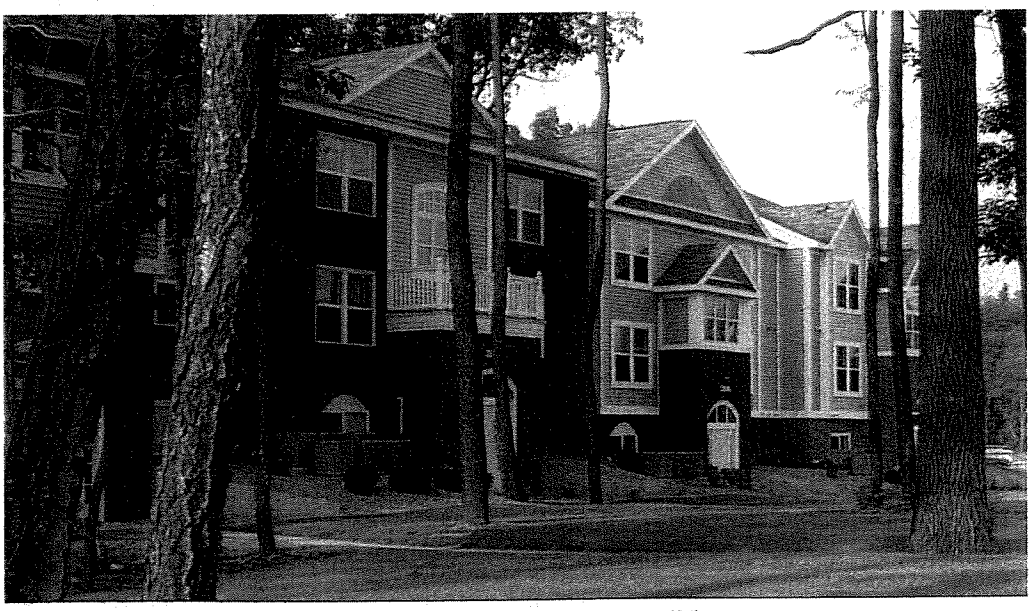
GREEN RIDGE (Grand Rapids, MI)

ORCHARD LAKES (Toledo, OH)

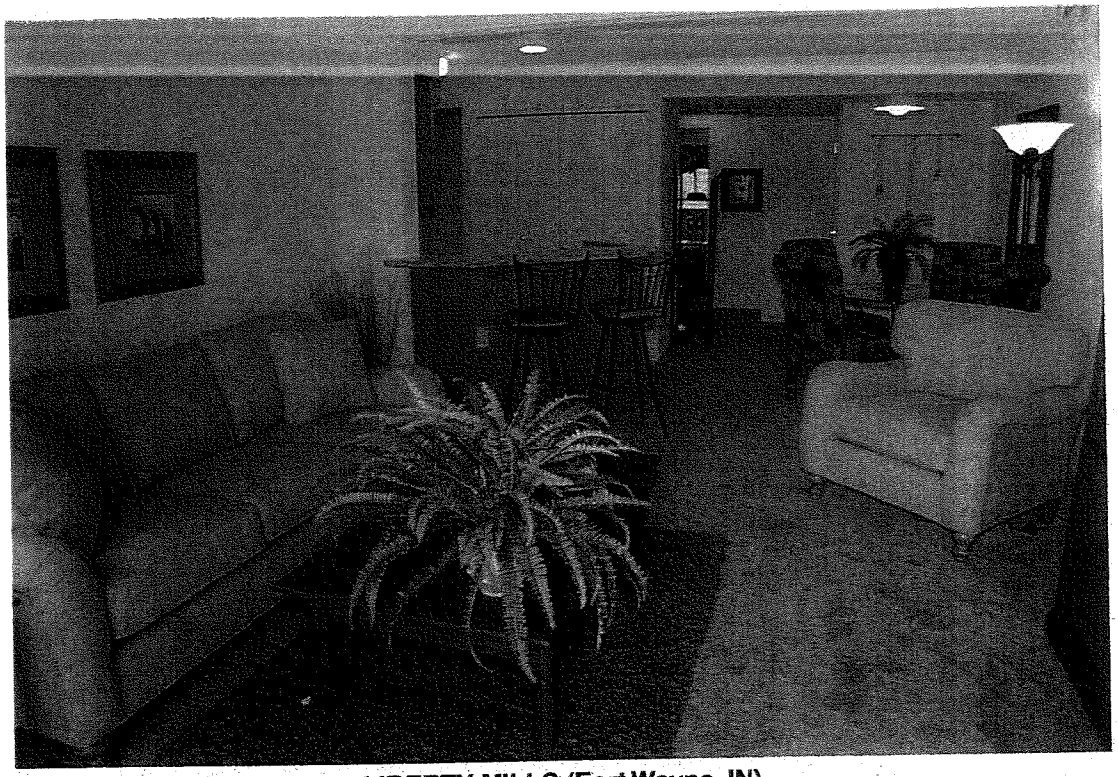
GULL PRAIRIE (Kalamazoo, MI)



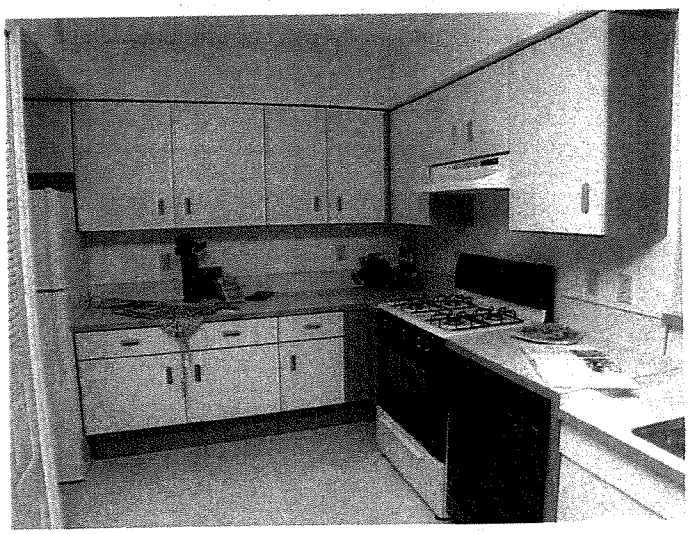
GREEN RIDGE (Grand Rapids, MI)



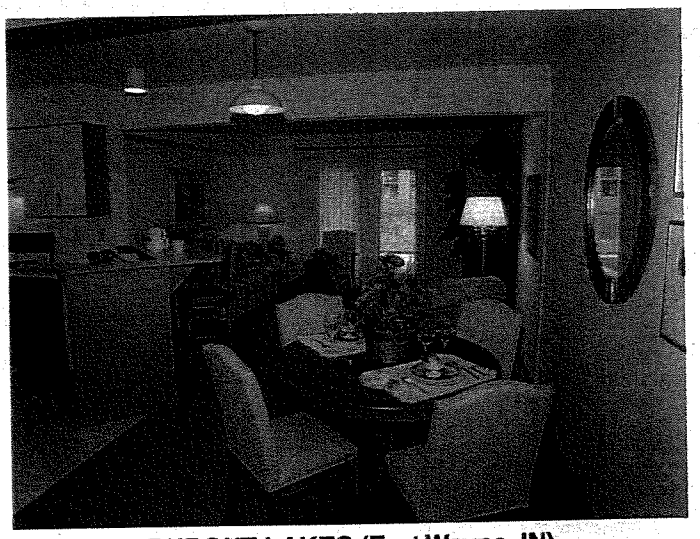
THE HIGHLANDS (Elkhart, IN)



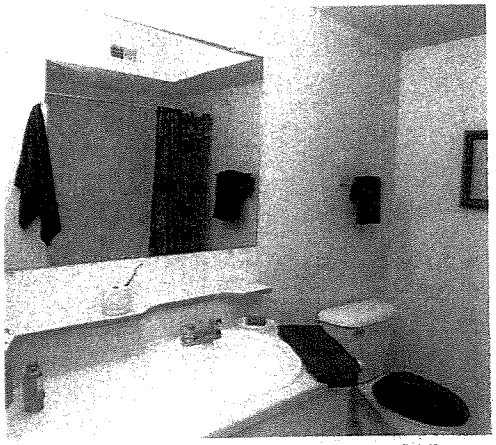
LIBERTY MILLS (Fort Wayne, IN)



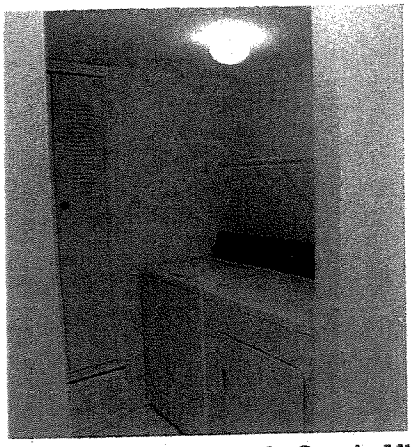
BRENTWOOD PARK (LaVista, NE)



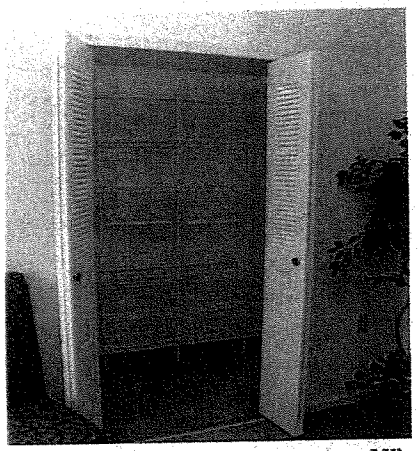
DUPONT LAKES (Fort Wayne, IN)



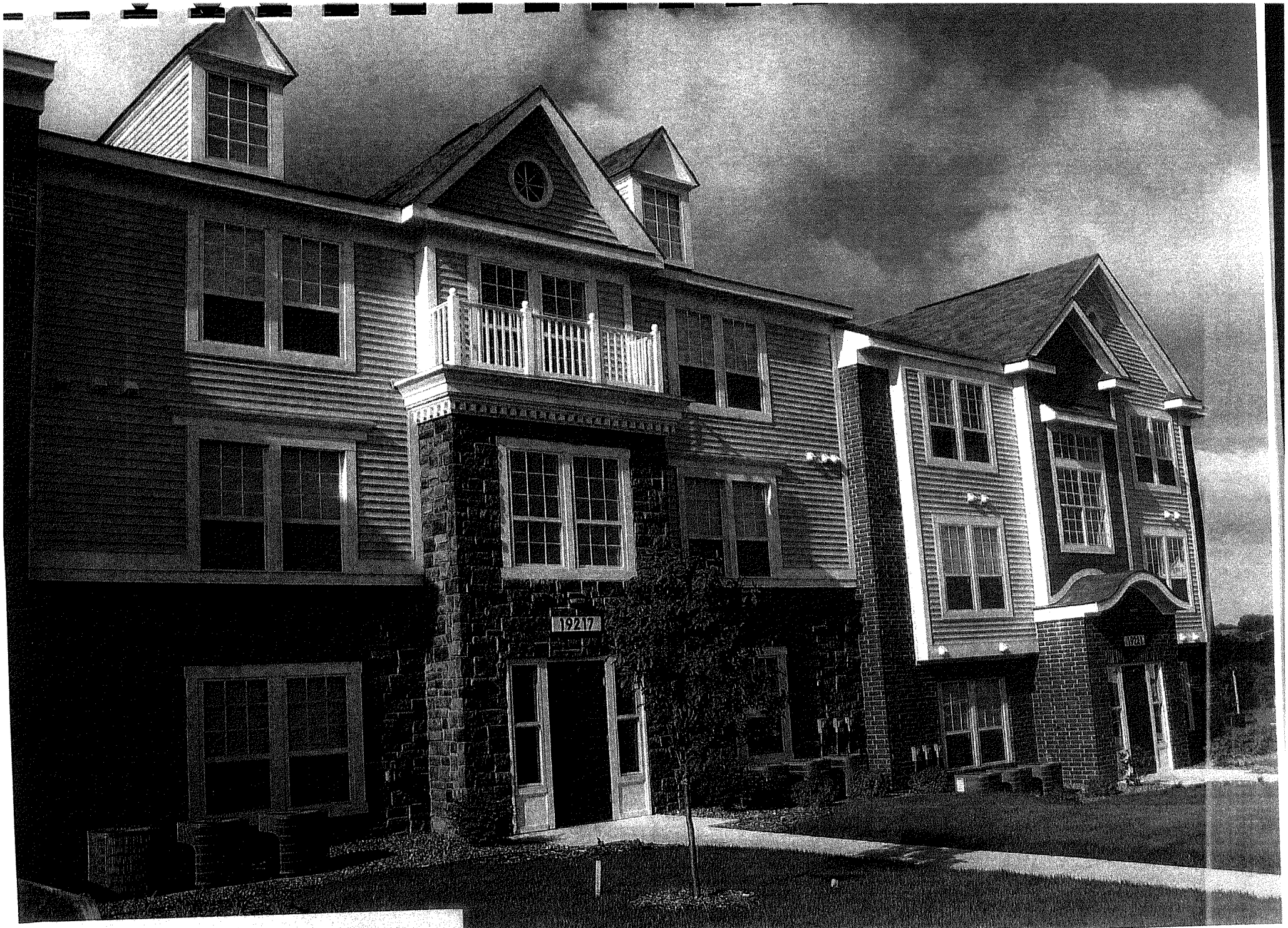
ORCHARD LAKES (Toledo, OH)



GLENN VALLEY (Battle Creek, MI)



GULL PRAIRIE (Kalamazoo, MI)



West Hampton Park Apartments

TYPICAL RESIDENT CHARACTERISTICS

What type of people reside at a typical Edward Rose and Sons Building Enterprises apartment development? The following pertains to West Hampton Park Apartments in Elkhorn (Omaha), Nebraska.

PERSONAL INCOME

Annual Income

Under $20,800	31.4%	of residents
$20,801 through $31,200	31.9%	" "
$31,201 through $41,600	17.3%	" "
$41,601 through $62,400	12.3%	" "
Over $62,401	7.1%	" "

Average Personal Income: $33,637
Average Household Income: $45,368

OCCUPATION

Professional and Technical	13.2%	of residents
Teachers	6.4%	" "
Managers and Administrators	22.9%	" "
Sales Workers	9.5%	" "
Clerical	7.0%	" "
Craftsmen and Laborers	21.0%	" "
Retired	3.2%	" "
Service Workers	13.5%	" "
Other	3.3%	" "

AGE

18-19 years	3.3%	of residents
20-24 years	35.6%	" "
25-29 years	22.4%	" "
30-34 years	9.0%	" "
35-39 years	6.6%	" "
40-44 years	4.0%	" "
45-49 years	4.2%	" "
50+ years	14.9%	" "

Average Age of Adult Residents: 32.27 Years
Median Age of Adult Residents: 27.00 Years

TYPICAL RESIDENT CHARACTERISTICS

What type of people reside at a typical Edward Rose and Sons Building Enterprises apartment development? The following pertains to Autumn Lakes Apartments in Mishawaka, Indiana.

PERSONAL INCOME

Annual Income

Under $20,800	25.1%	of residents
$20,801 through $31,200	30.4%	" "
$31,201 through $41,600	20.4%	" "
$41,601 through $62,400	16.3%	" "
Over $62,401	7.8%	" "

Average Personal Income:	$34,732
Average Household Income:	$46,940

OCCUPATION

Professional and Technical	14.6%	of residents
Teachers	5.2%	" "
Managers and Administrators	21.5%	" "
Sales Workers	7.2%	" "
Clerical	9.2%	" "
Craftsmen and Laborers	23.2%	" "
Retired	8.2%	" "
Service Workers	3.0%	" "
Other	7.9%	" "

AGE

18-19 years	.3%	of residents
20-24 years	19.2%	" "
25-29 years	28.2%	" "
30-34 years	9.9%	" "
35-39 years	6.4%	" "
40-44 years	6.1%	" "
45-49 years	5.2%	" "
50+ years	24.7%	" "

Average Age of Adult Residents:	38.5	Years
Median Age of Adult Residents:	30.0	Years

TYPICAL RESIDENT CHARACTERISTICS

What type of people reside at a typical Edward Rose and Sons Building Enterprises apartment development? The following pertains to Tall Oaks Apartments in Kalamazoo, Michigan.

PERSONAL INCOME

Annual Income

Under $20,800	26.6%	of residents
$20,801 through $31,200	26.6%	" "
$31,201 through $41,600	25.5%	" "
$41,601 through $62,400	11.7%	" "
Over $62,401	9.6%	" "

Average Personal Income:	$35,963
Average Household Income:	$50,835

OCCUPATION

Professional and Technical	13.8%	of residents
Teachers	11.7%	" "
Managers and Administrators	23.4%	" "
Sales Workers	7.5%	" "
Clerical	12.8%	" "
Craftsmen and Laborers	19.1%	" "
Retired	1.1%	" "
Service Workers	2.1%	" "
Other	8.5%	" "

AGE

18-19 years	0.0%	of residents
20-24 years	33.6%	" "
25-29 years	29.0%	" "
30-34 years	10.3%	" "
35-39 years	4.7%	" "
40-44 years	2.8%	" "
45-49 years	5.6%	" "
50+ years	14.0%	" "

Average Age of Adult Residents:	32.1	Years
Median Age of Adult Residents:	27.0	Years

ESTIMATED POPULATION

The following estimates are based on surveys of similar units conducted by members of the Edward Rose and Sons Kalamazoo office staff.

The apartment communities included in the census are owned and managed by the firm.

The following estimated population for the proposed development is based on 438 completed apartment units (271 one-bedroom and 167 two-bedroom apartment units).

TOTAL ESTIMATED POPULATION: 665

Adults:	600
Preschool children:	29
Grades K-5 children:	21
Grades 6-8 children:	7
Grades 9-12 children:	8

The census data used to derive these population estimates is included on pages 20 - 22.

FRONT-TO-BACK APARTMENTS CENSUS -- ONE BEDROOM UNITS

COMMUNITY	# OF UNITS OCCUPIED	# OF PEOPLE	HOUSEHOLD SIZE	ADULTS	CHILDREN	PRE SCHOOL	School Children GRADES K-5	GRADES 6-8	GRADES 9-12
Arbor Lakes	256	325	1.27	301	24	9	6	4	5
Autumn Lakes *	525	691	1.32	670	21	6	5	3	7
Brentwood Park	187	245	1.31	242	3	3	0	0	0
Byron Lakes	336	424	1.26	419	5	3	1	1	0
Canal Club	249	307	1.23	306	1	1	0	0	0
Canal 2	80	94	1.18	94	0	0	0	0	0
The Crossings	359	430	1.20	423	7	3	3	0	1
Dupont Lakes	194	247	1.27	235	12	7	2	1	2
Emerald Park	134	155	1.16	155	0	0	0	0	0
Foxwood	117	149	1.27	148	1	1	0	0	0
Glenn Valley	212	254	1.20	246	8	1	4	2	1
Green Ridge	392	466	1.19	462	4	0	2	2	0
Gull Prairie	125	164	1.31	162	2	0	1	0	1
Gull Run	407	495	1.22	489	6	4	1	0	1
Hampton Lakes	127	153	1.20	150	3	1	0	1	1
Heatherwood	184	242	1.32	237	5	4	0	1	0
The Highlands	184	238	1.29	236	2	1	1	0	0
Huntington Cove	359	477	1.33	461	16	4	6	5	1
Hurwich Farms	239	276	1.15	271	5	3	1	0	1
Indian Lakes	547	633	1.16	622	11	6	4	0	1
Liberty Mills	109	131	1.20	130	1	0	1	0	0
North Pointe	192	241	1.26	234	7	2	3	0	2
Oak Shores	311	362	1.16	359	3	0	1	1	1
Orchard Lakes	147	189	1.29	187	2	1	1	0	0
Pine Knoll	319	365	1.14	361	4	2	1	1	0
South Bridge	363	456	1.26	440	16	6	8	1	1
Tall Oaks *	43	62	1.44	62	0	0	0	0	0
W. Hampton Pk.	283	382	1.35	374	9	4	2	1	2
Windmill Lakes	215	280	1.30	272	8	4	2	1	1
TOTALS	**7,195**	**8,933**	**1.24**	**8,748**	**186**	**76**	**56**	**25**	**29**

* rev. 2008

CENSUS DATA

FRONT-TO-BACK APARTMENTS CENSUS -- TWO BEDROOM UNITS

COMMUNITY	# OF UNITS OCCUPIED	# OF PEOPLE	HOUSEHOLD SIZE	ADULTS	CHILDREN	PRE SCHOOL	School Children GRADES K-5	GRADES 6-8	GRADES 9-12
Arbor Lakes	145	305	2.10	243	62	28	20	8	6
Autumn Lakes *	314	634	2.02	516	118	44	32	16	26
Brentwood Park	117	253	2.16	210	43	29	12	0	2
Byron Lakes	190	375	1.97	320	55	34	13	4	4
Canal Club	144	249	1.73	217	32	15	16	1	0
Canal 2	41	72	1.76	65	7	4	1	0	2
The Crossings	218	415	1.90	348	67	26	24	10	7
Dupont Lakes	119	240	2.02	193	47	20	18	3	6
Emerald Park	83	158	1.90	138	20	10	7	1	2
Foxwood	66	134	2.03	114	20	8	8	3	1
Glenn Valley	118	225	1.91	176	49	19	19	7	4
Green Ridge	197	375	1.90	332	43	25	10	3	5
Gull Prairie	71	130	1.83	116	14	6	3	3	2
Gull Run	223	438	1.96	360	78	30	31	8	9
Hampton Lakes	69	110	1.59	101	9	4	1	2	2
Heatherwood	84	175	2.08	138	37	10	15	7	5
The Highlands	125	282	2.26	209	73	32	23	8	10
Huntington Cove	201	418	2.08	321	97	41	29	13	14
Hurwich Farms	121	193	1.60	181	12	4	7	0	1
Indian Lakes	319	589	1.85	487	102	42	32	8	20
Liberty Mills	78	143	1.83	119	24	14	8	1	1
North Pointe	142	310	2.18	231	79	37	22	8	12
Oak Shores	175	318	1.82	275	43	19	15	6	3
Orchard Lakes	81	157	1.94	150	7	3	3	0	1
Pine Knoll	195	382	1.96	294	88	31	35	12	10
South Bridge	230	483	2.10	374	109	60	34	9	6
Tall Oaks *	24	51	2.13	45	6	3	1	0	2
W. Hampton Pk.	170	372	2.19	295	76	38	21	9	8
Windmill Lakes	126	254	2.02	215	39	21	11	5	2
TOTALS	**4,186**	**8,240**	**1.97**	**6,783**	**1,456**	**657**	**471**	**155**	**173**

* rev. 2008

CENSUS DATA

FRONT-TO-BACK APARTMENTS CENSUS -- ONE AND TWO BEDROOM SUMMARY

COMMUNITY	# OF UNITS OCCUPIED	# OF PEOPLE	HOUSEHOLD SIZE	ADULTS	CHILDREN	PRE SCHOOL	School Children GRADES K-5	GRADES 6-8	GRADES 9-12
Arbor Lakes	401	630	1.57	544	86	37	26	12	11
Autumn Lakes *	839	1,325	1.58	1,186	139	50	37	19	33
Brentwood Park	304	498	1.64	452	46	32	12	0	2
Byron Lakes	526	799	1.52	739	60	37	14	5	4
Canal Club	393	556	1.41	523	33	16	16	1	0
Canal 2	121	166	1.37	159	7	4	1	0	2
The Crossings	577	845	1.46	771	74	29	27	10	8
Dupont Lakes	313	487	1.56	428	59	27	20	4	8
Emerald Park	217	313	1.44	293	20	10	7	1	2
Foxwood	183	283	1.55	262	21	9	8	3	1
Glenn Valley	330	479	1.45	422	57	20	23	9	5
Green Ridge	589	841	1.43	794	47	25	12	5	5
Gull Prairie	196	294	1.50	278	16	6	4	3	3
Gull Run	630	933	1.48	849	84	34	32	8	10
Hampton Lakes	196	263	1.34	251	12	5	1	3	3
Heatherwood	268	417	1.56	375	42	14	15	8	5
The Highlands	309	520	1.68	445	75	33	24	8	10
Huntington Cove	560	895	1.60	782	113	45	35	18	15
Hurwich Farms	360	469	1.30	452	17	7	8	0	2
Indian Lakes	866	1,222	1.41	1,109	113	48	36	8	21
Liberty Mills	187	274	1.47	249	25	14	9	1	1
North Pointe	334	551	1.65	465	86	39	25	8	14
Oak Shores	486	680	1.40	634	46	19	16	7	4
Orchard Lakes	228	346	1.52	337	9	4	4	0	1
Pine Knoll	514	747	1.45	655	92	33	36	13	10
South Bridge	593	939	1.58	814	125	66	42	10	7
Tall Oaks *	67	113	1.69	107	6	3	1	0	2
W. Hampton Pk.	453	754	1.66	669	85	42	23	10	10
Windmill Lakes	341	534	1.57	487	47	25	13	6	3
TOTALS	**11,381**	**17,173**	**1.51**	**15,531**	**1,642**	**733**	**527**	**180**	**202**

*rev. 2008

PROPERTY TAX IMPACT

Estimated Assessed Value	$2,415,000
Estimated total taxes paid by completed project (Based on 2009 tax rate and 438 units)	$281,418

Governmental Unit	Tax Rate	Tax Revenue Generated By Project
Sedgwick County	29.868	$72,131
USD School District 375 (includes 375 bond)	53.019	$128,041
Wichita City	32.142	$77,623
State of Kansas	1.500	$3,623
TOTAL 2009 TAX RATE	116.529	$281,418

6101 NEWPORT ROAD
POST OFFICE BOX 3015
KALAMAZOO, MICHIGAN 49003
PHONE (269) 323-9484
FAX (269) 321-7884

August 10, 2010

R. D. & Marilyn L. Messinger
12100 E. 29th St. North
Wichita, KS

RE: PROPOSED MULTI-FAMILY AND COMMERCIAL USE ON SOUTH SIDE OF 29TH STREET NORTH, APPROXIMATELY 1000 FEET EAST OF NORTH GREENWICH ROAD

Dear Mr. & Ms. Messinger:

Our company is in the process of purchasing land owned by North Greenwich/29th LLC. It is 45± acres located on the south side of 29th Street North approximately 1000 feet east of North Greenwich Road within what is known as the Greenwich Business Center Addition (see enclosed location map).

We are requesting a rezoning of the property from Limited Industrial to Multi-family-18 (34 acres) and Limited Commercial (11 acres) which will front on future 27th Street North.

The purpose of this letter is to invite you to a meeting where I will be available to describe our proposed development and answer any questions you may have. The meeting will be held on Thursday, August 19, 2010 at 7:00 p.m. at the Staybridge Suites, 2250 North Greenwich Road in Wichita, Kansas (316-927-3888).

If you are unable to attend this meeting and have questions or concerns about our proposal, feel free to call me or Mark Harrison at 269-323-9484. Also, please feel free to mention this meeting to anyone you believe may be interested in attending.

Sincerely,

James R. Hall
EDWARD ROSE DEVELOPMENT COMPANY, L.L.C.

/amm
encl.

cc: Mark Harrison

Agenda Item No. V-3

City of Wichita
City Council Meeting
October 19, 2010

To: Mayor and City Council

Subject: VAC2010-00009 - Request to vacate a portion of public street right-of-way; generally located midway between Waco Street and the Little Arkansas River, on the south side of 12th Street North. (District VI)

Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Consent)

Staff Recommendation: Approve.

MAPC Recommendation: Approve (unanimously).

Background: The applicants are requesting the vacation of the southern portion of the 12th Street right-of-way (ROW) located between Bitting Avenue and Carlos Avenue. The subject lots were platted as part of the Greiffenstein's 12th Addition, which was recorded with the Register of Deeds on October 26, 1886. The City acquired this portion of 12th Street by purchase in 1903 (the Bitting Avenue site) and Deed (the Carlos Avenue site) in 1904. The house on the Bitting site was built in 1937. The house on the Carlos site was built in 1917.

Per the applicant's survey, the house on Bitting is located: (a) one-foot from the 12th St. Street ROW on its west side, and (b) 10.7 feet from 12th Street ROW in the middle and (c) 25.2 feet from the 12th Street ROW on its east side. Per the applicant's survey, the house on Carlos is located: (a) 12.1 from the 12th Street ROW on its west side, and (b) 7.5 feet from 12th Street ROW in the middle and (c) 9 feet from the 12th Street ROW on its east side. It is not known how permits were issued for construction of the houses (1917 & 1937) in this close proximity to 12th Street.

A previous vacation case in the immediate area, (V-1328 approved by the MAPC on May 30, 1985), vacated a portion of 12th Street along the north lot lines of Lots 1126, 1128 and 1130, Greiffenstein's 12th Addition, (located west of the subject sites) to allow construction of condos/townhouses; portions of these lots were acquired for 12th Street at the same time, 1904 and 1903, as the subject properties. Minimum setbacks for the sites' MF-29 zoning district are 25 feet for a front setback (Bitting site) and 20 feet for a street side yard (Carlos site). With the Little Arkansas meandering and abutting the north side of 12thStreet, reduction of 12th Street ROW was determined by the Traffic Engineer. There are no hydrants, water or sewer lines in this portion of the 12th Street ROW. There are no utilities located within the described ROW.

Analysis: The MAPC voted (11-0) 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.

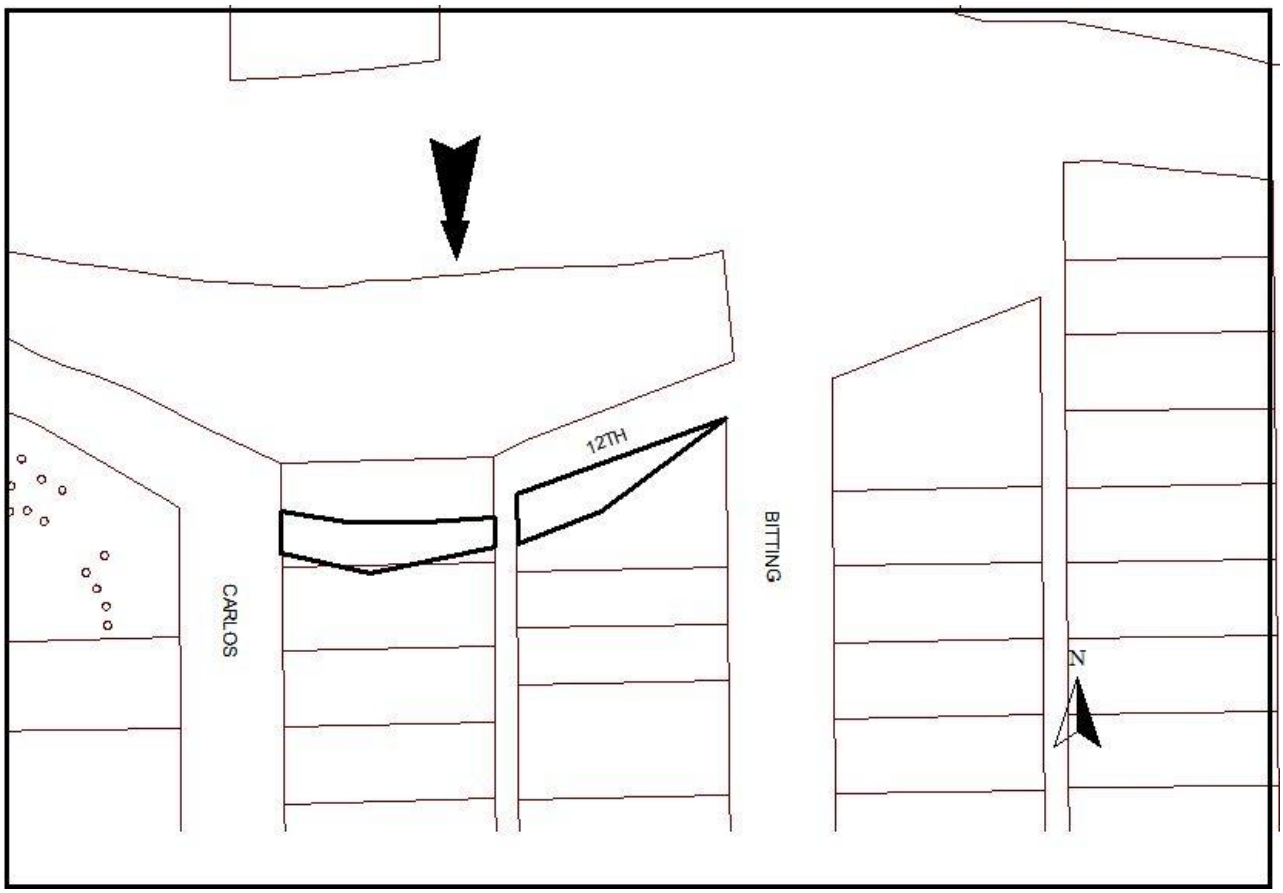
Financial Considerations: None.

Goal Impact: Ensure efficient infrastructure.

Legal Considerations: A certified copy of the Vacation Order and a dedication of street right-of-way by separate instrument have 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, approve the Vacation Order and authorize the necessary signatures.

Attachments: None.



Agenda Item No. V-4

City of Wichita
City Council Meeting
October 19, 2010

To: Mayor and City Council

Subject: VAC2010-00011 - Request to vacate a portion of a platted easement; generally located southwest of Pawnee Avenue and George Washington Boulevard. (District III)

Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Consent)

Staff Recommendation: Approve.

MAPC Recommendation: Approve (unanimously).

Background: The applicant proposes to vacate a portion of the platted 22-foot wide utility easement located (east to west) on Lot 6, Block D, Plainview Subdivision No. 1, to remove the encroachment of an addition to a residence. There is sewer in the platted easement, but no water lines. The applicant was instructed to abandon the existing 6-inch sanitary sewer City lateral in the easement by capping or sealing off the east/west lateral, at the point where the east/west City lateral connects to the north/south City lateral. The survey provided by the applicant also shows a gas line in the described easement. The applicant was instructed to retain that portion of the platted easement to cover the gas line. The Plainview Subdivision No. 1 Addition was recorded with the Register of Deeds on August 30, 1955.

Analysis: The MAPC voted (11-0) 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.

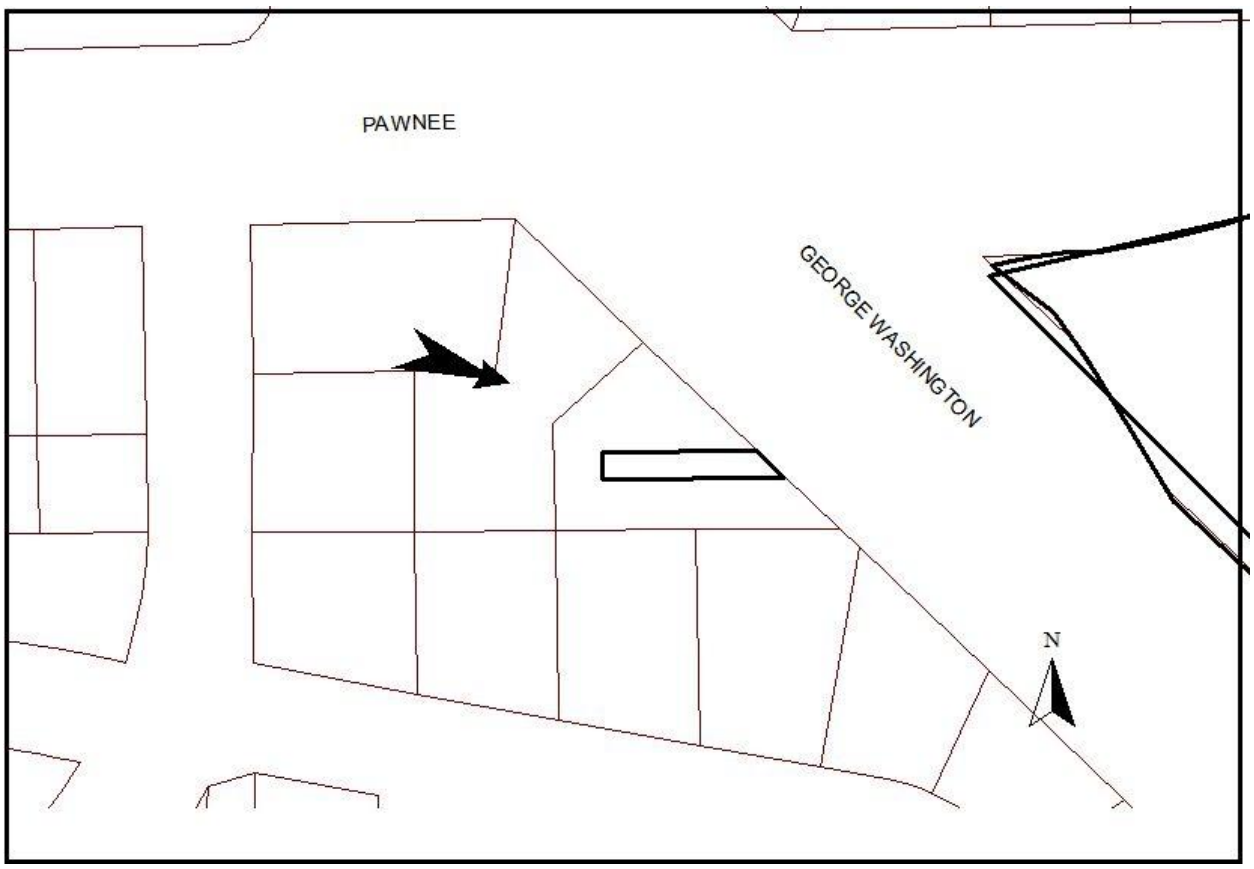
Financial Considerations: None.

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, approve the Vacation Order and authorize the necessary signatures.

Attachments: None.


PAWNEE
GEORGE WASHINGTON
N

Agenda Item No. V-5

City of Wichita
City Council Meeting
October 19, 2010

To: Mayor and City Council

Subject: VAC2010-00016 - Request to vacate platted easements; generally located north of I-235, between Broadway Avenue and the Big Ditch. (District VI)

Initiated By: Metropolitan Area Planning Department

Agenda: Planning (Consent)

Staff Recommendation: Approve.

MAPC Recommendation: Approve (unanimously).

Background: The applicant proposes to vacate the platted 10-foot wide utility easements located along the west lot lines of Lots 1 and 2, Kratzke's Addition and Lots 1 and 2, Farmer's Addition. There are no utilities located in the platted easements. The site has water available to it from Broadway Avenue. The nearest sewer is located west of the site, across the Chisholm Creek Diversion drainage canal of the Big Ditch. The Kratzke's Addition was recorded with the Register of Deeds on December 20, 1989. The Farmer's Addition was recorded with the Register of Deeds on June 14, 1967.

Analysis: The MAPC voted (10-0-1) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

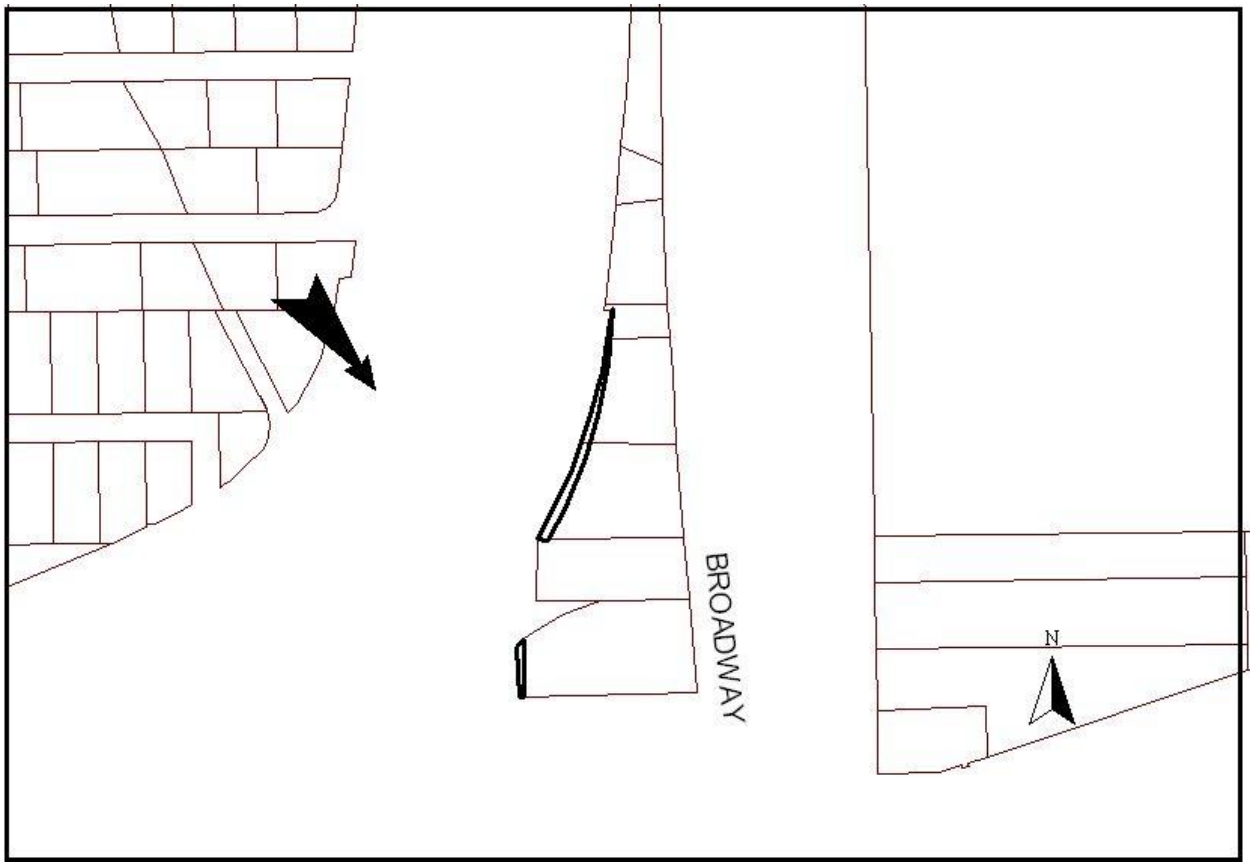
Financial Considerations: None.

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, approve the Vacation Order and authorize the necessary signatures.

Attachments: None.


N
BROADWAY

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council Members

SUBJECT: DED2010-00008 -- Partial Dedication of Abutter's Access Rights (Access Control) located south of 31st Street South and on the east side of Meridian. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Accept the Dedication.

Background: The Dedication is associated with Lot Split Case No. SUB2010-00026 (Hatcher-Gomez Addition) and is for access control except for one opening along Meridian.

Analysis: None.

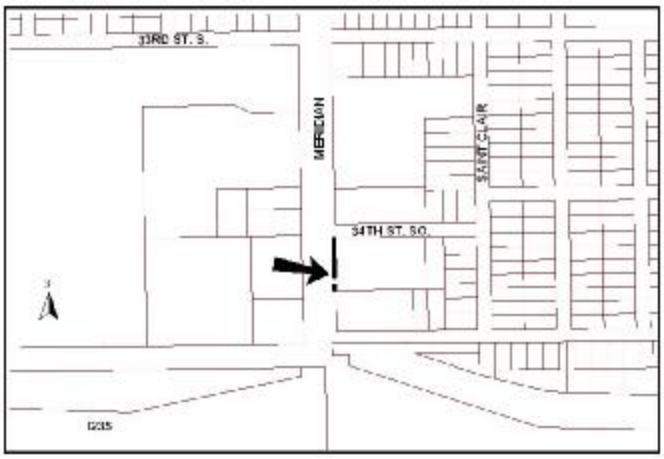
Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Dedication has been approved as to form by the Law Department and will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedication.

Attachment: Partial Dedication of Abutter's Access Rights (Access Control).



PARTIAL DEDICATION OF ABUTTER'S ACCESS RIGHTS

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar ($1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned Sachi Real Estate, L.L.C., a Kansas limited liability company, being the owner(s) of the following described real estate in Sedgwick County, Kansas, to wit:

Parcel "A"
The west 213.00 feet of Lot 15,
Hatcher-Gomez Addition to Wichita,
Sedgwick County, Kansas.

do hereby transfer and convey to the City of Wichita, all abutter's rights of access, ingress and egress to said parcel from or to Meridian Avenue over and across the south 25 feet and the over and across the north 162.99 feet of the above-described Parcel "A"; to have and to hold the same forever; it being understood that this conveyance is a covenant running with the land and prohibits all subsequent owners thereof and all members of the public from entering upon said property from Meridian Avenue, except at the one point of ingress and egress, as permitted.

Executed this 10 day of September, 2010.

Sachi Real Estate, L.L.C.

By: Dharod M.S.
Mukesh Dharod, Member

DED 2010-08
(C/S # SUB 2010-26)

STATE OF Kansas)
) SS:
COUNTY OF Johnson)

BE IT REMEMBERED, that on this 16th day of Sept., 2010, before me, the undersigned, a Notary Public in and for the State and County aforesaid, came Mukesh Dhaval as Manager of Sachi Real Estate, L.L.C., a Kansas limited liability company, to me personally known to be the person who executed the foregoing instrument, and duly acknowledged the execution of the same, for and on behalf and as the act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last above written.

Notary Public

My Appointment Expires: 8/17/13

TERI L BRISENDINE
Notary Public, State of Kansas
My Appointment Expires
8/17/13

Approved as to form:

Gary E. Rebenstorf, City Attorney

THE CITY OF WICHITA Wichita, Kansas
Department of Public Works

PRELIMINARY ESTIMATES
FOR CITY COUNCIL OCTOBER 19, 2010

a. 2010 Sanitary Sewer Reconstruction, Phase 3 (13th Street North, east of Meridian) (468-84703/620562/660679) Traffic to be maintained using flagpersons and barricades. (District VI) - $42,000.00

b. Alley from 1st to 2nd between Waco and Wichita (south of Central, west of Broadway) (472-84913/468-84691/132723/620559/133116/-/660676/-) Traffic to be maintained using flagpersons and barricades. (District VI) - $250,000.00

c. Lateral 511 Southwest Interceptor Sewer to serve Koker Addition (north of Central, west of 119th Street West) (468-84145/744315/480007) Traffic to be maintained using flagpersons and barricades. (District V) - $81,000.00

d. Sycamore Circle from the south line of 51st Street South to and including the cul-de-sac to serve Cornfield Addition (north of 55th Street South, east of Seneca) (472-84871/766253/490271) Does not affect existing traffic. (District IV) - $73,000.00

e. Water Distribution System to serve Koker Addition (north of Central, west of 119th Street West) (448-90167/735451/470124) Traffic to be maintained using flagpersons and barricades. (District V) - $46,000.00

The following deeds and easements have been recorded:

Utility Easement from Unified School District dated August 9, 2010 for a tract of land lying in Lot 1, Block 1, Wichita Heights High School Addition, an addition to Wichita, Sedgwick County, Kansas (OCA 607861) No Cost to City

Drainage Easement from Caywood, LLC, a Kansas limited liability company dated April 14, 2010 for a tract of land lying in the Southwest Quarter of Section 13, Township 28 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas (OCA 607861) No Cost to City

Agenda Item No. XII-6a

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Community Events – Monster Bash 5K Run (District II)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events procedure, the event sponsor Clark Ensz is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Monster Bash 5K Run October 30, 2010 8:00 am – 9:30 am

- 32nd Street North, Rushwood Drive to Woodlawn Street

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

Financial Consideration: The event sponsor is responsible for all costs associated with 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 Events Coordinator.

Agenda Item No. XII-6b

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Community Events – Hope Art
(District I)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events procedure, the event sponsor Sharon Van Horn, WaterWalk Promotions Director is coordinating with area business owners and making arrangements with staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Hope Art October 21, 2010 9:00 am – 11:00 pm

- South Water Street, Waterman to Dewey

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

Financial Consideration: The event sponsor is responsible for all costs associated with 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. (3) Certificate of Liability Insurance on file with the Community Events Coordinator.

Agenda Item No. XII-6c

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Community Events – Veterans Day Post Parade Activities (Districts I and VI)

INITIATED BY: Division of Arts & Cultural Services

AGENDA: Consent

Recommendation: Approve the request for temporary street closure.

Background: In accordance with the Community Events procedure, the event sponsor Lt. Col Michael George, USAF (Ret), USD 259 Wichita East High School JROTC is coordinating with City of Wichita staff, subject to final approval by the City Council.

Analysis: The following street closure request has been submitted:

Veterans Day Post Parade Activities November 6, 2010 11:00 am – 2:00 pm

- Douglas Avenue, Water Street to Waco Avenue, not including intersections.

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

Financial Consideration: The event sponsor 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: Obtaining barricades to close the streets in accordance with requirements of Police, Fire and Public Works Department.

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: BNSF Railway Company Pipeline License (All Districts)

INITIATED BY: Department of Water Utilities

AGENDA: Consent

Recommendation: Approve a Burlington Northern SantaFe (BNSF) Railway Company pipeline license agreement related to the City's raw water supply system in the Equus beds.

Background: Water Utilities has owned, operated and maintained miles of the pipeline needed to transport the City's raw water supply wells located in the Equus beds since the early 1950s. Water Utilities is in the process of expanding and increasing the size of the pipelines as part of the Aquifer Storage and Recovery (ASR) Phase II project.

Analysis: There is one location in the ASR Phase II project where Water Utilities' pipeline crosses BNSF railway property. The compensation for use of the premises to BNSF is $2,500 and must be paid before any work can be done in the right-of-way. The City will also be responsible for covering the costs of flagging during construction. Upon completion of said work, all reasonable costs incurred will be determined and invoiced to the City. Additionally, the City must purchase commercial general liability insurance, business automobile insurance, workers compensation and employer's liability insurance. BNSF has offered the City the option of participating in BNSF's Blanket Railroad protective liability insurance policy for $1,000 which the City intends to purchase. The City must also provide fairly comprehensive indemnities in favor of the railroad for the life of the permit, and must require all project contractors to do the same and to take out their own insurance for the protection of the railroad.

Financial Considerations: Funding for these services is available in Capital Improvement Program W-549, Water Supply Plan.

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

Recommendations/Actions: It is recommended that the City Council approve the BNSF agreement and authorize the necessary signatures.

Attachments: BNSF agreement.

PIPELINE LICENSE

THIS LICENSE ("License"), made as of the ____ day of _____, 2010 ("Effective Date") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("Licensor") and **CITY OF WICHITA**, a political subdivision of the State of Kansas ("Licensee").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "Drawings and Specifications"), one (1) Pipeline(s), twenty-four (24") inches in diameter inside a forty-eight (48") inch steel casing (collectively, the "PIPELINE"), across or along the rail corridor of Licensor at or near the station of Halstead, County of Harvey, State of Kansas, Line Segment 7300, Mile Post 198.38, as shown on the attached Drawing No. 1-48341, dated January 12, 2010, attached hereto as Exhibit "A" and made a part hereof ("Premises").

2. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, Licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.

3. Licensee shall use the Premises solely for construction and maintenance of a PIPELINE in accordance with the Drawings and Specifications carrying aquifer recharge water and/or groundwater. Licensee shall not use the PIPELINE to carry any other commodity or use the Premises for any other purpose.

   Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the PIPELINE on Licensor's property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in such compliance. Should Licensee not comply fully with the above-stated obligations of this Section, notwithstanding anything contained in any other provision hereof, Licensor may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee. Upon termination, Licensee shall remove the PIPELINE and restore Licensor's property as herein elsewhere provided.

4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or for any damage Licensee sustains in connection therewith.

5. Any contractors or subcontractors performing work on the PIPELINE or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.

TERM

6. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.

COMPENSATION

7. (a) Licensee shall pay Licensor, prior to the Effective Date, the sum of Two Thousand Five Hundred and No/100 Dollars ($2500) as compensation for the use of the Premises.

(b) Licensee agrees to reimburse Licensor (within thirty (30) days after receipt of bills therefor) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the PIPELINE, including but not limited to the furnishing of Licensor's Flaggers and any vehicle rental costs incurred. The cost of flagger services provided by the Licensor, when deemed necessary by Licensor's representative, will be borne by Licensee. Flagging costs shall include, but not be limited to, the following: payfor at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. The flagging rate in effect at the time of performance by the flaggers hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.

(c) All invoices are due thirty (30) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by Licensee at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in *The Wall Street Journal* in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

COMPLIANCE WITH LAWS

8. (a) Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("Legal Requirements") relating to the construction, maintenance, and use of the PIPELINE and the use of the Premises.

(b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require

its contractor to complete the safety-training program at the following Internet Website "http://www.contractororientation.com". This training must be completed no more than one year in advance of Licensee's entry on the Premises.

DEFINITION OF COST AND EXPENSE

9. For the purpose of this License, "cost' or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

RIGHT OF LICENSOR TO USE

10. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:

    (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;

    (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or

    (c) to use the Premises in any manner as the Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 3 above.

LICENSEE'S OPERATIONS

11. (a) Licensee shall notify Licensor's Roadmaster at 115 East 5th Street, Newton, Kansas, 67114, telephone (316) 284-3479 (Office) or (620) 202-0925 (Cell), at least ten (10) business days prior to installation of the PIPELINE and prior to entering the Premises for any subsequent maintenance thereon.

    (b) In performing the work described in Section 3, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

12. (a) Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the

safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

(b) Licensee shall, at its sole cost and expense, construct and maintain the PIPELINE in such a manner and of such material that it will not at any time be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Licensor, or the safe operation and activities of Licensor. Licensor may direct one of its field engineers to observe or inspect the construction and/or maintenance of the PIPELINE at any time for compliance with the Drawings and Specifications. If ordered at any time to halt construction or maintenance of the PIPELINE by Licensor's personnel due to non-compliance with the same or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the PIPELINE, it being solely Licensee's responsibility to ensure that the PIPELINE is constructed in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise nor the failure by Licensor to exercise any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this Section, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, upon receipt of an invoice for the same. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

13. During the construction and any subsequent maintenance performed on the PIPELINE, Licensee shall perform such work in a manner to preclude damage to the property of Licensor, and preclude interference with the operation of its railroad. The construction of the PIPELINE shall be completed within one (1) year of the Effective Date. Upon completion of the construction of the PIPELINE and after performing any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore Licensor's Premises to their former state as of the Effective Date of this License.

14. If at any time during the term of this License, Licensor shall desire the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the PIPELINE, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the PIPELINE as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the existing or the construction of a new PIPELINE(s).

15. (a) Prior to Licensee conducting any boring work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, the Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence

or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed PIPELINE by contacting Licensor at telephone number 1-800-362-9624 (option 1, option 2, and then option 4) at least thirty (30) business days prior to installation of the PIPELINE. Upon receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed PIPELINE and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions and Licensee's operations will be subject at all times to the liability provisions herein.

(b) For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation will need to be performed by the Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in its sole discretion a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at its sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.

16. Any open hole, boring or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:

(a) filled in to surrounding ground level with compacted bentonite grout; or

(b) otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

17. Upon termination of this License, Licensee shall, at its sole cost and expense:

(a) remove the PIPELINE and all appurtenances thereto, or, at the sole discretion of the Licensor, fill and cap or otherwise appropriately decommission the PIPELINE with a method satisfactory to Licensor;

(b) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;

(c) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and

(d) leave the Premises in the condition which existed as of the Effective Date of this License.

18. Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.

LIABILITY

19. (a) TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR AND LICENSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

(i) THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,

(ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,

(iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, OR

(v) ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE.

(b) FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 19(a), LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, REGARDLESS WHETHER BASED ON STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT LICENSOR IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE

PIPELINE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL NOT IN ANY WAY SUBJECT LICENSOR TO CLAIMS THAT LICENSOR IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

(c) **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE FURTHER AGREES, AND SHALL CAUSE ITS CONTRACTOR TO AGREE, REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES, OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**

(d) Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

PERSONAL PROPERTY WAIVER

20. **ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

INSURANCE

21. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

A. **Commercial General Liability Insurance.** This insurance shall contain broad form contractual liability with a combined single limit of a minimum of $5,000,000 each occurrence and an aggregate limit of at least $10,000,000, but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 1998 ISO occurrence or equivalent and include coverage for, but not limited to, the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Global Services - RR, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor employees.

No other endorsements limiting coverage may be included on the policy.

B. **Business Automobile Insurance.** This insurance shall contain a combined single limit of at least $1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.
- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor or and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

C. **Workers Compensation and Employers Liability Insurance.** This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least $500,000 each accident, $500,000 by disease policy limit, $500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

D. **Railroad Protective Liability Insurance.** This insurance shall name only the Licensor as the Insured with coverage of at least $5,000,000 per occurrence and $10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the PIPELINE. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the PIPELINE is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 10 93 and include the following:

- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to the Licensor prior to performing any work or services under this License.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is $1000.

☐ I **elect** to participate in Licensor's Blanket Policy;

☐ I **elect not** to participate in Licensor's Blanket Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages and certificates of insurance shall reflect that no exclusion exists.

Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, its insurers, through policy endorsement, waive their right of subrogation against Licensor for all claims and suits. The certificate of insurance must reflect waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody, or control.

Licensee is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

Prior to commencing any work, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this contract. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.

Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.

Failure to provide evidence as required by this Section 21 shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

For purposes of this Section 21, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

ENVIRONMENTAL

22. (a) Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water

Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.

(b) Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.

(c) In the event that Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the PIPELINE which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.

(d) Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

ALTERATIONS

23. Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

NO WARRANTIES

24. **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

QUIET ENJOYMENT

25. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

DEFAULT

26. If default shall be made in any of the covenants or agreements of Licensee contained in this document, or in case of any assignment or transfer of this License by operation of law, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedy set forth in this Section 26 shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.

LIENS AND CHARGES

27. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this Section 27 or any other Section of this License. Licensee shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the PIPELINE or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "Improvements") by any governmental or quasi-governmental body or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

TERMINATION

28. This License may be terminated by Licensor, at any time, by serving thirty (30) days' written notice of termination upon Licensee. This License may be terminated by Licensee upon execution of Licensor's Mutual Termination Letter Agreement then in effect. Upon expiration of the time specified in such notice, this License and all rights of Licensee shall absolutely cease.

29. If Licensee fails to surrender to Licensor the Premises, upon any termination of this License, all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered. Termination shall not release Licensee from any liability or obligation, whether of indemnity or otherwise, resulting from any events happening prior to the date of termination.

ASSIGNMENT

30. (a) Licensee may not sell, assign, transfer, or hypothecate this License or any interest herein (either voluntarily or by operation of law) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor.

Any attempted assignment by Licensee in violation of this Section 30 shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.

(b) For purposes of this Section 30, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the forgoing, any reorganization, recapitalization, merger, or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.

(c) Notwithstanding the provisions of Section 30(a) above or anything contained in this License to the contrary, in the event Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "Purported Assignment") to another party (a "Purported Transferee"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of Section 21 above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.

(d) The provisions of this Section 30 shall survive the expiration or earlier termination of this License.

NOTICES

31. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor:	Jones Lang LaSalle Global Services - RR, Inc. 3017 Lou Menk Drive, Suite 100 Fort Worth, TX 76131-2800 Attn: Licenses/Permits
with a copy to:	BNSF Railway Company 2500 Lou Menk Dr. – AOB3 Fort Worth, TX 76131 Attn: Manager – Land Revenue Management
If to Licensee:	City of Wichita Wichita Water Utilities 455 N. Main Wichita, Kansas 67202

SURVIVAL

32. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the PIPELINE and improvements are removed and the Premises are restored to its condition as of the Effective Date.

RECORDATION

33. It is understood and agreed that this License shall not be placed on public record.

APPLICABLE LAW

34. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.

SEVERABILITY

35. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.

INTEGRATION

36. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.

MISCELLANEOUS

37. In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.

38. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

39. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

40. Jones Lang LaSalle Global Services – RR, Inc. is acting as representative for BNSF Railway Company.

IN WITNESS WHEREOF, this License has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

BNSF RAILWAY COMPANY
Jones Lang LaSalle Global Services - RR, Inc.
3017 Lou Menk Drive, Suite 100
Fort Worth, TX 76131-2800

By: _____
Ed Darter
Title: Vice President - National Accounts

ATTEST:

By:_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By:_____
Gary Rebenstorf, Director of Law

CITY OF WICHITA
Wichita Water Utilities
455 N. Main
Wichita, Kansas 67202

By: _____

Title: _____

TRACKING NO. 10-40055

EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN

BNSF RAILWAY COMPANY

AND

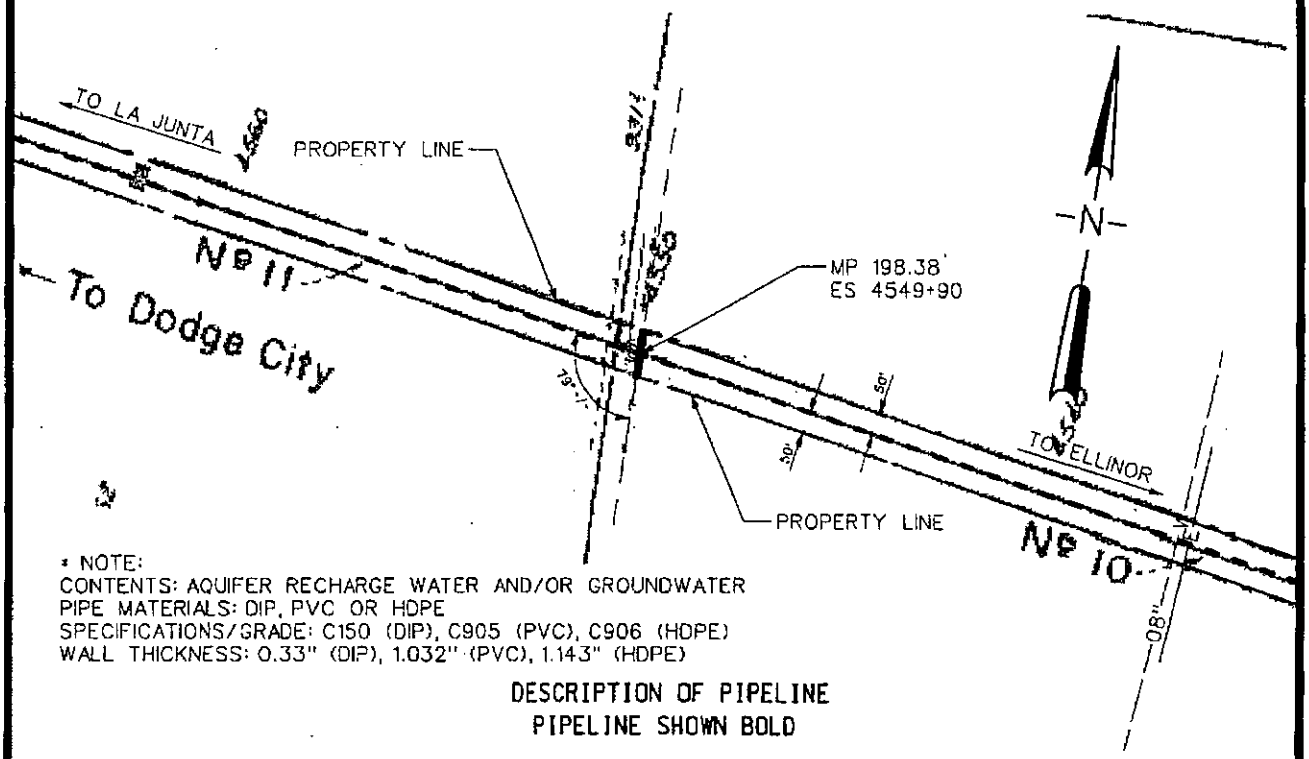
CITY OF WICHITA

MAP REF. R112204

SCALE: 1 IN.= 400 FT.
KANSAS DIV.
LA JUNTA SUBDIV. L.S. 7300
DATE 01/12/2010

SECTION: 32
TOWNSHIP: 23S
RANGE: 2W
MERIDIAN: 6TH

KS-30 / 3



* NOTE:
CONTENTS: AQUIFER RECHARGE WATER AND/OR GROUNDWATER
PIPE MATERIALS: DIP, PVC OR HDPE
SPECIFICATIONS/GRADE: C150 (DIP), C905 (PVC), C906 (HDPE)
WALL THICKNESS: 0.33" (DIP), 1.032" (PVC), 1.143" (HDPE)

DESCRIPTION OF PIPELINE
PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	24"	48"	LENGTH ON R/W:	102'	102'
CONTENTS:	*		WORKING PRESSURE:	80 PSI	
PIPE MATERIAL:	*	STEEL	BURY: BASE/RAIL TO TOP OF CASING		6.83'
SPECIFICATION/GRADE:	*	GRADE B	BURY: NATURAL GROUND		3.1'
WALL THICKNESS:	*	0.75"	BURY: ROADWAY DITCHES		N/A
COATING:	N/A	LIQUID EPOXY	CATHODIC PROTECTION		YES

VENTS: NUMBER N/A SIZE N/A HEIGHT OF VENT ABOVE GROUND N/A
NOTE: CASING TO BE JACKED OR DRY BORED ONLY

NEAR HALSTEAD
COUNTY OF HARVEY STATE OF KS

MDS

DRAWING NO. 1-48341

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Lawrence-Dumont Stadium – CIP Funded Improvements (District IV)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the contract amendment.

Background: Lawrence-Dumont Stadium is a historic baseball stadium and home to the Wichita Wingnuts, a member of the American Association of Independent Baseball. The stadium is one of the oldest facilities for professional baseball still in use in the United States, and its nostalgic value as a sports venue plays an important role in the fans' enjoyment.

On July 18, 2006, the City Council approved a contract with Schafer Johnson Cox and Frey (SJCF) to conduct a study and create a schematic design to complete needed improvements to the stadium. This schematic design was presented to Council on August 7, 2007, and included recommendations for a major remodel of the existing concession stands, replacement of the artificial turf, and renovation of the existing dugouts. On August 5, 2009, the City Council approved Contract Amendment No. 1 to the SJCF contract for the design and related services for the Concession Stand Remodel Project. This project was completed in April of 2010.

Analysis: On May 11, 2010, the City Council authorized the initiation of funding from the 2009-2018 Capital Improvement Program (CIP) in the amount of $1,720,000 for the design and replacement of the artificial turf. The attached Contract Amendment No. 2 to the existing SJCF contract is for professional services to include construction/bid documents and construction administration services for the replacement of the artificial turf for a fee not to exceed $58,000.

Staff believes that all professional quality artificial turf products are comparable, although the recommended methods of installation may vary, but the quality of the installer's work is the major factor in the success of the installation over time. Therefore, staff recommends that the selection of a contractor to provide the turf and its installation be done through the Request For Proposal process rather than through competitive bidding. Staff believes this will provide the best value and avoid potential delays to help insure that the artificial turf will be in place prior to the opening of the 2011 baseball season.

Financial Considerations: Project funding is budgeted in the 2009-2018 CIP in the amount $1,720,000 in 2010 for the replacement of the artificial turf.

Goal Impact: This improvement addresses the Enhance Quality of Life goal by providing an entertainment facility that is code compliant and offers current technology in an historic setting.

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

Recommendation/Action: It is recommended that Council approve the amendment, authorize the necessary signatures, and approve the issuance of an RFP for contractor selection in lieu of competitive bidding.

Attachments: Contract Amendment No. 2.

AMENDMENT NUMBER TWO

THIS AMENDMENT, Made the _____day of _____2010,

BY AND BETWEEN THE CITY OF WICHITA, KANSAS
A Municipal Corporation, hereinafter referred to as
"OWNER"

AND SCHAEFER JOHNSON COX FREY ARCHITECTURE, hereinafter referred to as
"ARCHITECT"

WHEREAS, the parties have heretofore, on the 18th day of July 2006, entered into a Contract; and

WHEREAS, the parties wish to modify the "SCOPE OF SERVICES" in connection with the Proposed Modifications to Lawrence-Dumont Stadium Project which is the subject matter of such Contract.

NOW, THEREFORE, in consideration of the promises and covenants herein contained and to be performed, the parties hereto agree as follows:

I. The Contract between the parties dated July 18, 2006 shall be amended to change the Basic Services (EXHIBIT "A") to be performed by the **ARCHITECT** as follows:

The **ARCHITECT** will provide architectural, civil, and all related professional services for complete replacement of the artificial turf, and conversion of existing natural outfield turf to artificial turf, including all construction documents, bid services, and construction administration duties. The **ARCHITECT** will consult with the **OWNER** to finalize the program requirements and further refine the current design, concept layouts and construction budget. Once the **OWNER** has approved a final design and construction budget the **ARCHITECT** will proceed with the Design Development and Construction Documents Phases. The documents will be sufficient for insertion into Request for Proposal (RFP) format, and construction by a Field Turf Contractor under a single contract.

The **ARCHITECT** will obtain approvals of State or other agencies as necessary to complete the drawings and specifications.

Federal and state laws prohibit discrimination based on disability. Section 504 of the Rehabilitation Act of 1073, as amended (504), and the Americans with Disabilities Act of 1990 (ADA) require that the City of Wichita and all organizations or firms contracting with the City of Wichita, except those providing tangible goods, comply with ADA/504 accessibility requirements. We understand that reasonable accommodation is required in

both program services and employment, except where to do so would cause an undue hardship or burden. We also agree that all new construction, alterations, or additions to City of Wichita buildings or facilities, performed by my organization or its subcontractors, must comply with all city, state, and federal laws, including related building guidelines/codes, and specifically the Americans with Disabilities Accessibility Guidelines (ADAAG).

The **ARCHITECT** will prepare proposals, forms, and assist in the creation of an RFP. Set forth in detail and prescribe the work to be done; the materials, workmanship, finishes, and equipment required for the architectural, civil, service connected equipment, and site work, and contract documents satisfactory to the **OWNER** for the effective coordination and efficient execution of the proposed construction projects.

The **ARCHITECT** will use the **OWNER'S** Modified Construction Contract and General Conditions packages (AIA 101 and 201 modifications) that have been approved by the City of Wichita, Law Department, when American Institute of Architects (AIA) form documents are used in connection with the City's bid and specification documents.

The **ARCHITECT** will furnish a formal written estimate of the probable cost of constructing the Project according to the completed drawings and specifications as approved by the **OWNER**.

The **ARCHITECT** will conduct the necessary code analysis, consult with governing authorities having jurisdiction over the Project, and incorporate their requirements into the construction documents for the Project.

Reproduction of the completed plans and specifications for use in bidding will be the responsibility of the **OWNER** and the **OWNER** will pay for all reproduction and associated costs directly. The **ARCHITECT** will coordinate with **OWNER** printing contractor directly.

The **ARCHITECT** will review submitted proposal documents for completeness and coordination and participate in the City of Wichita selection process.

The **ARCHITECT** will provide guidance to the **OWNER** and to prospective contractors, write and coordinate and otherwise aid in the issuance of addenda or provide clarifications as required.

The **ARCHITECT** will furnish a formal written estimate of probable construction costs to the **OWNER'S** Project Manager two days before the bid opening.

During the Construction Phase, the **ARCHITECT** will be responsible for providing periodic monitoring of the construction in accordance with professional standards. In addition, the **ARCHITECT** will condemn work, which fails to conform to the Contract Documents, prepare certificates of payments due the contractor, provide consultation and advice to the **OWNER** and contractor during construction, issue necessary interpretations

and clarifications of the Contract Documents, and review shop drawings for conformation with the bid documents.

The **ARCHITECT** will not be responsible for the contractor(s) scheduling, means or methods of construction or be responsible for the safety of the site and/or workplace.

II. The Contract between the parties dated July 18, 2006 shall be amended to change the **PAYMENTS**. The **OWNER** agrees to pay the **ARCHITECT** for services rendered under this Amendment Number One, a total fee established as follows:

For the review of current program requirements, design, concept layout, Design Development Bid and Specification Documents, Procurement and Construction Phase and other related items including those items identified in Paragraph I above a single stipulated lump sum fee including reimbursable expenses of $58,000. This fee is based on a total budget as follows:

Estimated construction, furniture and equipment	$1,177,000.00
Architectural/engineering fees	$ 58,000.00
OWNERS project finance and salary charges	$ 65,000.00
Total project budget	$1,300,000.00

This fee shall constitute complete compensation for the services. (See attached proposals a copy of which is attached hereto and which is incorporated herein by reference.)

This fee shall be payable in monthly installments, and in proportion to the services performed, payable upon the satisfactory performance of the service.

III. All other provisions of the July 18, 2006 Contract and subsequent Amendments between the parties hereto not modified herein shall remain in full force and effect.

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

CITY OF WICHITA, KANSAS

by _____
Carl Brewer, Mayor

Attest:

_____
Karen Sublett, City Clerk

City Seal:

SCHAEFER JOHNSON COX FREY

by _____
Joseph A. Johnson, AIA
Senior Vice President

Approved as to form:

_____
Gary E. Rebenstorf
Director of Law

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Aquifer Storage and Recovery Phase II – City of Bentley Spur Line Tie-In Supplemental Agreement (All Districts)

INITIATED BY: Department of Water Utilities

AGENDA: Consent

Recommendation: Approve the Supplemental Agreement for Professional Services.

Background: On July 10, 2007, City Council approved projects necessary for Phase II of the Equus Beds Aquifer Storage and Recovery (ASR) Project. Phase II will consist of a thirty million gallon-a-day Water Treatment Plant and Surface Water Intake Structure, as well as the pipelines, recharge and recovery wells, overhead power lines and a SCADA system that will provide much of the backbone for future phases. Included in the project is the reconstruction of many of the spur lines that tie the wells to the pipeline.

Analysis: Phase II of ASR will introduce treated surface water into Wichita's raw water pipeline for recharging the Equus Beds Aquifer. The City of Bentley receives water from this pipeline, which currently transports groundwater from Wichita's municipal wells. Kansas Department of Health and Environment granted a permit for the ASR project for recharge, but not as a public water source, so Water Utilities will not be able to supply Bentley with water from its current connection.

There are four municipal supply wells near Bentley that can be easily isolated from the rest of the pipeline to be used for recharge. These four wells have been removed from the ASR project and will be able to provide groundwater to both Wichita and Bentley. The existing spur line that ties the four wells to the rest of the system has experienced several failures over the years and needs to be increased in size to function well for increased usage. Though it is a component of the system that needs to be improved as part of the ASR project, it was decided to design and construct it as a smaller project.

Ruggles & Bohm was awarded the design of this line on November 3, 2009. As this is a smaller project, City staff will be used to inspect this line. However it is not feasible to use City staff to provide construction staking services. Ruggles & Bohm is capable of providing construction staking per City of Wichita Standard Construction Engineering Practices.

Financial Considerations: The fee for the staking of the spur line is $24,000. Funding for this is available in CIP W-549, Water Supply Plan, Phases II, III and IV.

Goal Impact: The project addresses the Ensure Efficient Infrastructure goal by providing for the development of future water supplies.

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

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

Attachments: Supplemental Agreement.

SUPPLEMENTAL AGREEMENT

To the

AGREEMENT FOR PROFESSIONAL SERVICES DATED NOVEMBER 9, 2009

between

THE CITY OF WICHITA, KANSAS

PARTY OF THE FIRST PART, HEREINAFTER CALLED THE

"CITY"

and

RUGGLES & BOHM, P.A.

PARTY OF THE SECOND PART, HEREINAFTER CALLD THE

"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated November 9, 2009) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements for the Bentley Tie-In Water Main for the Wichita Water Utilities Department along 117th Street North between 151st Street West and 119th Street West.

WHEREAS, Paragraph IV.B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. Project Description
The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

CONSTRUCTION STAKING
(as per the City of Wichita Standard Construction Engineering Practices)

BENTLEY TIE-IN WATER LINE NO. W-549, along 117th Street North between 151st Street West and 119th Street West.
Construction staking will be the responsibility of the ENGINEER. Minimum construction staking shall consist of the following: grade stakes set at 50 foot centers in tangent sections, and 25 foot centers through curve sections and critical grade points and water appurtenances as indicated on the plans. Existing ground elevations at the centerline of the proposed pipe will be taken adjacent to each offset stake, and this same set of points will be re-staked once the pipe is in place so that existing grade can be duplicated upon completion of restoration. The easement for the water line will be staked with lath along

the route. The ENGINEER will be responsible to provide re-checking of points deemed to be out of compliance by the city project engineer.

B. PAYMENT PROVISIOINS
The lump sum fee and the accumulated partial payment limits in Section IV.A. shall be amended as follows:
Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement shall be made on the basis of the not to exceed fee specified below:

Project W-549	$24,000.00

C. PROVISIONS OF THE ORIGINAL CONTRACT
The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2010.

BY ACTION OF THE CITY COUNCIL

_____
Carl G. Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

RUGGLES & BOHM, P.A.

_____
Christopher M. Bohm, President

ATTEST:

_____
Kenneth W. Lee, Associate

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Childhood Lead Poisoning Prevention Program Agreement (All Districts)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the contractual agreement

Background: The Kansas Department of Health and Environment (KDHE) established the Kansas Childhood Lead Poisoning Prevention Program (KCLPPP) to respond to concerns about lead and its effect on the health of Kansans, most notably the children. The KDHE Healthy Homes and Lead Hazard Prevention Program is tasked to assist Kansans in protecting themselves from hazardous environmental health exposures. The program acknowledges the association between human health and housing and is in keeping with the direction of federal partners. The primary objective continues to be lead poisoning prevention. The mission of the KDHE Healthy Homes and Lead Hazard Prevention Program (HHLHPP) is to promote healthy and safe environments for families in Kansas through awareness, education and reduction of environmental hazards in their homes.

KDHE has contacted staff to enter into a contractual agreement to assist KDHE to provide environmental risk assessment services in Sedgwick County. Environmental Health would serve as KDHE's designated agency to provide Elevated Blood Level (EBL) investigations in homes, where children with elevated blood lead levels reside, to identify lead hazards in the home.

Analysis: KDHE will notify City Environmental Health investigators to conduct in-home investigations to identify lead and other home~~s~~ hazards in the child's environment and educate parents and homeowners about risk reduction to make the home safer. City staff will undergo accredited EBL Inspector training and pass a certification exam. Once certified, City staff will schedule and conduct inspections per KDHE protocols to identify lead hazards in homes where KDHE has identified children live with elevated blood lead levels. The City will provide finding reports to KDHE within 20 days of the inspection.

Financial Considerations: KDHE will reimburse the City $200 per address per year for EBL services for each child identified with an elevated blood lead levels. It is estimated that approximately 15 homes are investigated for EBL per year. Staff estimates that KDHE will reimburse the City approximately $3,000 per year for the investigations. Staff believes that this work can be performed with existing staff and resources. Initial certification training costs of $800 will be incurred, with additional biennial certification training costs of $200.

Goal Impact: This agreement addresses the Safe and Secure Community goal by improving environmental health and community safety.

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

Recommendation: It is recommended that the City Council approve the contract and authorize the necessary signatures.

Attachment: SFY 2011 Grant Contract.

CONTRACT
Between
Kansas Department of Health and Environment
and
City of Wichita Public Works Department, Environmental Health Division

This Agreement is made by and between the Kansas Department of Health and Environment's Kansas Healthy Homes and Lead Hazard Prevention Program (hereinafter referred to as "KDHE") and the City of Wichita Public Works Department, Environmental Health Division (hereinafter referred to as "Local Agency") this 1st day of July 2010.

Whereas the KDHE has determined that the Local Agency is certified to provide proper inspection services in relation to elevated blood lead levels; and

Whereas the Local Agency is a qualified political subdivision, a qualified firm or a certified individual of the State of Kansas authorized to provide Elevated Blood Lead (EBL) Inspections; and

Whereas the KDHE has further determined that it is feasible and proper to reimburse the Local Agency for such purposes.

Therefore, this Agreement is the statement of the understanding and mutual obligations of the KDHE and the Local Agency.

I. <u>Purpose</u>

To reduce a child's environmental lead burden through the provision of environmental risk assessment services for children with confirmatory blood levels greater than or equal to 10 micrograms per deciliter (≥10µg/dL).

II. <u>Term of Agreement</u>

The effective date of this Agreement shall be for a term beginning **July 1, 2010 to June 30, 2011**. The Agreement is renewable on an annual basis unless terminated in accordance with the provision of Section VII of this Agreement.

III. <u>KDHE agrees to:</u>

A. Designate and accept the Local Agency as the agent of the KDHE to provide EBL Investigations as necessary for children identified with an elevated blood lead level per case management protocols. (See Exhibit 1)

B. Provide maximum payment of $200.00 per address per year for EBL Inspection services for each child identified with an elevated blood level per case management protocols including a follow up visit to ensure lead hazard reduction recommendations were followed.

C. Disperse payment to the Local Agency upon receipt of required completed reports.

D. Notify the Local Agency of a child with an elevated blood lead level and provide information pertinent to an EBL Investigation.

E. Notify the Local Agency of a residence that was subject of an EBL investigation in their area that was issued an EBL Hazard Control Work Order (K.A.R.28-72-17) that requires clearance sample testing as described in and in accordance with K.A.R. 28-72-18e.

F. Provide maximum payment of $100.00 per address per year for EBL Hazard Control Work Order Clearance Sampling and congruent report.

IV. <u>Local Agency agrees to:</u>

A. Meet the requirements of K.A.R. 28-72-6.
   1. Allow designated Local Agency individual(s) to attend and complete accredited Lead-Based Paint Inspector and Lead Hazard Risk Assessor training
   2. Allow designated Local Agency individual(s) to maintain current training and certification for a minimum of two years
   3. Pay for recertification for EBL inspector(s) every two years by an accredited KDHE training provider
   4. Successfully complete third party exam given by KDHE staff
   5. Complete EBL Inspector training provided by KDHE staff
   6. Submit an application in order to receive certification as an EBL Inspector

B. Contact parents or guardians of a lead poisoned child to schedule date and time for an investigation.

C. Provide EBL Inspection per protocols to identify lead hazards of children in municipalities and unincorporated areas within **Sedgwick County** with confirmatory blood lead levels ≥10µg/dL following work practice standards established under K.A.R. 28-72-17. (See Exhibit 1)

D. Provide the KDHE with the following reports within 20 business days following receipt of environment sample analysis results:
   1. Laboratory confirmation of venous blood level ≥10µg/dL
   2. Provide documentation of any and all Medicaid Eligibility including Medicaid #, last date of eligibility and current health care provider name, address and phone number. Information should include those families participating in Unicare and Children's Mercy Family Health Partners.
   3. Completed Residential Questionnaire including documentation of who provided the information collected and signatures for all persons present at the home visit including affiliated partners.

4. EBL Investigation Report per KDHE protocols (See Exhibit 1)
5. Copy of laboratory results of environmental samples collected
6. Copy of EBL follow up investigation summary that explains how lead hazard reduction recommendations were followed; including copy of laboratory results of clearance dust wipe samples taken.
7. Monthly Case Management Update Reports on all open confirmed cases identified in their area.

V. Channels of Communications

A. KDHE and the Local Agency will meet as needed to discuss and evaluate the effectiveness of existing administrative procedures and to discuss problems that have been identified by either party. Where appropriate, these meetings may be conducted by telephone.

Contact Persons Shall Be:

KDHE:

Shannon Steinbauer, Acting Director
Kansas Healthy Homes and Lead Hazard Prevention Program
Kansas Department of Health and Environment
Curtis Building, Suite 330
1000 SW Jackson Street
Topeka, Kansas 66612-1274
Phone: (785) 256-3229
Fax: (785) 296-5594
E-mail: ssteinbauer@kdheks.gov

or

Sherry Martell
Primary Case Management Coordinator
Kansas Healthy Homes and Lead Hazard Prevention Program
Kansas Department of Health and Environment
Curtis Building, Suite 330
1000 SW Jackson Street
Topeka, Kansas 66612-1274
Phone: (785) 368-7387
Fax: (785) 296-5594

Local Agency:

Randy Owen, Air Quality Program Supervisor
City of Wichita
Public Works Department
Environmental Health Division
1900 E 9th Street
Wichita, KS 67214
Phone: (316) 268-8351

Fax: (316) 268-8390
E-mail: rowen@wichita.gov

VI. Amendment of Agreement

This agreement may be amended at any time by mutual written agreement of both parties or when required by:

A. CDC directed changes to the KDHE; or

B. KDHE changes to operational requirements mandated by federal regulations and CDC directives; or

C. CDC policy changes in instructions for program evaluation or surveillance.

I. Termination of Agreement

This Agreement may be terminated at any time upon 30 days written notice by either party.

II. Notice

Any notice permitted or required by this Contract shall be in writing and delivered personally or mailed, postage prepaid, to the following address, or such other address as may be furnished by either party in writing:

If to KDHE:
Shannon Steinbauer, Acting Director
Kansas Healthy Homes and Lead Hazard Prevention Program
Kansas Department of Health and Environment
Curtis Building, Suite 330
1000 SW Jackson Street
Topeka, Kansas 66612-1274
Phone: (785) 256-3229
Fax: (785) 296-5594
E-mail: ssteinbauer@kdheks.gov

If to Local Agency:
Randy Owen, Air Quality Program Supervisor
City of Wichita
Public Works Department
Division of Environmental Health
1900 E 9th Street
Wichita, KS 67214
Phone: (316) 268-8351
Fax: (316) 268-8390
E-mail: rowen@wichita.gov

IX. It is mutually agreed:

The provisions found in Contractual Provisions Attachment (Form DA-146a), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

The contract entered into on the day and year above is contingent upon the availability of State or Federal funds. In the event that such funds are exhausted or no longer available, this contract may be terminated without penalty by the KDHE upon thirty (30) days written notice.

Payment may be denied if required program reports are not on file for previous quarters or for the final period, or if program requirements/objectives are not met as specified in the contract.

This agreement constitutes the total agreement between the parties, and except as otherwise specifically provided, it is mutually understood and agreed that no alternative or variation to the terms of this agreement shall be valid unless amendments hereto are made and agreed to in writing by both parties.

In WITNESS WHEREOF, the parties hereto have affixed their signatures.

By signing this agreement, the person below warrants that he or she has the authority to sign this document and to bind the City and the KDHE to its terms.

_____

Carl Brewer, Mayor
The City of Wichita, KS
By order of the City Council

Date: _____

Attest:

_____

Karen Sublett Date
City Clerk

Approved as to form:

_____

Gary E. Rebenstorf Date
Director of Law

_____

Roderick L. Bremby
Secretary
Kansas Department of Health and Environment

Date: _____

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

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated.

2. **Agreement With Kansas Law**: All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability**: Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

   Parties to this contract understand that the provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total $5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes**: The State of Kansas shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss of damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor holds title.

11. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**

12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Supplemental Agreement No. 2 for Design Services for 119th Street West from Kellogg to Maple (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve Supplemental Agreement No. 2.

Background: On December 13, 2005, the City entered into an agreement with Professional Engineering Consultants, P.A. (PEC) for designing 119th Street West from Kellogg to Maple. The fee was $145,000. On April 24, 2007, the City Council approved Supplemental No. 1 for additional survey data and hydraulic modeling to verify the elevated bridge would have no impacts made to the upstream properties. The fee was $7,700, bringing the design contract total to $152,700.

Analysis: During the design process, it has been determined that the following changes need to be made: shift the alignment for the north half of the project to the west, thus lessoning the impact to Park property, as required to maintain federal funding; add 10 foot wide multi-use path to the east side of 119th Street, thus requiring modifications to the existing Calfskin Creek Bridge handrails; provide plan details for excavation from Auburn Hills Golf Course pond to be used as fill within the floodplain on the project, to help in area flood mitigation; and provide additional design details to accommodate new development in the north half mile of the project, since design inception.

Supplemental Agreement No. 2 has been prepared to authorize the additional design services.

Financial Considerations: Payment to PEC for this supplemental agreement will be made on a lump sum basis of $80,224, and will be paid by General Obligations Bonds.

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

Legal Considerations: Supplemental Agreement No. 2 has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve Supplemental Agreement No. 2 and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 2.

SUPPLEMENTAL AGREEMENT NO. 2

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES DATED DECEMBER 13, 2005

BETWEEN

THE CITY OF WICHITA, KANSAS

PARTY OF THE FIRST PART, HEREINAFTER CALLED THE

"CITY"

AND

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

PARTY OF THE SECOND PART, HEREINAFTER CALLED THE

"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated December 13, 2005) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements to **119TH STREET WEST, KELLOGG TO MAPLE** (Project No. 472 84306, OCA No. 706937).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

Scope of Services (additional)
(see Exhibit “C”)

B. PAYMENT PROVISIONS

The lump sum fee and the accumulated partial payment limits in Section IV. A. shall be amended as follows:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement will increase the total contract by $**80,224.00.**

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2010.

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

_____

ATTEST:

_____

Exhibit “C”

SCOPE OF SERVICES (additional)
for
119TH STREET WEST, KELLOGG TO MAPLE

1. After preliminary concept approval, modified plans to shift alignment of north 1/2 mile west to eliminate need for permanent R/W acquisition on park property located east of 119th.
2. After preliminary concept approval, modified 119th Street profile and associated plans to provide “no-rise” on Calfskin Creek preventing need for CLOMR/LOMR.
3. Added 10’ Hike and Bike path on the east side of 119th from Taft to Kellogg. This resulted additional modifications to the Calfskin Creek bridge rails and approach slabs.
4. Designed and detailed pond on Auburn Hills Golf Course to provide excavation to offset the amount of embankment placed in the floodplain due to widening 119th Street.
5. Project completion dates were delayed from August 2007 to September 2010 resulting in additional wage rate and overhead increases.
6. Additional pickup survey and plan update was required to update topo on North 1/2 mile on the west side of 119th for development with occurred due to project being delayed. Additional design effort was required to accommodate retaining walls which were constructed adjacent to the project.
7. Following approval of Field Check Plans, modified plans several times from Kellogg north approximately 1200’ to reduce and/or eliminate R/W acquisition along the west side of 119th Street.

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Supplemental Agreement for Design Services for Lincoln Street Bridge and Dam (Districts III and IV)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve Supplemental Agreement No. 3.

Background: On May 28, 2003, the City entered into an agreement with MKEC Engineering Consultants, Inc. (MKEC) to explore and identify options for rehabilitation and/or repair of the Lincoln Street bridge and dam. The fee was $8,500. On October 27, 2007, the City Council approved Supplemental No. 1 with MKEC to complete a more detailed evaluation of options, and to provide the design for rehabilitation of the bridge and for rehabilitation of the dam, in-place. The design fee was $338,166. On April 20, 2010, the City Council approved a design concept that provides for replacement of the bridge and a new dam located downstream from the new bridge. On May 11, 2010, the City Council approved Supplemental No. 2 for additional design work, which included design for boat and fish passage through the new dam, as well as improvements to both banks for boat portage and pedestrian access. The design fee was $364,847, bringing the total design contract to $703,013. On September 21, 2010, the City Council approved construction funding.

Analysis: Public art consulting services will be utilized to provide input and design for aesthetic improvements to all aspects of the project. MKEC has retained Kent Williams as the artist for this project, as the original contract did not include a provision for the same. The City's Design Council approved the aesthetic/artistic project concepts on July 21, 2010.

The fee for Supplemental Agreement No. 3 is based on an hourly fee of $125 per hour, with the total not to exceed $50,000.

Financial Considerations: MKEC's total fee including Supplemental No. 1, 2 and 3 will be $753,013 with the total paid by General Obligation bonds. Funding is available within the approved project budget.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing improvements to an existing bridge and dam at the Arkansas River. The added recreational opportunities would enhance the quality of life and support the vision of a vibrant downtown neighborhood.

Legal Considerations: Supplemental Agreement No. 3 has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve Supplemental Agreement No. 3 and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 3.

SUPPLEMENTAL AGREEMENT NO. 3

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES DATED MAY 28, 2003

BETWEEN

THE CITY OF WICHITA, KANSAS

PARTY OF THE FIRST PART, HEREINAFTER CALLED THE

"CITY"

AND

MKEC ENGINEERING CONSULTANTS, INC.

PARTY OF THE SECOND PART, HEREINAFTER CALLED THE

"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated May 28, 2003) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements to **LINCOLN STREET BRIDGE & DAM AT THE ARKANSAS RIVER** (Project No. 472 84605).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement and in Supplemental Agreement No. 1 and 2 is hereby amended to include the following:

1. Public Art Consulting Services: The ENGINEER will hire an independent art consultant to initiate and coordinate public art consulting services for the PROJECT. Specific services provided are outlined in the attached Professional Service Agreement between the ENGINEER and the art consultant.

B. PAYMENT PROVISIONS

The fee in Section IV. A. shall be amended to include the following:

Payment to the ENGINEER for the performance of the additional professional design services as outlined in this supplemental agreement shall be made on an hourly basis at a rate of **$125.00** per hour with a maximum not-to-exceed fee of **$50,000.00**. The ENGINEER will invoice the CITY for the actual amount that the art consultant invoices the ENGINEER. The ENGINEER will not impose a multiplier to the amount invoiced.

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2010.

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary Rebenstorf, Director of Law

MKEC ENGINEERING CONSULTANTS, INC.

_____
(Name & Title)

ATTEST:

_____

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Supplemental Agreement for Design Services for 47th Street South, between Meridian and Seneca (District IV)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the Supplemental Agreement.

Background: On December 13, 2005, the City entered into an agreement with Baughman Company, P.A. for designing 47th Street South improvements between Meridian and Seneca. The fee was $197,500. The City Council approved the project design concept on July 13, 2010, and the project construction funding on September 14, 2010. The approved design concept revised the planned five lane roadway to a combination of three, four and five lanes to avoid the cost of relocating a private airport runway and a large Westar transmission line.

Analysis: The modifications will save the City approximately $700,000 in cost for the Westar relocation work, and will allow the air strip to remain in its current location. Projected future traffic counts indicate that a three lane section will provide the needed capacity. Additional design work includes significant plan modification, utility coordination, and revised property/easement exhibits. Also, survey and design work is needed on the north side of 47th Street near Elizabeth to accommodate drainage that was added with recent improvements near 46th Street.

A Supplemental Agreement has been prepared to authorize the additional design services.

Financial Considerations: Payment to Baughman for this supplemental agreement will be made on a lump sum basis of $59,975, and will be paid by General Obligations bonds. Funding is available in the approved project budget.

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

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

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

Attachments: Supplemental Agreement.

SUPPLEMENTAL AGREEMENT

TO THE

AGREEMENT FOR PROFESSIONAL SERVICES DATED DECEMBER 13, 2005

BETWEEN

THE CITY OF WICHITA, KANSAS

PARTY OF THE FIRST PART, HEREINAFTER CALLED THE

"CITY"

AND

BAUGHMAN COMPANY, P.A.

PARTY OF THE SECOND PART, HEREINAFTER CALLED THE

"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated December 13, 2005) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements to **47TH STREET SOUTH, BETWEEN MERIDIAN AND SENECA** (472 84296, OCA #706935)**.**

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

- Revise the east half mile of the street from a five (5) lane roadway section to a three (3) lane roadway section including new storm sewer plans, cross sections, traffic control, marking & signing and all other incidental revisions.
- Additional Utility Coordination with the affected utilities.
- Revised Property and Temporary Construction Exhibits.
- Additional Topographical Survey and Design north of the Project limits to reclaim the Park Dept's property.
- Additional Topographical Survey and Design north of the Project limits to accommodate the drainage from recently paved Elizabeth.
- Revisions to accommodated KDOT's Pipe Policy request.

B. PAYMENT PROVISIONS

The fee in Section IV. A. shall be amended to include the following:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement shall be made on the basis of the lump sum fee specified below:

472 84296 $**59,975.00**

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2010

.

CITY OF WICHITA

_____

Carl Brewer Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY

_____

N. Brent Wooten, President

ATTEST:

_____

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Agreement for Design Services for Water, Sanitary Sewer, Storm Water Drainage, and Paving Improvements in Silverton Addition (north of 13th Street North, west of 135th Street West) (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the agreement.

Background: The City Council approved the water, sanitary sewer, storm water drainage, and paving improvements in Silverton Addition on October 17, 2006.

Analysis: The proposed agreement between the City and Baughman Company, P.A. provides for the design of bond financed improvements consisting of water, sanitary sewer, storm water drainage, and paving in Silverton Addition. Per Administrative Regulation 1.10, staff recommends that Baughman be hired for this work, as this firm provided the preliminary engineering services for the platting of the subdivision and can expedite plan preparation.

Financial Considerations: Payment to Baughman will be on a lump sum basis of $61,300 and will be paid by special assessments.

Goal Impact: This agreement addresses the Efficient Infrastructure goal by providing the engineering design services needed for the construction of water, sanitary sewer, storm water drainage, and paving improvements in a new subdivision. It also addresses the Economic Vitality and Affordable Living goal by providing public improvements in new developments that are vital to Wichita's continued economic growth.

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

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

Attachments: Agreement.

AGREEMENT

for

PROFESSIONAL SERVICES

between

THE CITY OF WICHITA, KANSAS

and

BAUGHMAN COMPANY, P.A.

for

SILVERTON ADDITION

THIS AGREEMENT, made this _____ day of _____, 2010, by and between the CITY OF WICHITA, KANSAS, party of the first part, hereinafter called the "CITY" and BAUGHMAN COMPANY, P.A., party of the second part, hereinafter called the "ENGINEER".

WITNESSETH: That

WHEREAS, the CITY intends to construct;

WATER DISTRIBUTION SYSTEM NO. 448 90241 serving Lots 30 through 71, Block D; Lots 1 through 18, Block E, Silverton Addition (north of 13th Street North, west of 135th Street West) (Project No. 448 90241).

LATERAL 13, MAIN 4, NORTHWEST INTERCEPTOR SEWER serving Lots 30 through 47, Block D; Lots 50 through 64, Block D; Lots 10 through 18, Block E, Silverton Addition (north of 13th Street North, west of 135th Street West) (Project No. 468 84246).

STORM WATER DRAIN NO. 368 serving Lots 30 through 71, Block D; Lots 1 through 18, Block E, Silverton Addition (north of 13th Street North, west of 135th Street West) (Project No. 468 84681).

WESTPORT from the west line of Lot 23, Block F, west to the west line of Kentucky Lane, **KAP** from the south line of Westport, south to the south line of the plat; **KENTUCKY LANE** from the north line of Westport north to the south line of Willoughby; **WILLOUGHBY** and **WILLOUGHBY CIRCLE** from the west line of the plat, east to and including the cul-de-sac and on **KENTUCKY COURT** from the east line of Kentucky Lane east to and including the cul-de-sac and that sidewalk be constructed on Westport, Kentucky Lane and Willoughby (north of 13th Street North, west of 135th Street West) (Project No. 472 84462).

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

I. SCOPE OF SERVICES

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

II. IN ADDITION, THE ENGINEER AGREES

A. To provide the various technical and professional services, equipment, material and transportation to perform the tasks as outlined in the SCOPE OF SERVICES (Exhibit A).

B. To attend meetings with the City and other local, state and federal agencies as necessitated by the SCOPE OF SERVICES.

C. To make available during regular office hours, all calculations, sketches and drawings such as the CITY may wish to examine periodically during performance of this agreement.

D. To save and hold CITY harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by errors, omissions or negligent acts of ENGINEER, its agents, servants, employees, or subcontractors occurring in the performance of its services under this contract.

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

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

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

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

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

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

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

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

K. To designate a Project Manager for the coordination of the work that this agreement requires to be performed. The ENGINEER agrees to advise the CITY, in writing, of the person(s) designated as

Project Manager not later than five (5) days following issuance of the notice to proceed on the work required by this agreement. The ENGINEER shall also advise the CITY of any changes in the person designated Project Manager. Written notification shall be provided to the CITY for any changes exceeding one week in length of time.

III. THE CITY AGREES:

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

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

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

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

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

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

IV. PAYMENT PROVISIONS

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

Project No. 448 90241	$ **7,800.00**
Project No. 468 84246	$**10,500.00**
Project No. 468 84681	$**16,800.00**
Project No. 472 84462	$**26,200.00**
TOTAL	**$61,300.00**

B. When requested by the CITY, the ENGINEER will enter into a Supplemental Agreement for additional services related to the PROJECT such as, but not limited to:

1. Consultant or witness for the CITY in any litigation, administrative hearing, or other legal proceedings related to the PROJECT.
2. Additional design services not covered by the scope of this agreement.
3. Construction staking, material testing, inspection and administration related to the PROJECT.
4. A major change in the scope of services for the PROJECT.

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

V. THE PARTIES HERETO MUTUALLY AGREE:

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

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

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

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

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

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

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

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

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

BY ACTION OF THE CITY COUNCIL

_____

Carl Brewer, Mayor

SEAL:

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____

Gary Rebenstorf, Director of Law

BAUGHMAN COMPANY, P.A.

_____

N. Brent Wooten, President

ATTEST:

_____

EXHIBIT "A"

SCOPE OF SERVICES

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

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

A. PHASE I – PLAN DEVELOPMENT

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

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

9. All applicable coordinate control points and related project staking information shall be furnished on a map on the plans, as well on CD-ROM, as a text file, along with the project PDF's. When applicable, this coordinate information will be used by the CITY for construction staking purposes.
10. All shop drawings submitted by the contractor for the PROJECT shall be reviewed and, when acceptable, approved for construction by the ENGINEER for the PROJECT.
11. The ENGINEER shall meet with effected property owners, along with City staff, at a pre-construction Public Information Meeting, as arranged by the City, to explain project design, including such issues as construction phasing and traffic control.
12. The ENGINEER shall complete permanent monumentation of all new R/W, complete and submit all necessary legal documentation for same.
13. Permits. The ENGINEER shall prepare any and all necessary permits for this PROJECT, such as the preparation of applications for U.S. Army Corps of Engineers (404) permits, Division of Water Resources permit, Kansas Department of Wildlife and Parks permit and Kansas Department of Health and Environment permit. Also if requested by the CITY, obtain construction approval from the U.S. Army Corps of Engineers and assist the CITY in coordinating the archaeological review of the PROJECT.
14. Complete and deliver field notes, plan tracings, specifications and estimates to the CITY within the time allotted for the PROJECTS as stipulated below.
    a. Plan Development for the water improvements by **November 22, 2010**.
       (Project No. 448 90241).
    b. Plan Development for the sewer improvements by **November 15, 2010**.
       (Project No. 468 84246).
    c. Plan Development for the storm water improvements by **November 15, 2010**.
       (Project No. 468 84681).
    d. Plan Development for the paving improvements by **December 21, 2010**.
       (Project No. 472 84462).

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

Plan Submittal

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

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

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

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

Storm Water Pollution Prevention

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

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

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

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

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

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

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

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Change Order No. 4: Street Paving in Washington Heights Addition (East of Oliver, north of 31st Street South) (District III)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve Change Order No. 4.

Background: On September 22, 2009, the City Council approved a construction contract with Cornejo & Sons, Inc. to pave streets in Washington Heights Addition. A number of work items have been identified since the project was let that should be addressed as a change order.

Analysis: This was an area with existing gravel streets and bar ditches. The project was let as an asphalt mat roadway as it would have been cost prohibitive to the benefit district to install the required underground drainage. The bar ditches convey drainage from nearby McConnell Air Force Base and are very deep in places. However, during construction it became evident that curb and gutter would be needed at certain locations in order to direct localized drainage and to limit future erosion. A change order has been prepared for the additional work.

Financial Considerations: The total cost of the additional work is $43,140 with the $40,502 paid by special assessments and $2,638 by City General Obligation bonds. The original contract amount is $549,185. This change order plus previous change orders represents 12.56% of the original contract amount. Funding is available within the existing project budget.

Goal Impact: This project addresses the Efficient Infrastructure goal by paving streets in a developed area.

Legal Considerations: The Law Department has approved the change order as to legal form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve Change Order No. 4 and authorize the necessary signatures.

Attachments: Change Order No. 4.

CITY OF WICHITA

PUBLIC WORKS-ENGINEERING

September 9, 2010

CHANGE ORDER

To: Cornejo & Sons, Inc.

Project: New Jersey, Brandywine & Valley Forge Tied w/ New Jersey & Bunker Hill - Washington Heights

Change Order No.: 4

Purchase Order No.: 930774

CHARGE TO OCA No.: 766216 = $10,851.50
766236 = $32,288.50

Project No.: 472-84718/472-84783

OCA No.: 766216/636222/766236

PPN: 490234/779611/490254

Please perform the following extra work at a cost not to exceed $43,140.00

Additional Work: Add curb and gutter, and additional signage. Regrade slope.

Item #1 - To help stabilize the edge of the pavement around intersection corners, curb needs to be added on Valley Forge from Sta.33+88 Lt. to Sta. 36+09 Lt. on Brandywine, New Jersey from Sta. 7+80 Rt. to Sta. 15+20 Rt. on Valley Forge, New Jersey from Sta. 14+60 Rt. to Sta. 70+32 Rt. on Bunker Hill, and New Jersey from Sta. 13+30 Lt. to Sta. 50+90 Lt. on Bunker Hill. Also, an OM-3R needs to be added at Sta. 15+20 Rt. on Valley Forge to warn traffic to the close proximity of the storm sewer end section.

Item	Negot'd/Bid	Qty			Unit Price		Extension
ADD (766216 GO)							
Curb & Gutter	Negot'd	341	lf	@	26.00	=	$8,866.00
Install OM-3R	Negot'd	1	LS	@	85.00	=	$85.00
OVERRUN (766216 GO)							
#7 Conc. Flume (W=3')	Bid	15	lf	@	31.00	=	$465.00
#8 Conc. Flume (W=5')	Bid	15	lf	@	35.50	=	$532.50
#15 Rip-Rap, Light Stone	Bid	28	sy	@	32.25	=	$903.00
ADD (766236 GO)							
Curb & Gutter	Negot'd	225	lf	@	26.00	=	$5,850.00
OVERRUN (766236 GO)							
#41 Conc. Flume (W=3')	Bid	30	lf	@	31.00	=	$930.00
#49 Rip-Rap, Light Stone	Bid	22	sy	@	32.75	=	$720.50

Item #2 - To prevent erosion and protect the edge of the pavement, curb needs to be added on Bunker Hill from Sta. 60+34 to Sta. 59+64 Rt., Sta. 59+37 to Sta. 58+84 Rt., Sta. 58+53 to 57+96 Rt., Sta. 57+36 to 55+82 Rt., and Sta. 55+46 Rt. to Sta. 14+22 Lt. on New Jersey. The existing slope behind the retaining wall on Bunker Hill from Sta. 52+75 to Sta. 54+00 requires grading to a 4:1 slope to match the top of the retaining wall.

Item	Negot'd/Bid	Qty			Unit Price		Extension
ADD (766236 SA)							
Curb & Gutter	Negot'd	885	lf	@	24.00	=	$21,240.00
Slope Grading	Negot'd	1	LS	@	3,548.00	=	$3,548.00
					Total	**=**	**$43,140.00**

CIP Budget Amount: $431,800.00 (766216); $610,500.00 (766236)	**Original Contract Amt.: $549,184.75**
Consultant: R&B	Current CO Amt.: $43,140.00
Exp. & Encum. To Date: $390,260.85 (766216) **$344,367.91 (766236)**	**Amt. of Previous CO's: $25,840.25** **Total of All CO's: $68,980.25**
CO Amount: $43,140.00	**% of Orig. Contract / 25% Max.: 12.56%**
Unencum. Bal. After CO: $ 30,687.65 (766216); **$233,843.59 (766236)**	**Adjusted Contract Amt.: $618,165.00**

Recommended By:

_____ _____
Greg Baalman, P.E. Date
Construction Engineer

Approved:

_____ _____
Jim Armour, P.E. Date
City Engineer

Approved:

_____ _____
Contractor Date

Approved:

_____ _____
Chris Carrier, P.E. Date
Director of Public Works

Approved as to Form:

_____ _____
Gary Rebenstorf Date
Director of Law

By Order of the City Council:

_____ _____
Carl Brewer Date
Mayor

Attest:_____
City Clerk

CITY OF WICHITA
City Council Meeting
October 19, 2010

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Land for an Easement at 12525 West 117th Street for the Integrated Local Water Supply Plan (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 construction of a treatment plant was approved at the southwest corner of West 117th Street North and North 119th Street West. The treatment plant commonly referred to as the Bentley Treatment Plant, will be a fundamental part of the Integrated Local Water Supply Plan. Acquiring easements along 117th Street and west of the proposed plant will allow other aquifer recharge pipelines to be tied into the Bentley Treatment Plant. One such easement is required at 12525 West 117th Street North. The property is improved with a single-family residence however; no improvements will be impacted by the project. The proposed easement area is .10 acres.

Analysis: The seller agreed to convey the necessary easements for $500; the established minimum offer. The driveway and lawn will be restored as part of the project.

Financial Considerations: A budget of $900 is requested; this includes $500 for the acquisition and $400 for recording costs and other administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, 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: Easement purchase contract, tract map and area map.

EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ___ day of_____, 2010 by and between David P. Gaede & Leah A. Gaede, husband and wife, 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:

Permanent Easement (Pipeline – Parcel "A"): The South 20.00 feet of the North 50.00 feet of a tract of land in the Northeast Quarter of Section 12, Township 25 South, Range 2 West of the 6th Principal Meridian, Sedgwick County, Kansas, more particularly described as the West 220.00 feet of the East 646.00 feet of the West half of the North half of the Northeast Quarter.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Five Hundred Dollars and No Cents ($500.00) 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:

David P. Gaede

David P. ~~Geade~~, husband
Gaede DPG MMS

Leah A. Gaede

Leah A. ~~Geade~~, wife
Gaede LAG MMS

BUYER:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

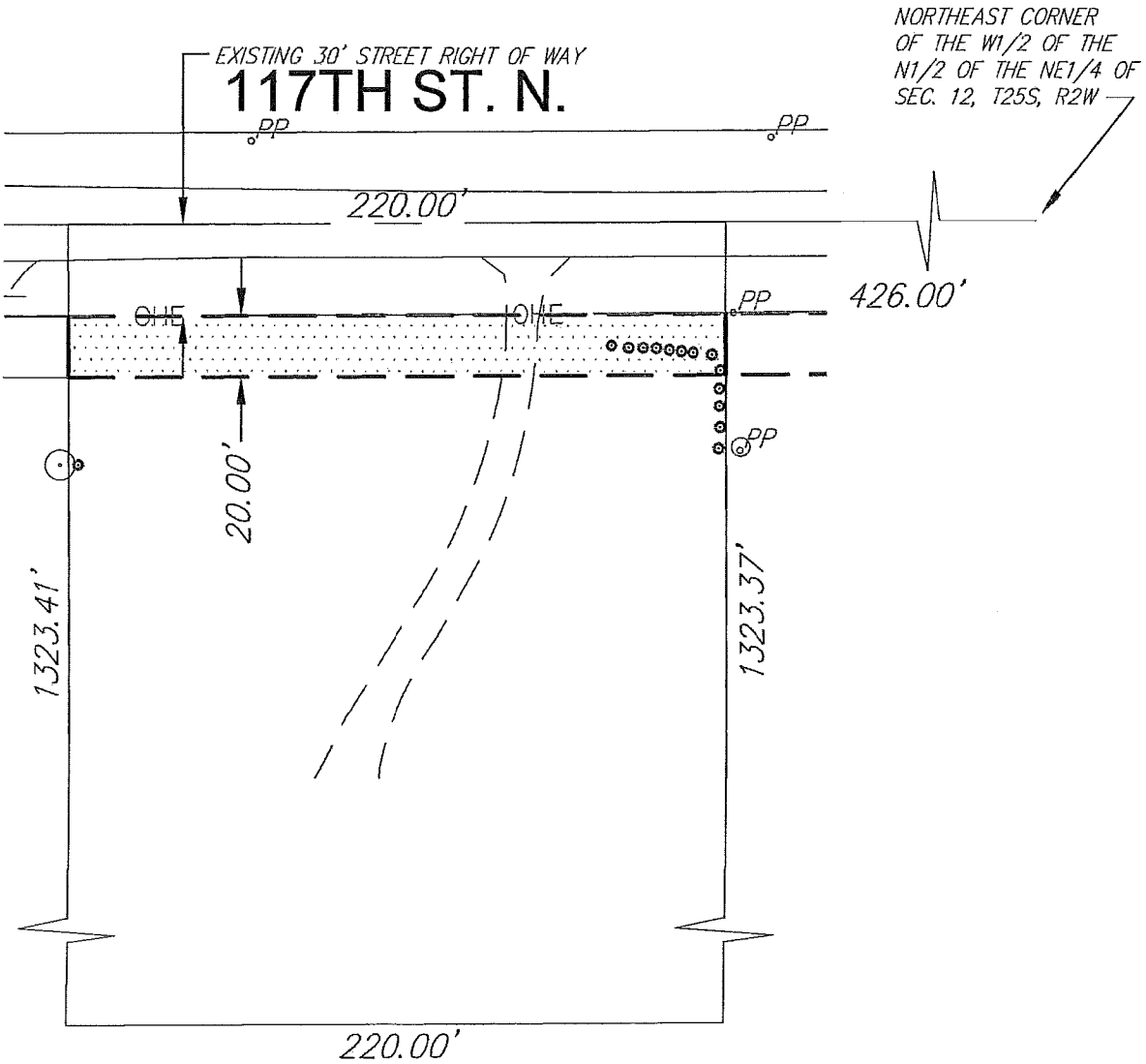
Gary E. Rebenstorf, Director of Law

UTILITY EASEMENT EXHIBIT

GAEDE, DAVID P & LEAH A HILL
12525 W 117TH ST N SEDGWICK KS 67135
EA 84000A4

Easement Area: 4,400 Sq. Ft.±

60' 0 60'



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

Revised 9/16/2010
3523W

EA 84000A4 Utility Easement

The south 20.00 feet of the north 50.00 feet of a tract of land in the NE1/4 of Sec. 12, T25S, R2W of the 6th P.M., Sedgwick County, Kansas, more particularly described as the west 220 feet of the east 646.00 feet of the west half of the north half of the NE1/4.

WILLIAM K. CLEVENGER
LICENSED
LS-1437
9/16/10
KANSAS
LAND SURVEYOR

Revised 9/16/2010

12525 West 117th St North

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

CITY OF WICHITA
City Council Meeting
October 19, 2010

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Land for an Easement at 12421 West 117th Street for the Integrated Local Water Supply Plan (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 construction of a treatment plant was approved at the southwest corner of West 117th Street North and North 119th Street West. The treatment plant commonly referred to as the Bentley Treatment Plant, will be a fundamental part of the Integrated Local Water Supply Plan. Acquiring easements along 117th Street and west of the proposed plant will allow other aquifer recharge pipelines to be tied into the Bentley Treatment Plant. One such easement is required at 12421 West 117th Street North. The property is improved with a single-family residence. There are mature trees and a sprinkler system within the proposed utility easement however; no other improvements will be impacted. The proposed easement area consists of .10 acres.

Analysis: The seller agreed to convey the necessary easements for the estimated market value of $3,693. This amount is comprised of $213 for the easement, or $2,130 per acre; $3,280 for seventeen trees; and $200 to replace and repair the sprinkler system. The driveway and lawn will be restored as part of the project.

Financial Considerations: A budget of $4,093 is requested; this includes $3,693 for the acquisition and $400 for recording costs and other administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, 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: Easement purchase contract, tract map and area map.

EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ___ day of_____, 2010 by and between Paul W. Woodard, II & LaShelle M. Woodard, husband and wife, tenants in common, 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:

Permanent Easement (Pipeline – Parcel "A")
The South 20.00 feet of the north 50.00 feet of a tract of land in the Northeast Quarter of Section 12, Township 25 South, Range 2 West of the 6th Prime Meridian, Sedgwick County, Kansas, more particularly described as the East 206.00 feet of the West half of the North half of the Northeast Quarter.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Three Thousand Six Hundred Ninety-Three Dollars and No Cents ($3,693.00) 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:

Paul W. ~~Woodward~~ Woodard, II, husband
Tenants in common

LaShelle M. ~~Woodward~~ Woodard, wife
Tenants in common

BUYER:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

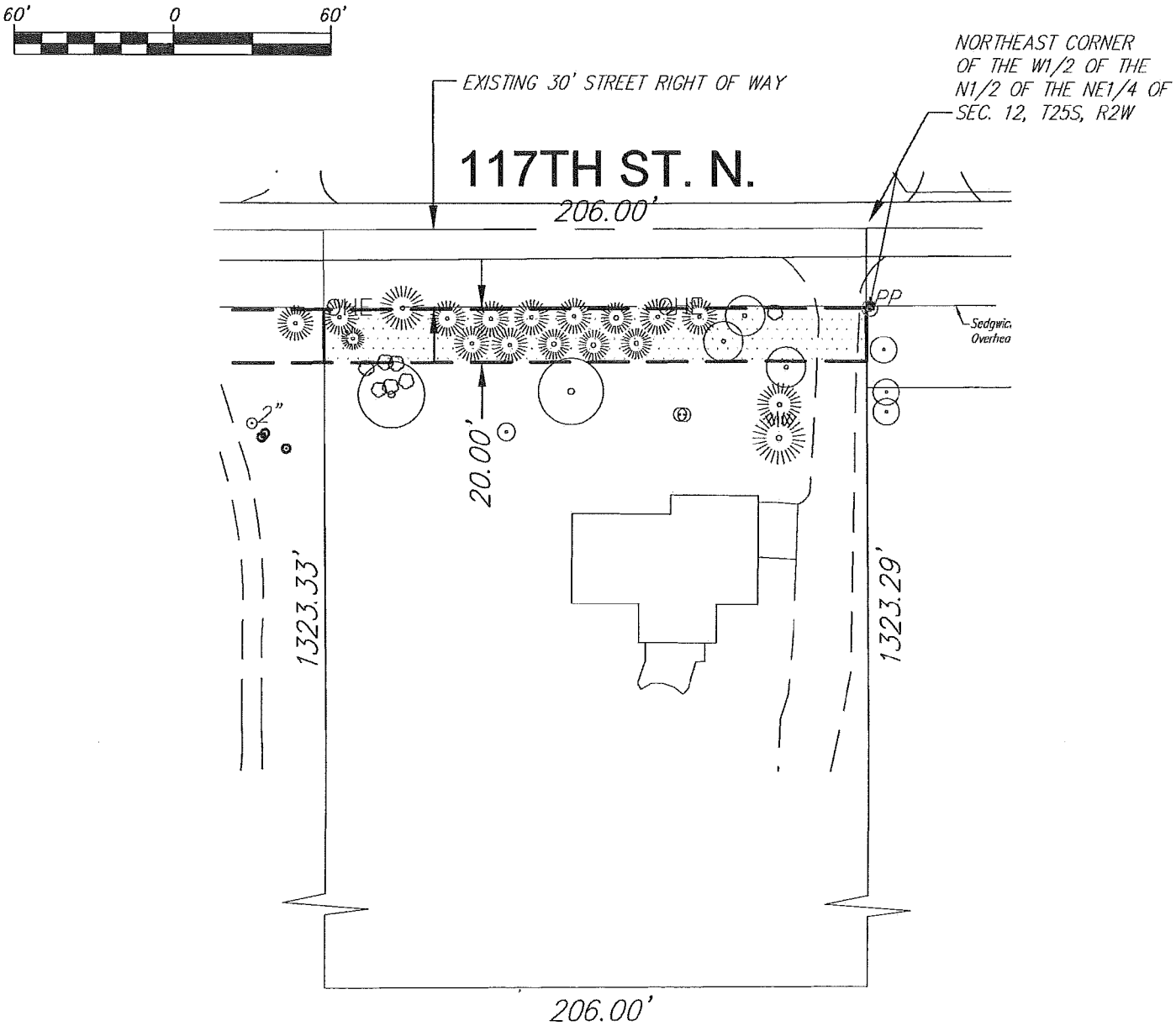
Gary E. Rebenstorf, Director of Law

UTILITY EASEMENT EXHIBIT

Tract 4
ok
JTS
9-17-10

WOODARD, PAUL W II & LA SHELLE M
12421 W 117TH ST N SEDGWICK KS 67135
EA 84000A

Easement Area: 4,120 Sq. Ft.±



Ruggles & Bohm, P.A.
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(316) 264-4621 fax
E-mail: info@rbkansas.com

Revised 9/16/2010
3523W

EA 84000A Utility Easement

ok
JTS
9-17-10

The south 20.00 feet of the north 50.00 feet of a tract of land in the NE1/4 of Sec. 12, T25S, R2W of the 6th P.M., Sedgwick County, Kansas, more particularly described as the east 206.00 feet of the west half of the north half of the NE1/4.

WILLIAM K. CLEVENGER
LICENSED
LS-1437
KANSAS
LAND SURVEYOR

William K. Clevenger
9/16/10

Revised 9/16/2010

12421 West 117th St North

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CITY OF WICHITA
City Council Meeting
October 19, 2010

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Land for an Easement at 12501 West 117th Street for the Integrated Local Water Supply Plan (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 construction of a treatment plant was approved at the southwest corner of West 117th Street North and North 119th Street West. The treatment plant commonly referred to as the Bentley Treatment Plant, will be a fundamental part of the Integrated Local Water Supply Plan. Acquiring easements along 117th Street and west of the proposed plant will allow other aquifer recharge pipelines to be tied into the Bentley Treatment Plant. One such easement is required at 12501 West 117th Street North. The property is improved with a single-family residence however; the improvements are removed from the proposed acquisition area. There are two mature trees in the acquisition area that will be removed. The proposed easement area consists of .10 acres.

Analysis: The seller agreed to convey the necessary easements for the estimated market value of $1,313. This amount is comprised of $213 for the easement, or $2,130 per acre; and $1,100 for the two trees. The driveway and lawn will be restored as part of the project.

Financial Considerations: A budget of $1,713 is requested; this includes $1,313 for the acquisition and $400 for recording costs and other administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, 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: Easement purchase contract, tract map and area map.

EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ___ day of_____, 2010 by and between Roland W. Starbuck, a single person, 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:

Permanent Easement (Pipeline – Parcel "A"): The South 20.00 feet of the North 50.00 feet of a tract of land in the Northeast Quarter of Section 12, Township 25 South, Range 2 West of the 6th Principal Meridian, Sedgwick County, Kansas, more particularly described as the West 220.00 feet of the East 426.00 feet of the Northwest Quarter of the Northeast Quarter, subject to existing road right of way.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of One Thousand Three Hunred Thirteen Dollars and No Cents ($1,313.00) 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:

Roland W. Starbuck, a single person

BUYER:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

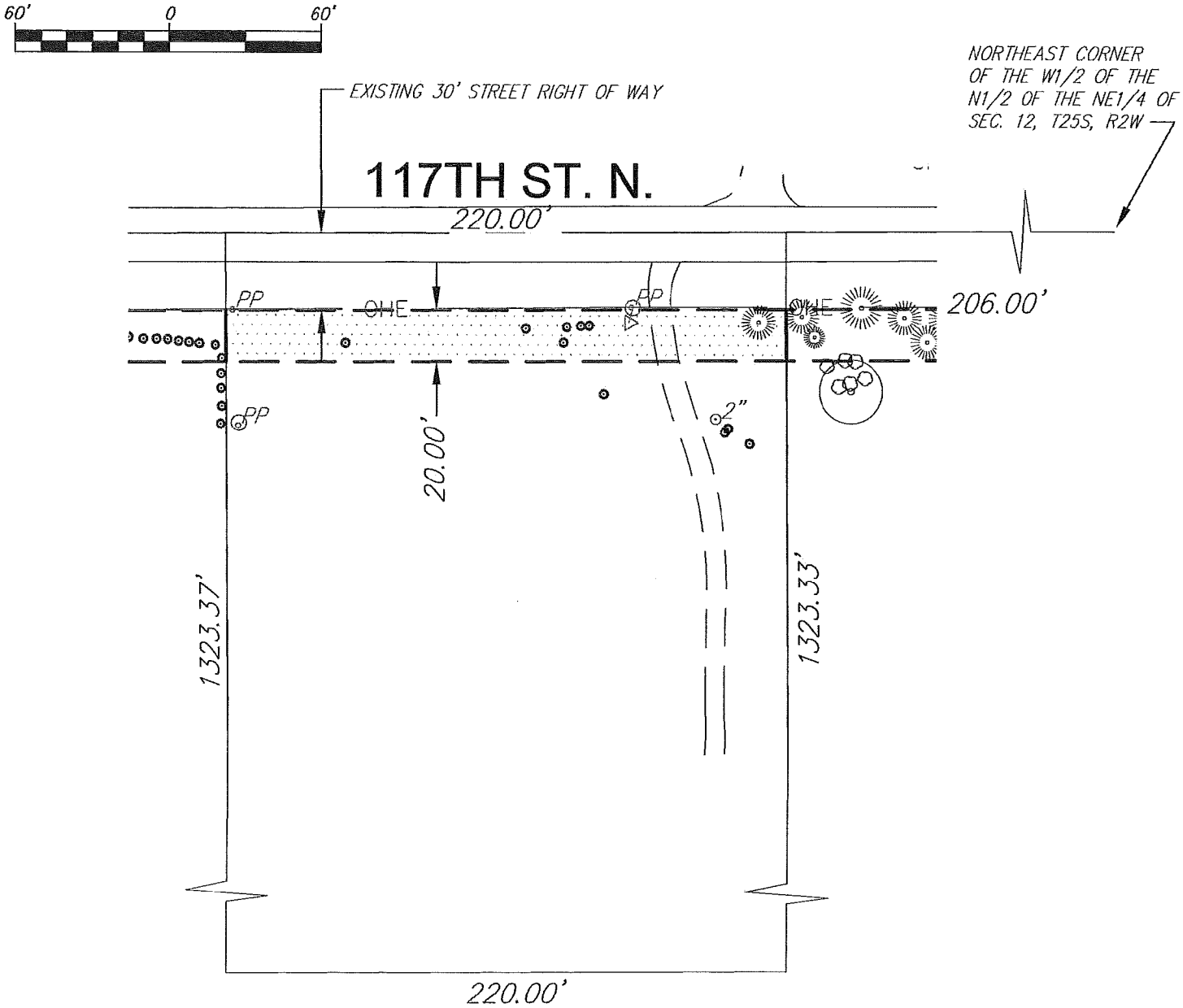
APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

UTILITY EASEMENT EXHIBIT

STARBUCK, ROLAND W
1412 LAURA WICHITA KS 67211
EA 84000A3

Easement Area: 4,400 Sq. Ft.±



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

Revised 9/16/2010
3523W

EA 84000A3 Utility Easement

The south 20.00 feet of the north 50.00 feet of a tract of land in the NE1/4 of Sec. 12, T25S, R2W of the 6th P.M., Sedgwick County, Kansas, more particularly described as the west 220.00 feet of the east 426.00 feet of the west half of the north half of the NE1/4, subject to existing road right of way.

WILLIAM K. CLEVENGER
LICENSED
LS-1437
9/16/10
KANSAS
LAND SURVEYOR

Revised 9/16/2010

12501 West 117th St North

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

CITY OF WICHITA
City Council Meeting
October 19, 2010

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Land for an Easement at 12700 West 117th Street for the Integrated Local Water Supply Plan (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 construction of a treatment plant was approved at the southwest corner of West 117th Street North and North 119th Street West. The treatment plant commonly referred to as the Bentley Treatment Plant, will be a fundamental part of the Integrated Local Water Supply Plan. Acquiring easements along 117th Street and west of the proposed plant will allow other aquifer recharge pipelines to be tied into the Bentley Treatment Plant. One such easement is required at 12700 West 117th Street North. That portion of the property at 12700 West 117th Street is a narrow strip of land utilized as an access road to the remainder of the property. The proposed easement area consists of .01 acres. There are no improvements impacted as a result of the project.

Analysis: The seller agreed to convey the necessary easements for $500; the established minimum offer. The driveway and lawn will be restored as part of the project.

Financial Considerations: A budget of $900 is requested; this includes $500 for the acquisition and $400 for recording costs and other administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, 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: Easement purchase contract, tract map and area map.

EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ___ day of _____, 2010 by and between Shawn Kohr, President and Jeff Johns, Treasurer, of the Bit & Spur Saddle Club, Inc., 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 Sedgwick County, Kansas, to wit:

Permanent Easement (Pipeline Parcel - "A"): The south 20 feet of the north 50 feet of a tract of property in the Northeast Quarter of Section 12, Township 25 South, Range 2 West of the Sixth Principal Meridian, Sedgwick County, Kansas, beginning at a point which is 660 feet South of the northwest corner; thence South 660 feet on the quarter section line; thence East 363 feet, parallel with the north section line; thence North 1320 feet, parallel with the west quarter section line; thence West 33 feet on the north section line; thence South 660 feet parallel with the west quarter section line; thence West 330 feet to the point of beginning. Said tract contains 0.015 acres, more or less, excluding road right of way.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Five Hundred and Dollars and No Cents ($500.00) 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:

Shawn Kohr, President
Bit & Spur Saddle Club, Inc.

Jeff Johns, Treasurer
Bit & Spur Saddle Club, Inc.

BUYER:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

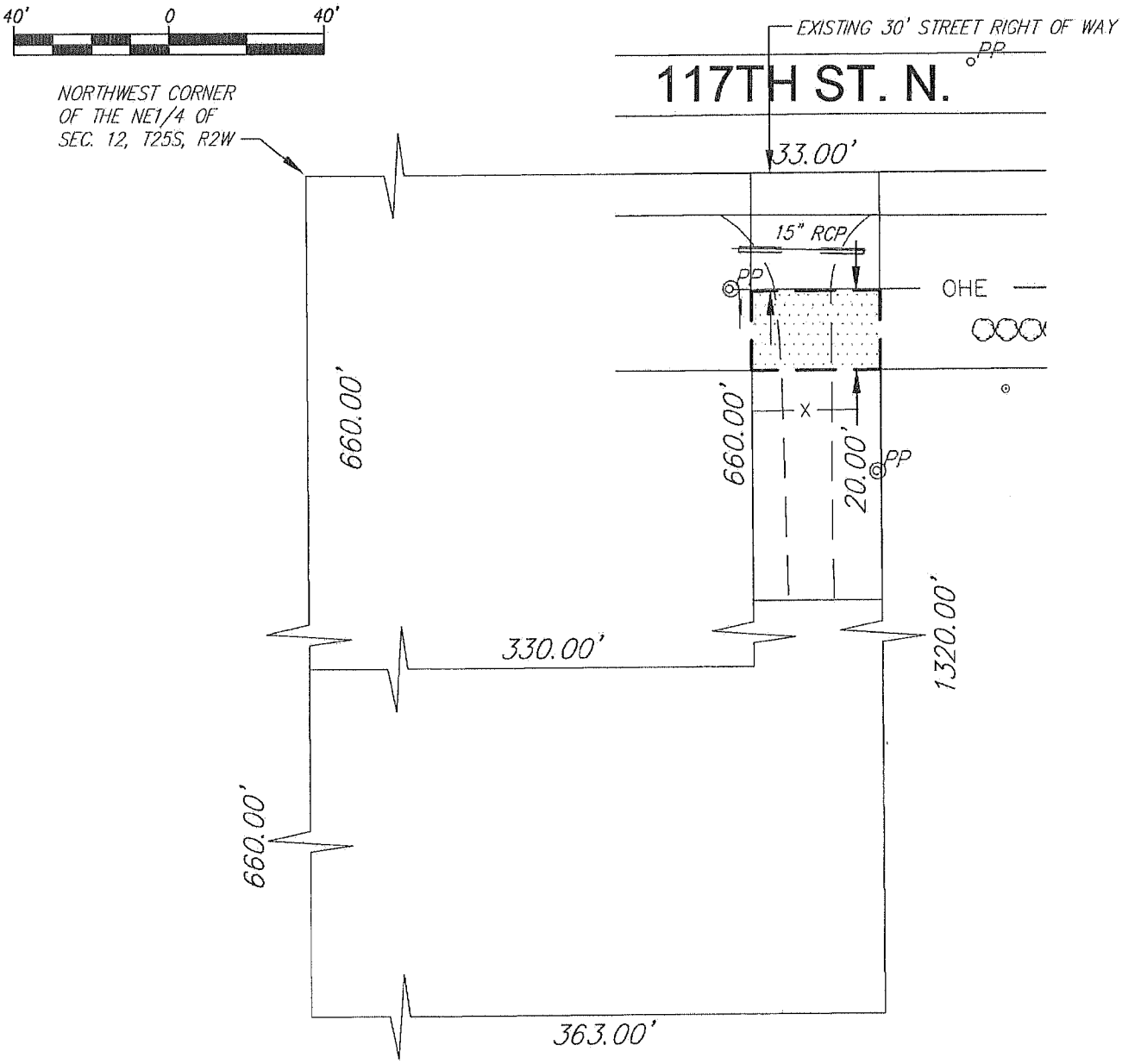
APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

UTILITY EASEMENT EXHIBIT

BIT & SPUR SADDLE CLUB INC
5757 N 123RD E. WICHITA KS 67226
EA 84000A2

Easement Area: 660 Sq. Ft.±



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(316) 264-4621 fax
E-mail: info@rbkansas.com

Revised 9/16/2010
3523W

EA 84000A2 Utility Easement

The south 20.00 feet of the north 50.00 feet of a tract of property in the NE1/4 of Sec. 12, T25S, R2W of the 6th P.M., Sedgwick County, Kansas, beginning at a point which is 660 feet South of the northwest corner; thence South 660 feet on the quarter section line; thence East 363 feet, parallel with the north section line; thence North 1320 feet, parallel with the west quarter section line; thence West 33 feet on the north section line; thence South 660 feet parallel with the west quarter section line; thence West 330 feet to the point of beginning.

WILLIAM K. CLEVENGER
LICENSED
LS-1437
1/27/10
KANSAS
LAND SURVEYOR

12700 W 117th N

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-10e

CITY OF WICHITA
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 1403 North Vassar 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. It is necessary to acquire a ten foot strip of land from the north end of the property as 13th Street road right-of-way. 1360 North Yale is improved with a single-family residential house. The project requires the south 10 feet of the property consisting of 1,489 square feet. The acquisition will not directly impact the improvements but will necessitate the removal of several mature trees as well as site fencing.

Analysis: The acquisition was appraised at $3,575 consisting of $675 ($.45 per square foot for the land, $1,000 for the trees and $1,900 for fencing. The owner rejected this offer but agreed to accept $8,500. This higher amount is justified as the appraiser used a depreciated value for the fencing rather than replacement value as is standard. In addition, the number and size of the trees being removed was greater than estimated by the appraiser. The total amount of $8,500 is comprised of $.45 per square foot for the 1,489 square foot right-of-way; $3,800 for the fencing; and $4,025 for trees.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $9,000 is requested. This includes $8,500 for the acquisition and $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 4, 2010

COUNTY: Sedgwick **TRACT NO.:** 149

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 4th day of October, 2010., by and between

Lighthouse Properties of Wichita LLC

9202 E 43rd Circle N

Wichita, KS 67226

(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.

PROJECT: 13th Street North **DATE:** October 4, 2010

COUNTY: Sedgwick **TRACT NO.:** 149

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 4th day of October, 2010., by and between

Lighthouse Properties of Wichita LLC

9202 E 43rd Circle N

Wichita, KS 67226

(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 1,489 Sq. Ft. for Right of Way Damages including but not limited to all improvements and real property of the landowner: $ 8,500.00

TOTAL: $ 8,500.00

It is understood and agreed that the above stated consideration for said real estate is in full payment of said tract of land and all damages arising from the transfer of said property and its use for the purposes above set out.

IN WITNESS WHEREOF The parties have hereunto signed this agreement the day and year first above written.

LANDOWNERS: Lighthouse Properties of Wichita LLC

By: _____
Russell Campbell, Managing Member

By: _____

THE CITY OF WICHITA

By: _____

MEMORANDA

Exact and full name of owner, as name appears of record:

Lighthouse Properties of Wichita LLC

If mortgage or other liens, show names of holders:

Emprise Bank

REMARKS:

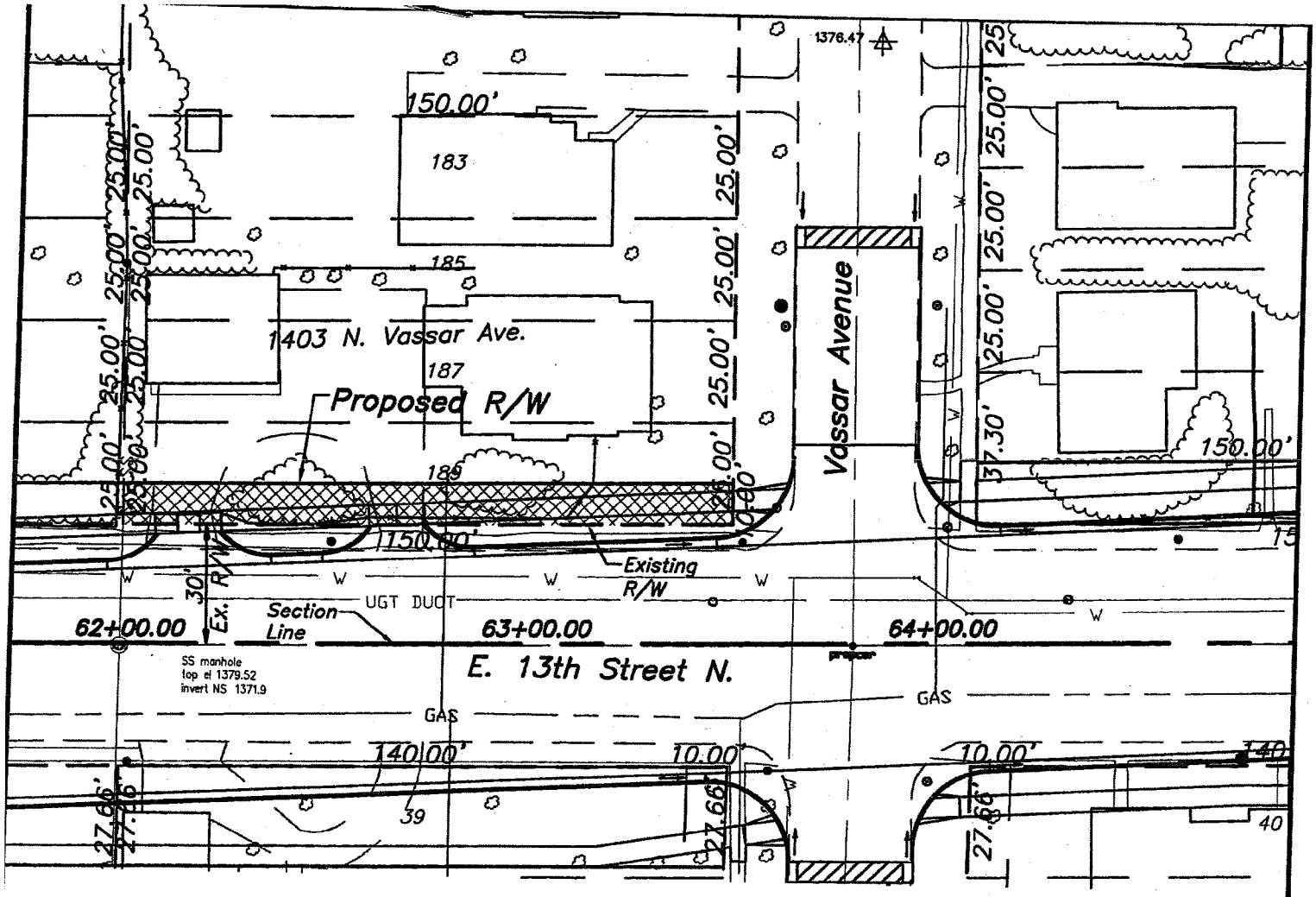
PIN/APN 121110330701000
Security Title File Number 2001299

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 187 & 189, on Vassar, Fairmount Addition, an addition to Wichita, Sedgwick County, Kansas, more particularly described as follows:

All of the south 10.00 feet of said Lot 189 on Vassar, as platted in Fairmount Addition.

TAX KEY #: C04686

R/W ACQUISITION SIZE: 1,498 sq. ft.

PROPOSED R/W ACQUISITION

13th STREET
HYDRAULIC AVENUE TO OLIVER

TRACT MAP

DON & DANIELLE LUCERO
SEC. 11–T27–R1E

SCALE: 1" = 40'

Tract No. 149

1403 North Vassar

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

CITY OF WICHITA
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Acquisition of 1355 North Chautauqua 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 1355 North Chautauqua is improved with 1,612 square foot duplex. The project will physically impact the improvements, necessitating the acquisition of the entire property.

Analysis: The property was appraised for $57,000 ($35.35 per square foot of improvements) and the owner has agreed to accept this amount. The owner currently occupies both units of the property and will be eligible for relocation assistance.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $78,500 is requested. This includes $57,000 for the acquisition, $16,000 for relocation, $5,000 for demolition and $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:** Sept. 30, 2010

COUNTY: Sedgwick **TRACT NO.:** 141

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 30th day of September, 2010, by and between

Mary J. Parnell, a single person

1355 North Chautauqua Street

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 6,750 Sq. Ft. for Right of Way
Damages including but not limited to all improvements and real property of the landowner: $ 57,000.00

TOTAL: $ 57,000.00

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: Mary J. Parnell
Mary J. Parnell, a single person

THE CITY OF WICHITA

By:_____

MEMORANDA

Exact and full name of owner, as name appears of record:

Mary J. Parnell

If mortgage or other liens, show names of holders:

N/A

REMARKS:

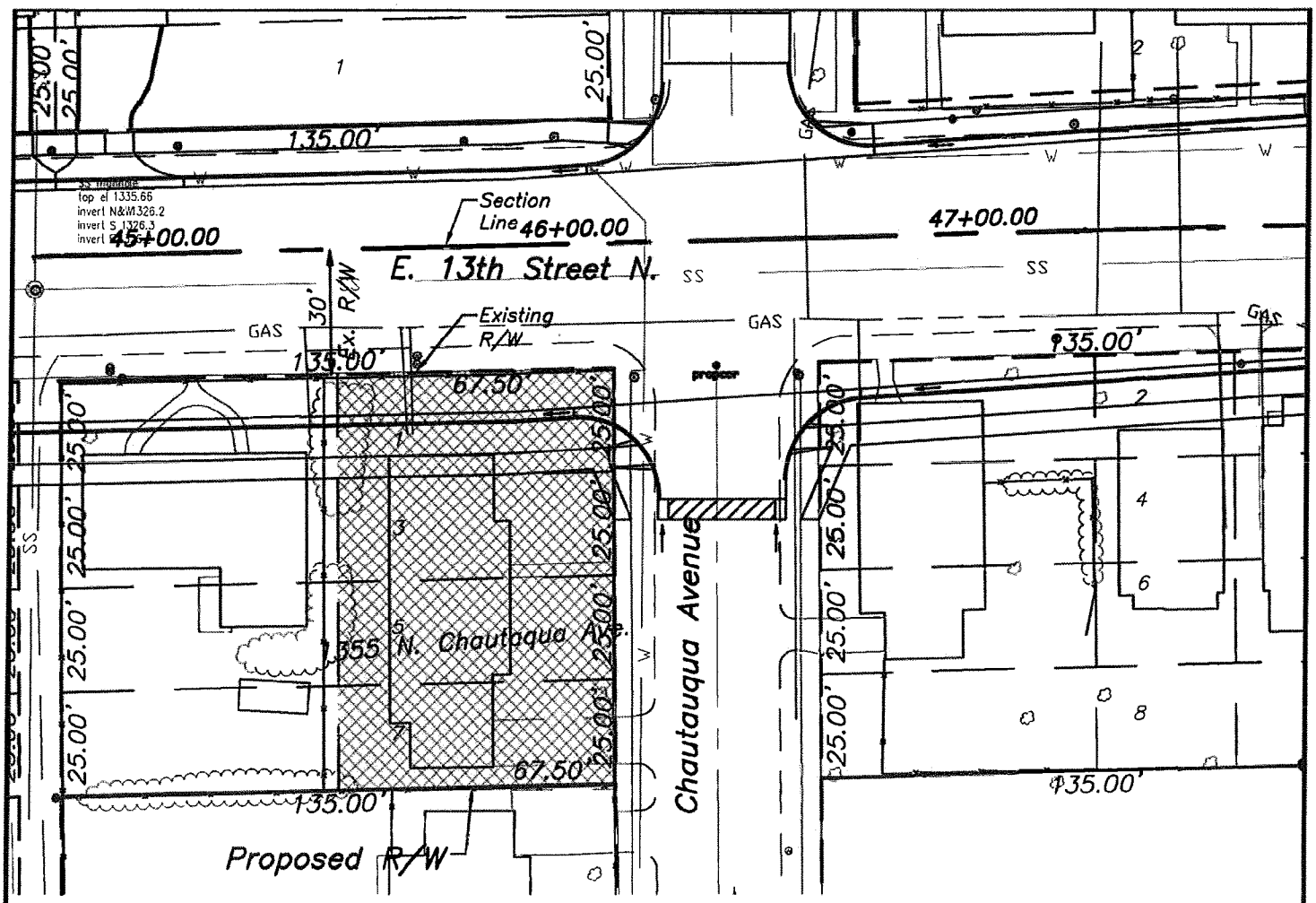
PIN/APN 125150110300100
Security Title File Number 2000538

APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

Mia Warlick
Mia Warlick, Project Manager



PROPOSED R/W ACQ. LEGAL:

Part of the East half of Lots 1, 3, 5, & 7, 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 Lots 1, 3, 5, & 7, on Mt. Olive (now Chautauqua Avenue) in Fairmount Park Addition.

TAX KEY #: C02981

R/W ACQUISITION SIZE: 6,750 sq. ft.

PROPOSED R/W ACQUISITION

13th STREET
HYDRAULIC AVENUE TO OLIVER

TRACT MAP

MARY PARNELL
SEC 15-T27-R1E

SCALE: 1" = 40'

Tract No. 141

1355 North Chautauqua

- Identified Features
- Property Parcels

Roads

- State Highway
- US Federal Highway
- Interstate
- KTA
- Arterial
- Collector
- Minor
- Ramp

- Railroads
- Quarter Section
- Waterways
- Streams
- Parks
- Airports

SDERASTER.SDEDATA.ORTHO1FT

SDERASTER.SDEDATA.ORTHO

City Limits

- Andale
- Bel Aire
- Bentley
- Cheney
- Clearwater
- Colwich
- Derby
- Eastborough
- Garden Plain
- Goddard
- Haysville
- Kechi
- Maize
- Mount Hope

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

CITY OF WICHITA
City Council Meeting
October 19, 2010

TO: Mayor and City Council Members

SUBJECT: Acquisition of Land for a Recharge Basin and Well at the Southeast Corner of 117th Street North and 119th Street West for the Integrated Local Water Supply Plan (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 proposed acquisition at the Southeast Corner of 117th Street North and 119th Street West is comprised of five acres. This site will be utilized as a recharge basin. The basin is imperative to the operation of the treatment plant and recharge system. The land is currently vacant and in agricultural production.

Analysis: The owner agreed to convey the necessary land for $25,000, or $5,000 an acre. This amount is higher than the estimated appraised value of $16,400, or $3,280 an acre however; settlement avoids the risk associated with eminent domain and saves the associated administrative costs and time involved with the process.

Financial Considerations: A budget of $27,000 is requested; this includes $25,000 for the acquisition, $2,000 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 III, 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 Virginia Popkins, a single person, 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 Sedgwick County, Kansas, to wit:

Described as: The West 466.69 feet of the South 466.69 feet of the West Half of the Northwest Quarter of Section Seven (7), Township Twenty-five (25) South, Range One (1) West of the Sixth Principal Meridian, Sedgwick County, Kansas. Said tract contains 5.0 acres, more or less, including existing road right-of-way.

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Twenty-Five Thousand Dollars and No Cents ($25,000.00) 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. 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 22, 2010.

6. The Seller further agrees to convey the above described premises with all the improvements located thereon and deliver possession of the same in the same condition as they are now, reasonable wear and tear excepted.

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. 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.

10. 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.

11. 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.

12. Paragraphs 9 and 11 shall survive the closing.

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

SELLER:

Virginia Popkins, a single person

BUYER:

Carl Brewer, Mayor

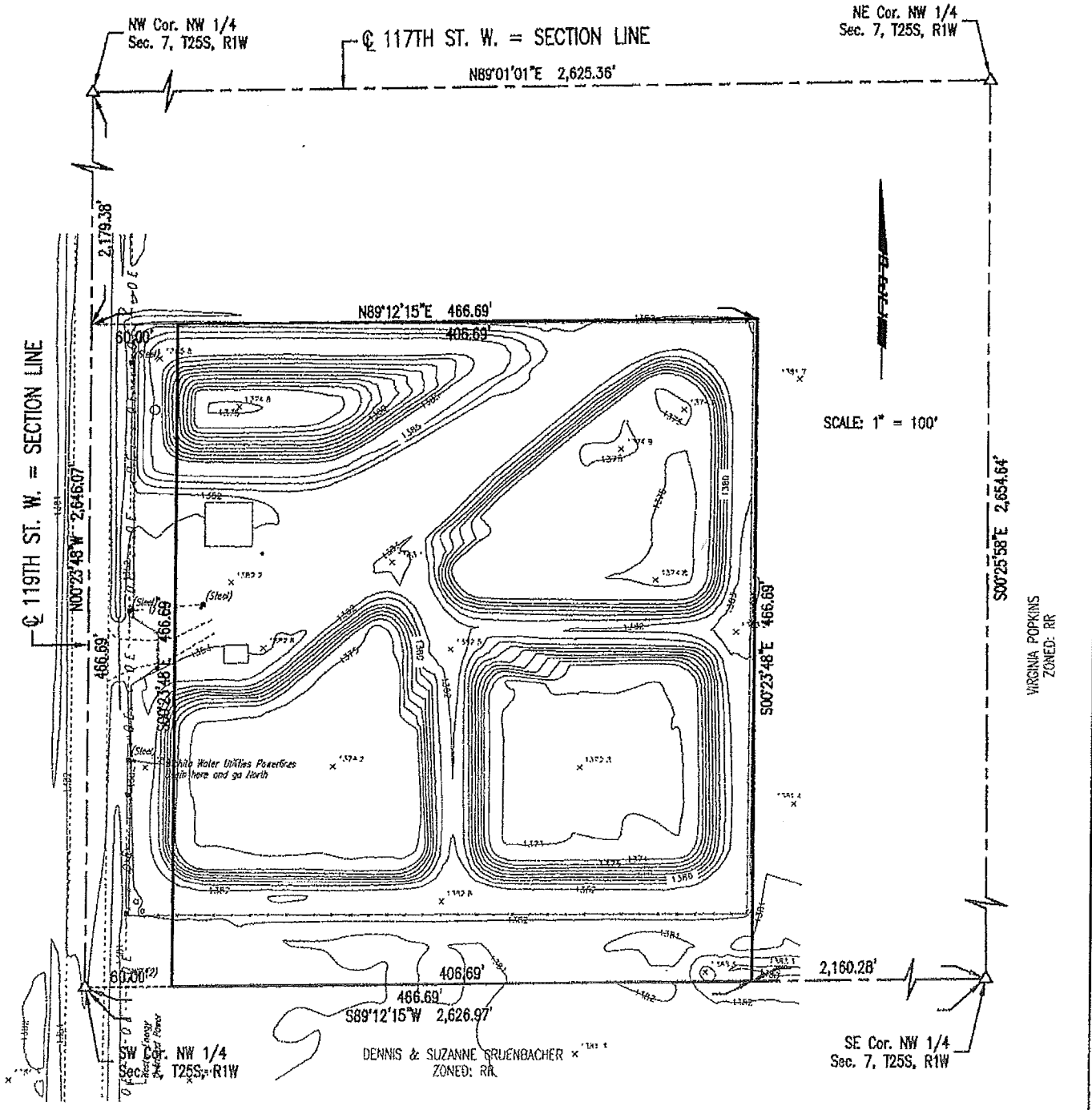
ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

ASR M-36
EXHIBIT TRACT MAP
SEDGWICK COUNTY, KANSAS



Professional Engineering Consultants, P.A.
303 S. TOPEKA • WICHITA, KANSAS 67202
316-262-2691 • FAX 316-262-2003

Legal for ASR MR-36 Site

The West 466.69 feet of the South 466.69 feet of the West Half of the Northwest Quarter of Section Seven (7), Township Twenty-five (25) South, Range One (1) West of the Sixth Principal Meridian, Sedgwick County, Kansas. Said tract contains 5.0 acres, more or less, including existing road right-of-way.

07685-004

ASR
PRESERVING OUR WATER
...OUR FUTURE

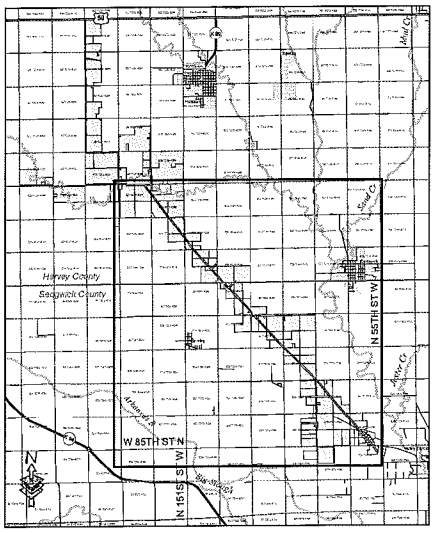
BID PACKAGE 1
Property Acquisition Map

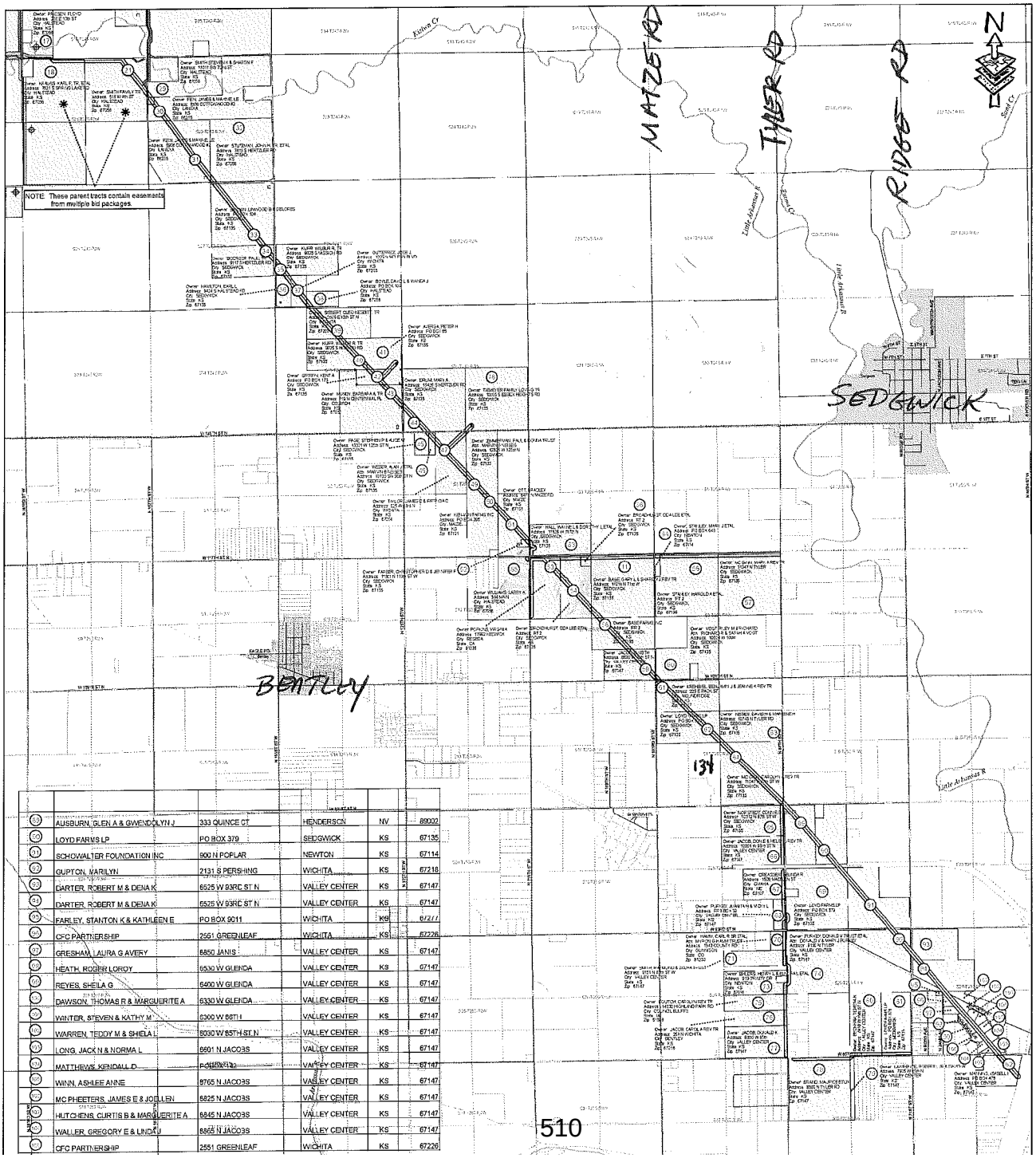
Legend

- 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) 262-2591
© 2008 Professional Engineering Consultants, P.A.





50	AUSBURN, GLEN A & GWENDOLYN J	333 QUINCE CT	HENDERSON	NV	89002
50	LOYD FARMS LP	PO BOX 379	SEDGWICK	KS	67135
51	SCHOWALTER FOUNDATION INC	900 N POPLAR	NEWTON	KS	67114
52	GUPTON, MARILYN	2131 S PERSHING	WICHITA	KS	67218
53	DARTER, ROBERT M & DENA K	6525 W 93RD ST N	VALLEY CENTER	KS	67147
54	DARTER, ROBERT M & DENA K	6525 W 93RD ST N	VALLEY CENTER	KS	67147
55	FARLEY, STANTON K & KATHLEEN E	PO BOX 9011	WICHITA	KS	67277
56	CFC PARTNERSHIP	2551 GREENLEAF	WICHITA	KS	67226
57	GRESHAM, LAURA G AVERY	8850 JANIS	VALLEY CENTER	KS	67147
58	HEATH, ROBIER LOROY	6530 W GLENDA	VALLEY CENTER	KS	67147
59	REYES, SHEILA G	6400 W GLENDA	VALLEY CENTER	KS	67147
60	DAWSON, THOMAS R & MARGUERITE A	6330 W GLENDA	VALLEY CENTER	KS	67147
61	WINTER, STEVEN & KATHY M	6300 W 86TH	VALLEY CENTER	KS	67147
62	WARREN, TEDDY M & SHEILA L	8030 W 85TH ST N	VALLEY CENTER	KS	67147
63	LONG, JACK N & NORMA L	8601 N JACO 3S	VALLEY CENTER	KS	67147
64	MATTHEWS, KENDALL D	P O BOX 710	VALLEY CENTER	KS	67147
65	WINN, ASHLEE ANNE	8765 N JACO 3S	VALLEY CENTER	KS	67147
66	MC PHEETERS, JAMES E & JOELLEN	8825 N JACO 3S	VALLEY CENTER	KS	67147
67	HUTCHENS, CURTIS B & MARGUERITE A	8845 N JACO 3S	VALLEY CENTER	KS	67147
68	WALLER, GREGORY E & LINDA J	8865 N JACO 3S	VALLEY CENTER	KS	67147
69	CFC PARTNERSHIP	2551 GREENLEAF	WICHITA	KS	67226

CITY OF WICHITA
City Council Meeting
October 19, 2010

TO: Mayor and City Council Members

SUBJECT: Partial Acquisition of Land for Easements at the Southeast Corner of 117th Street North and 119th Street West for the Integrated Local Water Supply Plan (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 City requires a pipeline easement together with a temporary construction easement to facilitate construction. The proposed 6.09 acre pipeline easement will impact the property along the north boundary line, the west boundary line and a third part cuts through the property at an angle. The temporary easement adjacent to the pipeline easement consists of 3.08 acres. The land is currently vacant and in agricultural production.

Analysis: The seller agreed to convey the necessary easements for $28,925. This amount is comprised of $12,180, or $2,000 an acre for the 6.09 acres of pipeline; $1,232, or $400 an acre for the 3.08 acres of the temporary construction easement; $14,873 as crop and other damages.

Financial Considerations: A budget of $30,425 is requested; this includes $28,925 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 III, 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.

EASEMENT PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this ___ day of _____, 2010 by and between Virginia Popkins, a single person, 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 Sedgwick County, Kansas, to wit:

Permanent Easement (Pipeline - Parcel A) A 60.5 feet wide strip of land lying on the left side (northeasterly side) of a line described as: Commencing at the Northwest corner of the west half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth P.M., Sedgwick County Kansas; thence along the north line of said Section 7, on an assumed bearing of N89^{0}01'00"E, 496.20 feet; thence S43^{0}05'47"E, 175.24 feet to the Point of Beginning, said point lying 130 feet south of the north line said Section 7; thence S43^{0}05'47"E, 1029.09 feet, to the east line of the west half of said Northwest Quarter, being the Point of Termination.

The above easement adjoins the southwesterly side of an easement as described in Condemnation Case No. 104,110 and recorded in Miscellaneous Book 150, Page 1.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the east line of the west half of said Northwest Quarter and on a line parallel with and 130 feet south of the north line of said Section 7.

TOGETHER WITH the south 100 feet of the north 130 feet of the west half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, Except a 25 foot easement as described in Condemnation Case No.104,110 and recorded in Miscellaneous Book 150, Page 1.

TOGETHER WITH the east 40 feet of the west 70 feet of the west half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas. Except the north 130 feet and Except the south 5 acre square described in Misc. Book 305, Page 89.

Said tracts contain 6.09 acres, more or less, excluding road right of way.

Temporary Easement (Construction – Parcel B) – Commencing at the Northwest corner of the Northwest Quarter Section 7, Township 25 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; thence along the north line of said Section 7, on an assumed bearing of N89^{0}01'00"E, 496.20 feet; thence S43^{0}05'47"E, 175.24 feet to the Point of Beginning, said point lying 130 feet south of the north line said Section 7; thence S43^{0}05'47"E, 1029.09 feet, to the east line of the west half of said Northwest Quarter; thence along said east line of west half of said Northwest Quarter, S00^{0}24'53"E, 110.63 feet; thence N43^{0}05'47"W, 1110.82 feet; thence

S89^{0}01'00"W, 489.65 feet; thence Parallel with and 30 feet east of the west line of said Northwest Quarter, N00^{0}23'48"W, 50.00 feet to a point lying 130 feet south of the north line said Section 7; thence N89^{0}01'00"E, 545.04 feet to the Point of Beginning.

TOGETHER WITH the south 50 feet of the north 180 feet lying east of and adjoining an Existing 25 foot easement as described in condemnation Case NO. 104,110 and recorded in Miscellaneous Book 150, Page 1, all in the west half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas.

Said tracts contain 3.08 acres, more or less

2. The Buyer hereby agrees to purchase and pay to the Seller the sum of Twenty-Eight Thousand Nine Hundred Twenty-Five Dollars and No Cents ($28,925.00) 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 22, 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:

Virginia Popkins, a single person

BUYER:

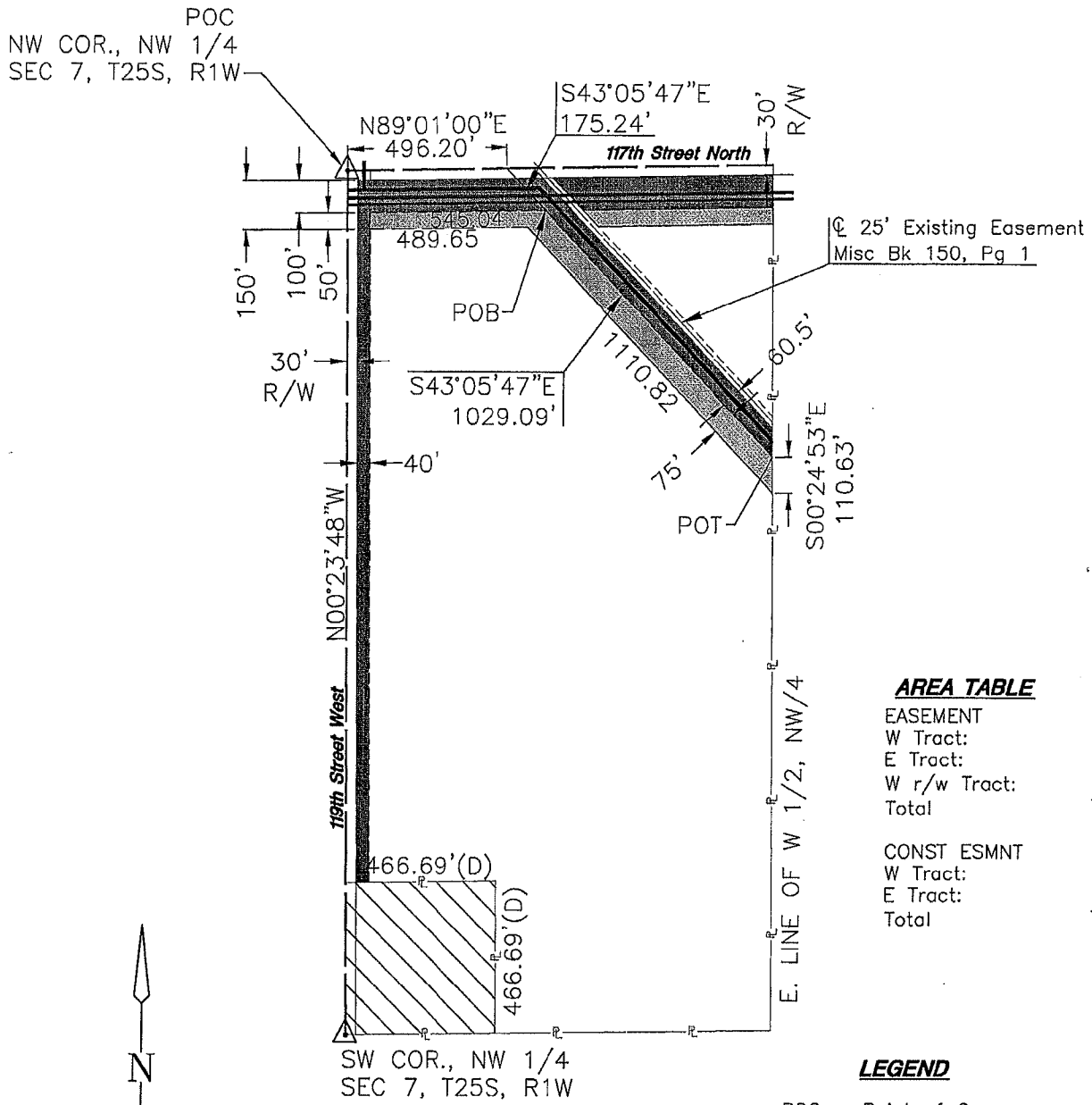
Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law



AREA TABLE

EASEMENT	
W Tract:	2.77
E Tract:	1.44
W r/w Tract:	1.88
Total	6.09
CONST ESMNT	
W Tract:	2.44
E Tract:	0.64
Total	3.08

LEGEND

POC – Point of Commencement
POB – Point of Beginning
POT – Point of Termination
D – Deed

Easement (6.09 acres) Excluding road right of way.

Construction Easement (3.08 acres)

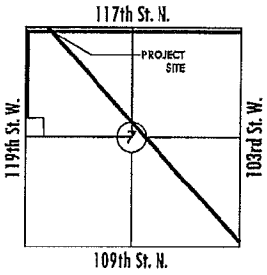
Existing Well Tract (5 acres)

Proposed Water Line

I:\MAP\2008\08248\DWG APRIL 2009\TRACT MAPS\53 W_WEST EASE.DWG

OWNER:

Popkins, Virginia
17992 Keswick St.
Reseda, CA 91335



VICINITY MAP

ASR

CDM
Camp Dresser & McKee
345 Riverview, Ste. 520
Wichita, KS 67203
Tel: (316) 660-6700
consulting • engineering • construction • operations

MKEC ENGINEERING CONSULTANTS, INC.

THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

DIAGONAL TRANSMISSION MAIN AND RIVER INTAKE LINE
PROJECT NAME

TRACT 53
SHEET TITLE

DFL	DSN/AAM/DM	CWL
DESIGN BY:	DRAWN BY:	CHECKED BY:
APRIL 2009 AUGUST 2009 revised SEPT 2009 revised	08248	1 / 2
DATE	JOB NO.	SHEET/OF

EASEMENT

A 60.5 feet wide strip of land lying on the left side (northeasterly side) of a line described as: Commencing at the Northwest corner of the west half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the Sixth P.M., Sedgwick County, Kansas; thence along the north line of said Section 7, on an assumed bearing of N89°01'00"E, 496.20 feet; thence S43°05'47"E, 175.24 feet to the Point of Beginning, said point lying 130 feet south of the north line said Section 7; thence S43°05'47"E, 1029.09 feet, to the east line of the west half of said Northwest Quarter, being the Point of Termination.

The above easement adjoins the southwesterly side of an easement as described in Condemnation Case NO. 104,110 and recorded in Miscellaneous Book 150, Page 1.

The sidelines of the above described strip of land are to be shortened or lengthened to form continuous lines and to terminate on the east line of the west half of said Northwest Quarter and on a line parallel with and 130 feet south of the north line of said Section 7.

TOGETHER WITH the south 100 feet of the north 130 feet of the west half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, Except a 25 foot easement as described in Condemnation Case NO. 104,110 and recorded in Miscellaneous Book 150, Page 1.

TOGETHER WITH the east 40 feet of the west 70 feet of the west half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, Except the north 130 feet and Except the south 5 acre square described in Misc. Book 305, Page 89.

Said tracts contain 6.09 acres, more or less, excluding road right of way.

CONSTRUCTION EASEMENT

Commencing at the Northwest corner of the Northwest Quarter Section 7, Township 25 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; thence along the north line of said Section 7, on an assumed bearing of N89°01'00"E, 496.20 feet; thence S43°05'47"E, 175.24 feet to the Point of Beginning, said point lying 130 feet south of the north line said Section 7; thence S43°05'47"E, 1029.09 feet, to the east line of the west half of said Northwest Quarter; thence along said east line of west half of said Northwest Quarter, S00°24'53"E, 110.63 feet; thence N43°05'47"W, 1110.82 feet; thence S89°01'00"W, 489.65 feet; thence Parallel with and 30 feet east of the west line of said Northwest Quarter, N00°23'48"W, 50.00 feet to a point lying 130 feet south of the north line said Section 7; thence N89°01'00"E, 545.04 feet to the Point of Beginning.

TOGETHER WITH the south 50 feet of the north 180 feet lying east of and adjoining an Existing 25 foot easement as described in Condemnation Case NO. 104,110 and recorded in Miscellaneous Book 150, Page 1, all in the west half of the Northwest Quarter of Section 7, Township 25 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas.

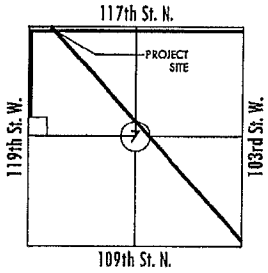
Said tracts contain 3.08 acres, more or less.

EXISTING WELL TRACT

A tract for conveyance described as: Five acres in square form in the southwest corner of the west half of the Northwest Quarter Section 7, Township 25 South, Range 1 West, Sedgwick County, Kansas as described in Misc. Book 305, Page 89, Sedgwick County Register of Deeds office, Sedgwick County, Kansas.

OWNER:

Popkins, Virginia
17992 Keswick St.
Reseda, CA 91335



VICINITY MAP

I:\MAP\2008\08248\DWG APRIL 2009\TRACT MAPS\53 W_WEST EASE.DWG

THIS TRACT EXHIBIT DOES NOT CONSTITUTE A BOUNDARY SURVEY PLAT

DIAGONAL TRANSMISSION MAIN AND RIVER INTAKE LINE

PROJECT NAME

TRACT 53

DFL	*DSN/AAM/DM*	*CWL*
DESIGN BY:	DRAWN BY:	CHECKED BY:
APRIL 2009		
AUGUST 2009 revised		
SEPT 2009 revised	*08248*	*2 / 2*
	JOB NO.	SHEET/OF

CDM
Camp Dresser & McKee
345 Riverview, Ste. 520
Wichita, KS 67203
Tel: (316) 660-6700
consulting • engineering • construction • operations

MKEC ENGINEERING CONSULTANTS, INC.

ASR
PRESERVING OUR WATER ...OUR FUTURE

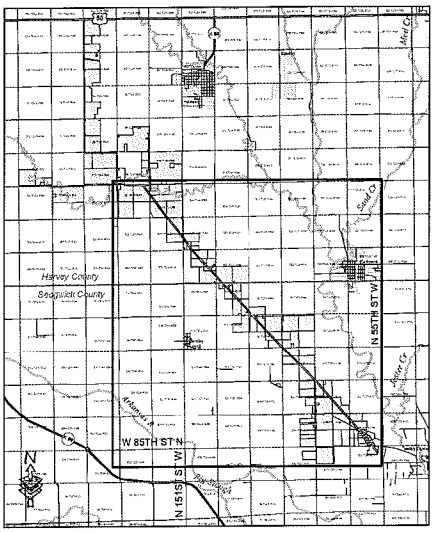
BID PACKAGE 1
Property Acquisition Map

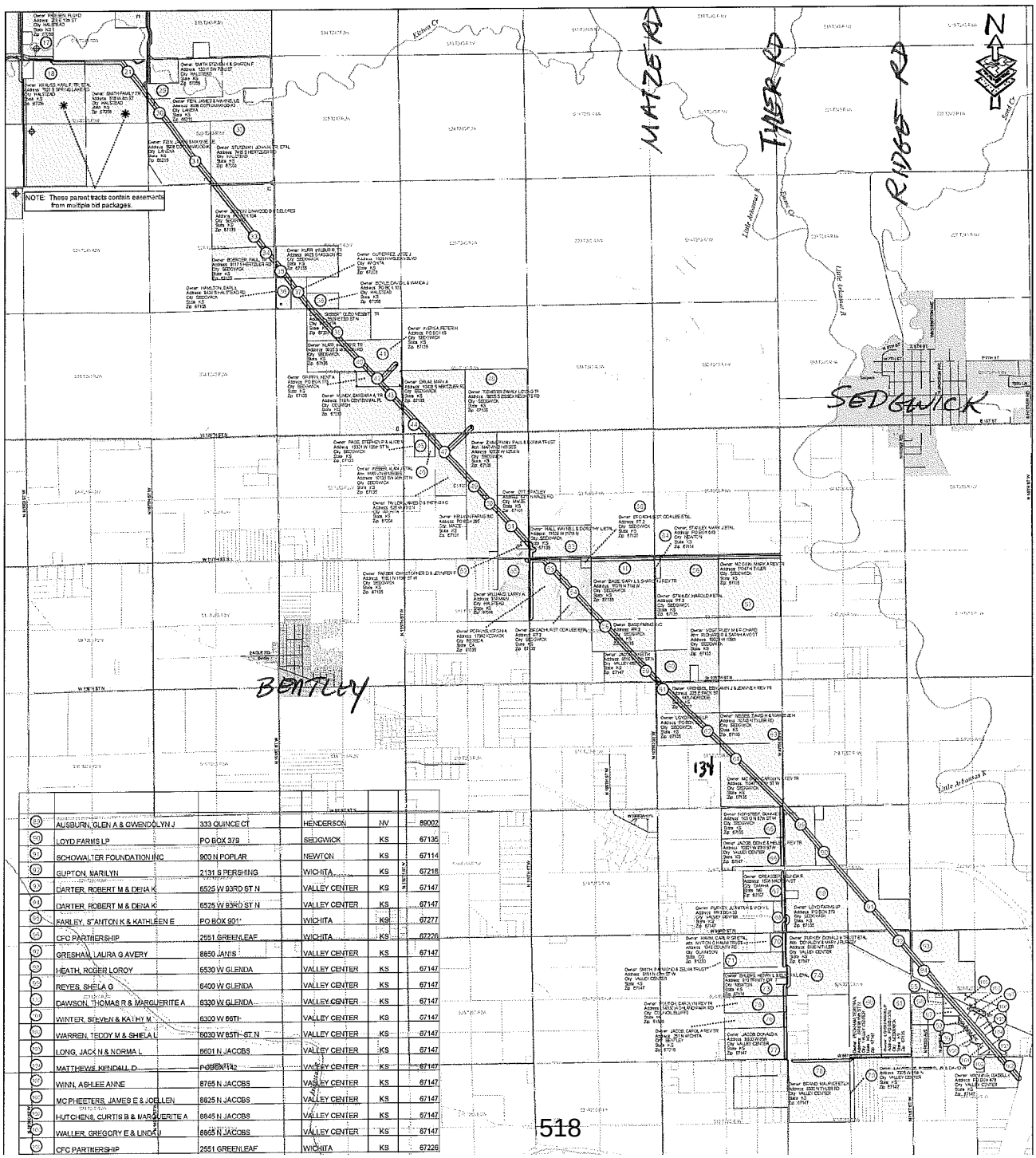
Legend

- 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) 262-2591
© 2008 Professional Engineering Consultants, P.A.





62	AUSBURN, GLEN A & GWENDOLYN J	333 QUINCE CT	HENDERSON	NV	89002
63	LOYD FARMS LP	PO BOX 379	SEDGWICK	KS	67135
64	SCHOWALTER FOUNDATION INC	900 N POPLAR	NEWTON	KS	67114
65	GUPTON, MARILYN	2131 S PERSHING	WICHITA	KS	67216
66	DARTER, ROBERT M & DENA K	6525 W 93RD ST N	VALLEY CENTER	KS	67147
67	DARTER, ROBERT M & DENA K	6525 W 93RD ST N	VALLEY CENTER	KS	67147
68	FARLEY, STANTON K & KATHLEEN E	PO BOX 901	WICHITA	KS	67277
69	CFC PARTNERSHIP	2551 GREENLEAF	WICHITA	KS	67226
70	GRESHAM, LAURA G AVERY	8850 JANIS	VALLEY CENTER	KS	67147
71	HEATH, ROGER LOROY	6530 W GLENDA	VALLEY CENTER	KS	67147
72	REYES, SHEILA G	6400 W GLENDA	VALLEY CENTER	KS	67147
73	DAWSON, THOMAS R & MARGUERITE A	6330 W GLENDA	VALLEY CENTER	KS	67147
74	WINTER, STEVEN & KATHY M	6300 W 86TH	VALLEY CENTER	KS	67147
75	WARREN, TEDDY M & SHIELA L	6030 W 85TH ST N	VALLEY CENTER	KS	67147
76	LONG, JACK N & NORMA L	8601 N JACOBS	VALLEY CENTER	KS	67147
77	MATTHEWS, KENDALL D	PO BOX 112	VALLEY CENTER	KS	67147
78	WINN, ASHLEE ANNE	8765 N JACOBS	VALLEY CENTER	KS	67147
79	MC PHEETERS, JAMES E & JOELLEN	8625 N JACOBS	VALLEY CENTER	KS	67147
80	HUTCHENS, CURTIS B & MARGUERITE A	8845 N JACOBS	VALLEY CENTER	KS	67147
81	WALLER, GREGORY E & LINDA J	8865 N JACOBS	VALLEY CENTER	KS	67147
82	CFC PARTNERSHIP	2551 GREENLEAF	WICHITA	KS	67226

CITY OF WICHITA
City Council Meeting
October 19, 2010

TO: Mayor and City Council Members

SUBJECT: Acquisition of 548 South Wetmore Court for the Cowskin Creek Channel Improvement Project from Kellogg to Maple (District V)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: In 2004, the City began acquiring land between Maple and Kellogg for the Cowskin Creek Channel Improvement Project. The land acquired for the project has been cleared of all improvements and has been maintained as open space which allows for benching excess water during heavy rain events. The property at 548 South Wetmore Court is situated between the Cowskin Creek and a tributary stream. As a result, this property is subject to flooding and is eligible for acquisition. The property consists of 2.14 acres and is improved with a 2,800 square foot single-family residence.

Analysis: The property was appraised and the owner was offered the appraised value of $220,000. This amount was rejected by the owner. As a counter, the owner presented an appraisal that valued the property at $250,000. The comparable properties used in this appraisal appeared to be more similar to the subject in size, location and amenities than the comparable properties used in the original appraisal. This similarity was evidenced by much smaller adjustments to price. Based on this, the second appraisal was felt to better represent the value of the property and the owner has agreed to convey the land for the second appraised value of $250,000.

Financial Considerations: The funding source is General Obligation Bonds with the debt service to be repaid by Storm Water Utility. A budget of $280,000 is requested. This amount consists of $250,000 for the acquisition, $25,000 for demolition and $5,000 for closing costs, title insurance, and administrative fees.

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; 1) Approve the budget; 2) Approve the real estate purchase agreement; and 3) Authorize all necessary signatures.

Attachments: Real estate agreement and aerial map.

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT, Made and entered into this 29th day of September, 2010 by and between Brian Blake Elliott and Tina Elliott, husband and wife, hereinafter referred to as "Seller," whether one or more, and City of Wichita, Kansas, 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 warranty deed the following described tracts, to wit:

Attached as Exhibit "A"

2. The Buyer hereby agrees to purchase and pay to the Seller, as consideration for the conveyance the above-described real property and improvements located thereon, the sum of Two Hundred Fifty Thousand Dollars ($250,000) in the manner following, to-wit: cash at closing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure 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 will be ordered by the Buyer and said title 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 5, 2010.

6. The Seller further agrees to convey the above-described property with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.

7. Possession to be given to Buyer on or before closing date.

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. Seller and Buyer will split the closing costs evenly, 50/50.

9. Site Assessment

A. At any time prior to the 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. 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 testing of the Property, at the buyer's sole expense.

B. Provided, however, buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. The buyer shall, if buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

10. Buyer hereby agrees that the Seller retains the right to remove chandelier from the living room.

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

SELLER:

Brian Blake Elliott

Tina Elliott

BUYER:
City of Wichita, Kansas, a municipal corporation:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law

EXHIBIT A

All of Lots 16 and 17, Block C, The Dell, Sedgwick County, Kansas, lying South of the South line of Lot 2, Oatman Addition, Sedgwick County, Kansas, described as follows: Beginning at the Northeast corner of Lot 16, Block C, The Dell; thence South 65 degrees 38'39" East, 70.16 feet; thence North 89 degrees 14'47" East, 240.63 feet to the Westerly line of said drainage right-of-way; thence Southeasterly on said drainage right-of-way line 29.29 feet; thence North 57 degrees 32' East, 150 feet.

EXCEPT, A parcel of land lying in Lots 16 and 17, Block C, The Dell, Sedgwick County, Kansas, being more particularly described as follows:
Commencing at the Northernmost corner of said Lot 16, said point being a common corner with the South line of Lot 2, Block 1, Oatman Addition, Sedgwick County, Kansas, and the easterly line of Hayden Court as platted in said The Dell; thence on a platted bearing of S65°36'39''E along the South line of said Lot 2, 70.16 feet; thence N89°14'47''E along said South line, 240.63 feet to a point on a curve to the right; thence along said curve and said South line 29.29 feet to the Point of Beginning, said point being on the westerly line of the Drainage Right of Way as platted in said The Dell, said curve having a radius of 165.00 feet, a central angle of 10°10'15'' and a long chord of 29.25 feet bearing S37°33'40''E; thence S06°26'19''E, 103.04 feet; thence S03°02'18''W, 60.11 feet to a point on a curve to the left, said point being on the westerly line of said Drainage Right of Way; thence along said curve and said westerly line 170.06 feet to the Point of Beginning, said curve having a radius of 165.00 feet, a central angle of 59°03'06'' and a long chord of 162.63 feet, bearing N02°56'59''W.

548 South Wetmore Court

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

CITY OF WICHITA
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Partial Acquisition for Right-of-Way at 1931 South 119th Street West for the 119th Street, Pawnee Avenue to Kellogg Improvement Project (District IV)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the acquisition.

Background: On May 11, 2010, the City Council approved the design concept and the funding to acquire right-of-way for the road improvement project 119th Street between Pawnee and Kellogg. The project will provide four through lanes on 119th Street and a traffic signal at the intersection of Pawnee and 119th. Landscaped medians, sidewalks and a bike path will also be constructed. The corridor is improved with residential properties, agricultural land and a church. The property at 1931 South 119th Street is improved with a single-family residence on a 4.8 acre site. The project requires the east 10 feet of the property. A 30 foot by 40 foot drainage easement is also required at the southwest corner of the property as well as a ten-foot wide temporary easement. The proposed right-of-way acquisition consists of 1,650 square feet, the drainage easement is 1,200 square feet and the temporary easement impacts 1,250 square feet. The improvements will not be impacted by the proposed acquisition. The drainage easement will require the removal of several mature trees and the right of way acquisition will impact several shrubs and plantings.

Analysis: The owner agreed to convey the necessary right-of-way and easements for $25,000. This consists of the $11,000 ($3.85 per square foot) for the right of way and drainage easement, $12,000 for the trees and shrubs that are being removed and $2,000 for the temporary easement.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $25,500 is requested. This includes $25,000 for acquisition and $500 for closing costs and title insurance.

Goal Impact: The acquisition of this right-of-way is necessary to ensure Efficient Infrastructure by improving an arterial street through a rapidly developing part of the City.

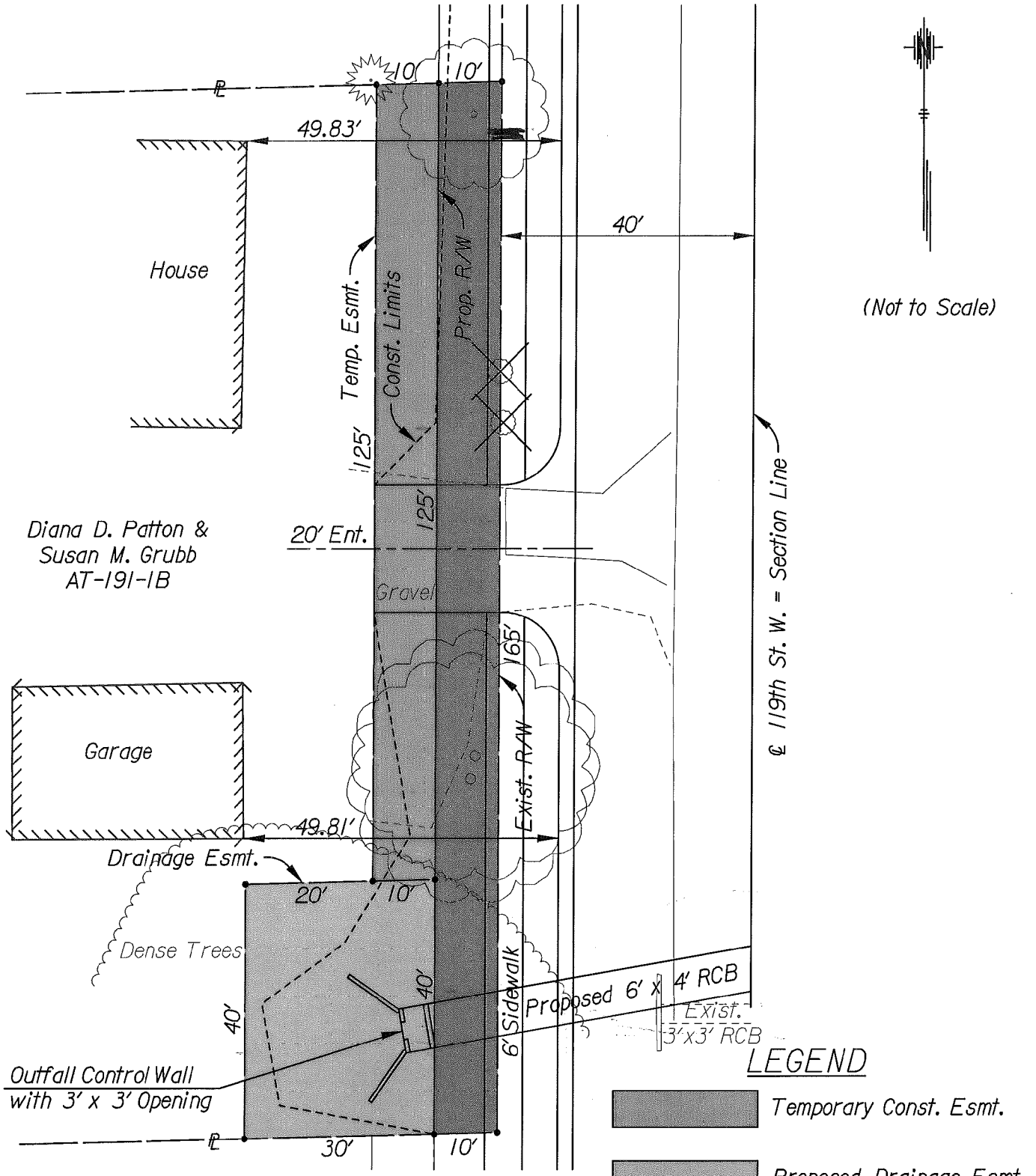
Legal Considerations: The Law Department approved the real estate purchase agreement as to form.

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

Attachments: Real Estate Agreement, tract map and aerial map.

TRACT MAP AT-191-1B

RIGHT OF WAY, TEMPORARY CONSTRUCTION EASEMENT, & DRAINAGE EASEMENT



Contractor will remove trees as needed for construction.

May 10, 2010

AT-191-1B

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REAL ESTATE PURCHASE CONTRACT

THIS AGREEMENT, Made and entered into this 2 day of OCTOBER, 2010 by and between Diana D. Patton and Susan M. Grubb, joint tenants with rights of survivorship, hereinafter referred to as "Seller," whether one or more, and City of Wichita, a municipal corporation, party of the Second Part, hereinafter referred to as "Buyer," whether one or more.

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

1. The Seller does hereby agree to sell and convey to the Buyer by a good and sufficient warranty deed for the following described real property as road right-of-way, drainage easement, temporary construction easement and damages including but not limited to: trees and shrubs, all situated in Sedgwick County, Kansas, to wit:

RIGHT-OF-WAY:
The West 10 feet of the East 50 feet of the North 5 acres of the South 10 acres of the Southeast Quarter of the Northeast Quarter of Section 36, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, containing 0.038 acres (1,650.00 sq. ft.), more or less.

DRAINAGE EASEMENT:
The West 30 feet of the East 80 feet of the South 40 feet of the North 5 acres of the South 10 acres of the Southeast Quarter of the Northeast Quarter of Section 36, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, containing 0.028 acres (1,200.00 sq. ft.), more or less.

TEMPORARY CONSTRUCTION EASEMENT:
The West 10 feet of the East 60 feet of the North 5 acres of the South 10 acres of the Southeast Quarter of the Northeast Quarter of Section 36, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, except the South 40 feet thereof, containing 0.029 acres (1,250.00 sq. ft.), more or less.

2. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above described real properties and any damages to the remainder, the sum of Twenty-five Thousand Dollars and No Cents ($25,000) in the manner following, to-wit: cash at closing.

4. 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. Buyer will order title at its cost.

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

6. It is understood and agreed between the parties hereto that time is of the essence of this

contract, and that this transaction shall be consummated on or before November 30, 2010.

8. The Seller further agrees to convey the above described premises with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.

9. Possession to be given to Buyer on closing date .

10. 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.

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

SELLER:

Diana D. Patton

Susan M. Grubb

BUYER:

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law

CITY OF WICHITA
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Partial Acquisition of 2612 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 proposed improvements include adding a center turn lane, relocating the sidewalks away from the back of the curb, improving the storm sewer system and landscaping. From the parcel identified as 2612 East 13th Street North, the City requires a 331 square foot easement along 13th Street to accommodate the new sidewalk. No improvements will be impacted as a result of the project however; the residential structure will be approximately seven feet from the new right-of-way line.

Analysis: The owner rejected the estimated appraised value of $1,790, which was comprised of $150 for the land ($.45 per square foot) and $1,640 as loss of value damages due to proximity. The owner did agree to convey the necessary land for $4,300, or $150 for the land ($.45 per square foot) and $4,150 as damages due to proximity. The owner recently updated some of the appliances together with updating the plumbing and electrical wiring within the residence improving its value. The increase in compensation for proximity damages is reasonable and prudent.

Financial Considerations: The funding source for the project is General Obligation Bonds. A budget of $4,800 is requested. This includes $4,300 for the acquisition and $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:** September 22, 2010

COUNTY: Sedgwick **TRACT NO.:** 31

THE CITY OF WICHITA, KANSAS

CONTRACT FOR CONVEYANCE OF REAL ESTATE BY WARRANTY DEED

THIS AGREEMENT Made and entered into this 24th day of September 2010, by and between

Thuy Dang Bui and Lam T. Ngo, husband and wife

2908 Key West

Wichita, KS 67204

(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: $ 4,300.00

TOTAL: $ 4,300.00

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: _____ By: _____
Thuy Dang Bui Lam T. Ngo

THE CITY OF WICHITA

By: _____

MEMORANDA

Exact and full name of owner, as name appears of record:

Thuy Bui

If mortgage or other liens, show names of holders:

n/a

REMARKS:

PIN/APN: 122100430901300
Security Title File Number 1090433

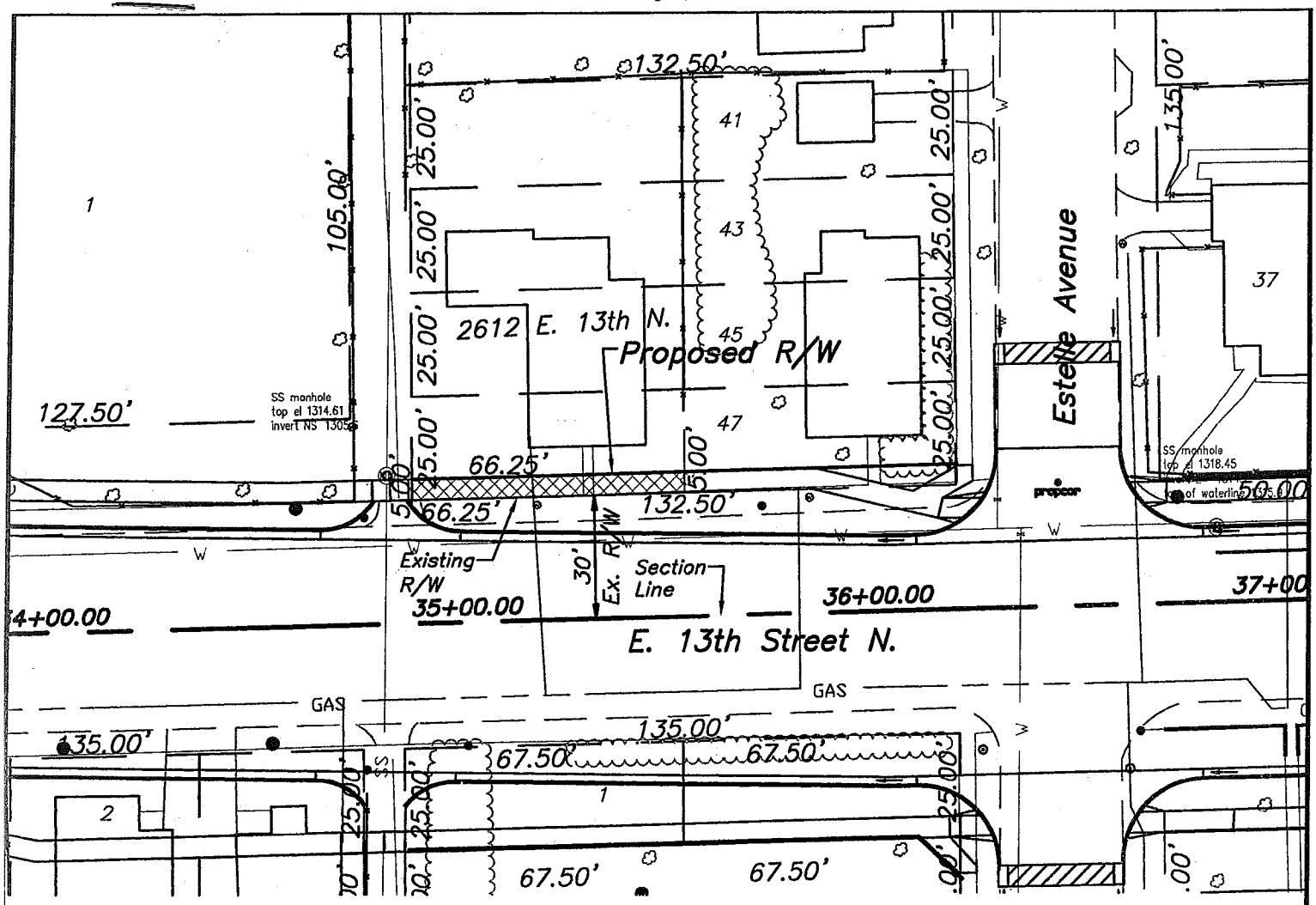
APPROVED TO FORM:

_____
Gary E. Rebenstorf, Director of Law

RECOMMENDED BY:

_____
Mia Warlick, Project Manager

EXHIBIT A



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 west half of said Lot 47 on Goethe Avenue (now Estelle Avenue), as platted in Rose Hill Addition.

TAX KEY #: C03526

R/W ACQUISITION SIZE: 331 sq. ft.

PROPOSED R/W ACQUISITION

13th STREET
HYDRAULIC AVENUE TO OLIVER

TRACT MAP

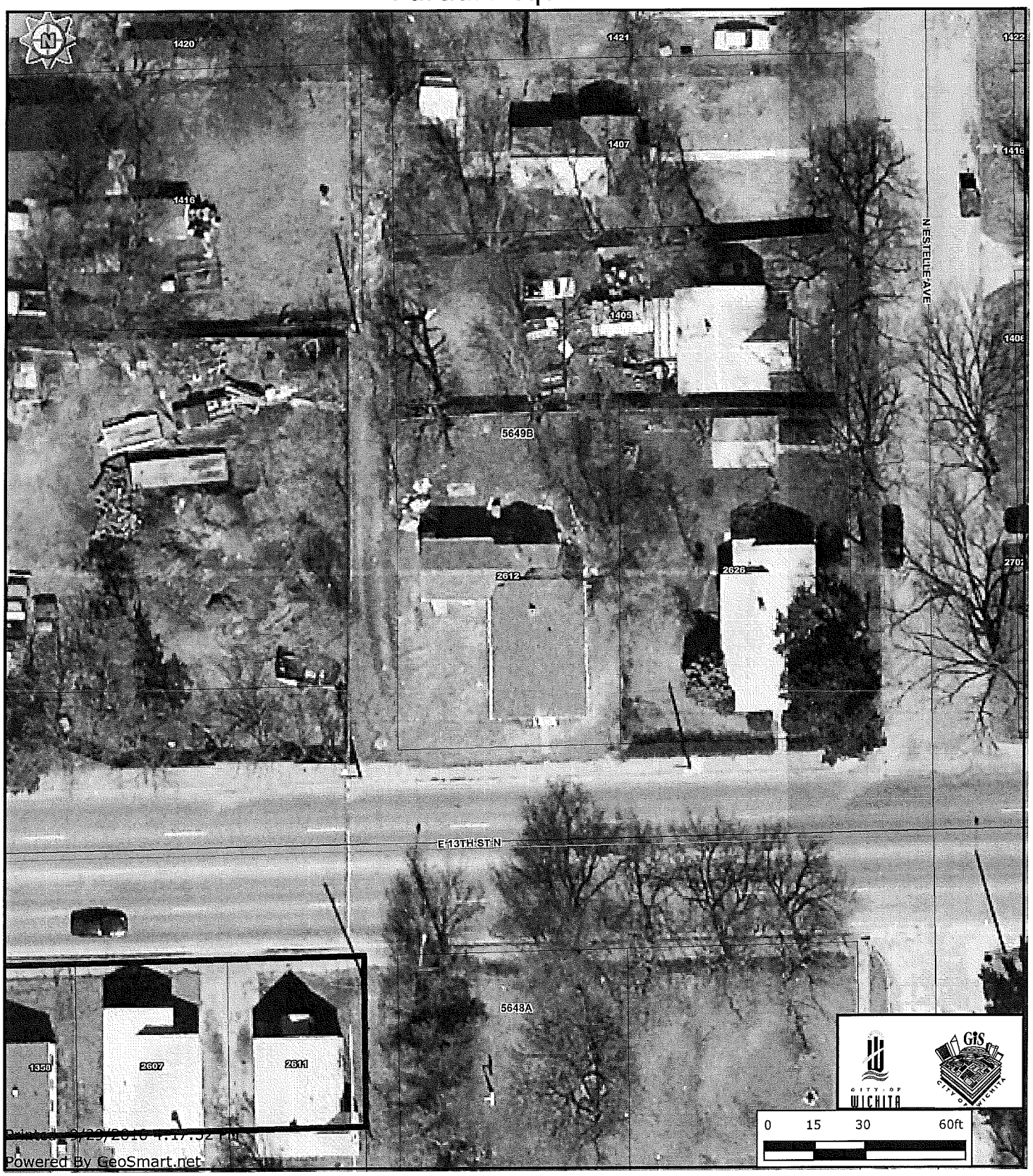
PAUL F. O'NEIL
SEC 10 T27 R15

SCALE: 1" = 40'

Tract No. 31

2612 E 13th Street North

Partial Acquisition



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CONTRACTS & AGREEMENTS
BLANKET PURCHASE ORDERS RENEWAL OPTIONS
SEPTEMBER 2010

COMMODITY TITLE	EXPIRATION DATE	VENDOR NAME	DEPARTMENT	ORIGINAL CONTRACT DATES	RENEWAL OPTIONS REMAINING
Catering and Concession Services at Century II Performing Arts and Convention Center	9/30/2012	Wichita Canteen Company, Inc.	Parks & Recreation	10/1/2007 - 9/30/2010	1 - 2 year option
Vending Food Services	9/30/2011	Wichita Vending Company, Inc.	Parks & Recreation	10/1/2009 - 9/30/2010	1 - 1 year option

PROFESSIONAL CONTRACTS UNDER $25,000
SEPTEMBER 2010

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		
Baughman Co	PO030770	Engineering Consulting	21,300.00		

ANNUAL MAINTENANCE CONTRACTS OVER $25,000
DIRECT PURCHASE ORDERS FOR SEPTEMBER 2010

VENDOR NAME	DOCUMENT NO	DOCUMENT TITLE	AMOUNT		
International Business Machines Corp	DP031217	Software Maintenance/Support	$27,378.00		
GIS Information Systems, Inc.	DP031241	Software Maintenance/Support	$35,592.09		

CITY OF WICHITA
City Council Meeting
October 19, 2010

TO: Mayor and City Council Members

SUBJECT: Settlement of Lawsuit

INITIATED BY: Law Department

AGENDA: Consent

Recommendation: Authorize payment of $25,000 as a full settlement for all claims arising out of an automobile accident.

Background: This lawsuit arose from an October, 2007 automobile accident involving a City Transit Bus driver employed by the City. The driver of the other vehicle sustained personal injuries and medical expenses.

Analysis: The claimant has offered to accept a lump sum payment of $25,000 as reimbursement of his medical expenses in the claim against the City and its employee. Because of the risk of an adverse judgment if it went to trial, the Law Department recommends acceptance of the offer. This is a settlement of a long disputed claim.

Financial Considerations: Funding for this settlement payment is from the City's Transit Fund.

Goal Impact: Payment of the sum contributes to the City goal of providing a Safe and Secure Community. It provides certain resolution to a contingent liability.

Legal Considerations: The Law Department recommends acceptance of the offer of settlement.

Recommendations/Actions: It is recommended that the City Council authorize payment of $25,000 as a full settlement of all possible claims which were made or could have been made in the claim and approve any necessary budget adjustments.

Attachments: None.

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Payment for Settlement of Claim

INITIATED BY: Law Department

AGENDA: Consent

- -

Recommendation: Authorize payment of $13,000 as a full settlement of the subject claim.

Background: This claim arises from the arrest of Derrick Clark on May 10, 2009. Mr. Clark alleges that Wichita Police Department officers acted improperly and that he incurred physical injuries as a result of his arrest.

Analysis: The plaintiff has offered to accept a lump sum payment of $13,000 as full settlement of all his claims against police officers and the City of Wichita. Because of the uncertainty and risk that a judgment at trial, plus a potential award of attorney fees to plaintiff, would exceed this amount, the Law Department recommends acceptance of the offer. The settlement of this claim does not consistute an admission of liability on the part of the City or the officers. Rather, it is merely a settlement to resolve a long disputed claim.

Financial Considerations: Funding for the settlement payment will come from the City's tort claims fund.

Goal Impact: Payment of the sum contributes to the City goal of providing a safe and secure community. It provides certain resolution to a contingent liability.

Legal Considerations: The Law Department recommends acceptance of the plaintiff's offer of settlement.

Recommendations/Actions: It is recommended that the City Council authorize payment of $13,000 as a full settlement of all possible claims which were made or could have been made in the claim and approve any necessary budget adjustments.

Attachments: None

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Wichita Community Foundation Walking Group Grant. (Districts I, II, VI)

INITIATED BY: Department of Park and Recreation

AGENDA: Consent

Recommendation: Approve the grant application.

Background: The Health and Wellness Coalition of Wichita has partnered with the Wichita Community Foundation to support the Coalition's continued vision for a healthier community. The Coalition is seeking grant proposals for development of a walking and/or running group program. The grant will support organizations that develop and/or expand walking/running groups within Wichita. The grant funds will be used for salary, supplies, mileage and/or other program incentives. The program will provide educational information about healthy lifestyle choices, exercise and strength building, and social encouragement. Each recreation center's staff will continue to provide follow-up support and other social networking after the completion of the ten week program to encourage the established walking group to meet on a regular basis and continue their individual goals.

Analysis: The walking group program will be established at Boston, Evergreen and Linwood Recreation Centers. The ten week program will meet three times per week and serve approximately 60 adult and senior participants. Motivational rewards will be tickets to Botanica, to encourage walking at destination locations, entry fee to the 2011 Riverfest Walkfest, and a gift certificate to purchase walking shoes. With City Manager approval, the grant was submitted on October 1, 2010.

Financial Consideration: The grant application is for $10,170 to cover all expenses of the ten week program.

Goal Impact: The grant will provide citizens with education on physical activity, general health and exercise techniques and encourage a healthy lifestyle through motivational rewards. The program will improve the participant's Quality of Life.

Legal Consideration: None.

Recommendation/Actions: Approve the grant application.

Attachment: None.

Agenda Item No. XII-16

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Recreational/Community Education Research Proposal

INITIATED BY: City Manager's Office

AGENDA: Consent

- -

Recommendation: Approve the request for Wichita State University mill levy funding for an evaluation of recreational programming provided by the Park and Recreation Department.

Background: The City of Wichita continues to identify programs and services needed by the citizens of Wichita. During the preparation of the 2011 budget, staff suggested numerous ideas for process and service improvements that could result in cost savings and efficiencies to the City organization. One idea was to evaluate the recreational programming provided by the Park and Recreation Department to determine how citizens can best be served.

Analysis: The City of Wichita is requesting funding from the Wichita State University mill levy fund to engage the Hugo Wall School (HWS) to conduct an evaluation of the recreational services provided by the Park and Recreation Department. The HWS will research and evaluate current service levels, identify best practices, conduct interviews with stakeholders, engage citizens, and develop recommendations for transforming recreational services into a comprehensive community education program. The research will result in recommendations for all eleven recreation center sites.

Financial Considerations: The funding request is for $30,200 from the Wichita State mill levy fund. There are sufficient funds remaining in this fund for this project. There is no impact on the General Fund.

Goal Impact: This project addresses the goal of Quality of Life as it will provide recommendations on services and programs that are needed and desired by neighborhood residents at recreational centers.

Legal Considerations: The City has the legal authority to request funding from the Wichita State University mill levy fund.

Recommendations/Actions: It is recommended that the City Council authorize the project and funding from the Wichita State University mill levy fund.

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Mead Street Improvement, between 3rd and Central (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the project funding revision.

Background: On July 10, 2007, the City Council ordered in the paving of Mead Street, between 3rd and Central, with funding by a combination of special assessments and the City-at-large. At the time the project was presented to affected property owners, the proposed special assessments totaled $295,000. After discussions with the property owners, the amount of specials assessments was set by the City Council at $237,000. It was staff's understanding at that time that the property owners wanted the assessments set at that amount with the balance to be paid by the City-at-large. In that manner the property owners would not be subject to increased assessments if the final project cost was higher than expected. The project has been completed and the cost is less than expected. Staff has met with the property owners and it is their understanding that the assessments would be reduced as a result of the lower than expected project cost.

Analysis: The completed project is a two lane concrete roadway with on-street parking, landscaping, benches, brick crosswalks, sidewalks and ornamental streetlights. It has improved access to adjoining businesses and serves as a northern gateway to the Old Town District.

Financial Considerations: The original project estimate was $530,000. Due to favorable bids, the completed project cost is $451,400. It is proposed that the project cost be split equally between the improvement district and the City-at-large, which will result in the amount of the special assessments being lowered from $237,000 to $225,700.

Goal Impact: The project addressed the Efficient Infrastructure goal by providing paved access in an existing commercial area and improved access to Old Town.

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

Recommendation/Action: It is recommended that the City Council approve the revised project funding, adopt the resolution, approve the statement of cost and authorize the necessary signatures.

Attachments: Resolution and statement of cost.

132019

First Published in the Wichita Eagle on October 22, 2010

RESOLUTION NO. 10-274

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON MEAD FROM THE SOUTH LINE OF CENTRAL TO THE NORTH LINE OF 3RD ST. NORTH 472-84561 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON MEAD FROM THE SOUTH LINE OF CENTRAL TO THE NORTH LINE OF 3RD ST. NORTH 472-84561 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 07-401 adopted on July 10, 2007 and Resolution No. 10-229 adopted on August 17, 2010 are hereby rescinded.

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on Mead from the south line of Central to the north line of 3rd St. North 472-84561. Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to Four Hundred Fifty-One Thousand Four Hundred Dollars ($451,400) exclusive of the cost of interest on borrowed money, with 50% payable by the improvement district and 50% payable by the City-at-large.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

HINTON'S SUBDIVISION OF EAST WICHITA ADDITION
The E 150' of Reserve A
Lots 7 through 24, Inclusive

UNPLATTED TRACTS
In Section 21, Twp 27S, R1E

The W ½ of the following tract: Beginning 40' S & 536' W of the NE corner of the NW ¼; thence S 145' W 128.75' N 145' E 125' to the beginning.

The W ½ of the following tract: Beginning 185' S & 532.25' W of the NE corner of the NW ¼; thence S 75' W 130.69' N 75' to the beginning.

The W ½ of the following tract: Beginning 661' W & 260' S of the NE corner of the NW ¼; thence S 85' E 132.88' N 85' W to the beginning.

The W ½ of the following tract: Beginning 661' W & 345' S of the NE corner of the NW ¼; thence S 40' E 133.92' N 40' W to the beginning.

The W ½ of the following tract: Beginning 661' W & 385' S of the NE corner of the NW ¼; thence S 50' E 135.21' N 50' W to the beginning.

The W ½ of the following tract: Beginning 661' W & 505' S of the NE corner of the NW ¼; thence N 70' E 135.21' S 70' W to the beginning.

The W ½ of the following tract: Beginning 661' W & 630' S of the NE corner of the NW ¼; thence N 125' E 137.02' S 125' W to the beginning.

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a square foot basis.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. 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 19th day of October, 2010.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF, DIRECTOR OF LAW

Approved /Accepted by City Council

This _____

Wichita, Kansas
July 13, 2010
472-84561
OCA# 766158
PPN# 490176

City Clerk
Wichita, Kansas

Dear City Clerk:

Following is the cost of constructing:

Paving on Mead from Central to 3rd Street North to serve Hinton's Subdivision to East Wichita Addition (south of Central, east of Broadway)

Lump Sum Contract Amount	$335,626.02
Measured Items	$0.00
Change Orders	$3,534.00
Change Orders Measured Items	$0.00
Administration	$15,127.88
Engineering & Inspection	$92,803.01
Publication	$242.25
Abstract	$20.00
Construction Cost	$447,353.16
Idle Fund Interest Estimated	$26.36
Temporary Financing Estimated	$4,020.48
TOTAL COST	$451,400.00

Respectfully Submitted,

James L. Armour

Jim Armour, P.E., City Engineer

Property	$225,700.00
GO	$225,700.00

February 2011
Chesney
15 year

Petition/Resolution Amount:	$530,000.00
Increase by 1% per month after:	May 1, 2007

Agenda Item No. XII-18

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Cooperative Agreement with Heartland PTAC

INITIATED BY: Department of Finance

AGENDA: Consent

- -

Recommendation: Approve the 2011 Letter of Commitment and proposed budget; authorize necessary budget adjustments and signatures for cooperative agreement.

Background: The City of Wichita is committed to ensuring equal opportunity, promoting diversity and enhancing economic opportunities for Emerging and Disadvantaged businesses. It is the policy and commitment of the City of Wichita to provide Emerging and Disadvantaged businesses the maximum opportunity to participate in, compete for and be utilized by the City of Wichita in its procurement of goods and services.

The Finance Department/Purchasing Division is continuously striving to find ways to enhance and improve the Emerging and Disadvantaged Business Enterprise Program. The cooperative agreement between Heartland PTAC Missouri Southern State University and the City of Wichita as a sub-contractor increases procurement opportunities for Kansas businesses by providing comprehensive technical assistance to businesses interested in selling their goods and services to the federal government.

The mission of Heartland PTAC (HPTAC) is to identify Missouri and Kansas businesses with the potential for market expansion through Department of Defense (DoD) and other government procurement opportunities and assist those viable companies in becoming successful DoD and government contractors. This expands the industrial base and increases competition of DoD goods, which reduces the cost of maintaining a strong national security, and also enhances the economies of Missouri and Kansas.

Another important component of Heartland PTAC is the development of linkages with other programs at the federal, state, and local level. This program works in close cooperation with the Missouri and Kansas Small Business Development Centers (SBDCs') full services and technology centers. This allows participating firms to receive a full range of business development services, including business management assistance, product development and technology transfer.

Analysis: The Finance Department/Purchasing Division will be a sub-contractor with Heartland PTAC Missouri Southern State University. This collaboration increases the range of business development services that are offered by the Emerging and Disadvantaged Business Enterprise Program. The services that Heartland PTAC provides include general procurement counseling, assistance with bidder application forms, matching of products and/or services with appropriate buying activities, bid package review, pre-award and post-award assistance, and providing specifications and other information needed to complete government bids. Without this assistance, many of the program's clients might not consider entering the federal government market.

Financial Considerations: Total cost to the City for the 12-month agreement is $28,909 in non-federal, in-kind matching funds. The existing EBE program budget already established and included within the Purchasing Division budget is eligible to provide the match. The City of Wichita as a sub-contractor will receive $9,878 of federal Procurement Technical Assistance Program (PTAP) funds from Missouri Southern State University. Authorize budget transfer to grant project for this cooperative agreement.

Goal Impact: The Economic Vitality and Affordable Living Goal is impacted as Wichita area businesses have accesses to potential market expansion through government procurement opportunities, enhancing the quality and diversity of jobs and providing opportunities for the City to partner with economic development stakeholders.

Legal Considerations: The 2011 Letter of Commitment and 2011 proposed budget will be for 12 months beginning February 1, 2011 through January 31, 2012.

Recommendations/Actions: It is recommended that the City Council continue its relationship as a sub-contractor with Heartland PTAC Missouri Southern State University, approve the 2011 Letter of Commitment and proposed budget, and authorize the necessary budget adjustments and signatures.

Attachments: Submittal 2011 Letter of Commitment and proposed budget.

STATEMENT FOR 2011 PROPOSED BUDGET OF CITY OF WICHITA:

We understand we are applying for 2011 budget for the federal Procurement Technical Assistance (PTA) funds from Missouri Southern State University. In return we will provide the following non-federal matching funds:

Objective Cost Category	**Federal**	**Cost Match**	**In-Kind**	**Total Budget**
a) Personnel	5,526		16,577	22,103
b) Fringe Benefits	2,224		6,673	8,897
c) Travel	1,285			1,285
d) Equipment				
e) Supplies				
f) Contractual Fees				
g) Other	843		5,659	6,502
TOTALS	**9,878**		**28,909**	**38,787**

a) 35% of Contract Compliance Officer providing technical assistance
b) Fringe Benefits are determined by costs of Social Security (7.65%), retirement/pension 10.2%), Workers' Compensation (.54%), unemployment compensation (.20%), health insurance ($11,749/yr), and life insurance (.40%).
c) Travel for the Spring and/or Fall APTAC Conference.
g) Telephone line charges, instrument charges and long distance services and Data Center Charges for computer programs

_____ _____

Melinda Walker, Purchasing Manager Date

Letter of Commitment
Procurement Technical Assistance Program (PTAP)

This letter is to certify that the cash and/or in-kind contribution(s) described below are committed to the MSSU/Heartland PTAC. The contributions described will be made available to the PTAC between the dates of 2/1/2011 and 1/31/2012. The undersigned further certifies that there is no expectation of compensation in return for the donations described such as a requirement that the contribution(s) be made as a provision in a contract or purchase order.

Donor Organization: ___City of Wichita_____

Address: _455 N. Main, 12th Floor, Wichita, Kansas, 67202_____

Representative's Signature: _____ Date: _9/21/10_____

Name & Title of Representative: _Melinda Walker, Purchasing Manager_____

Phone: _316.268.4411_____

Total cash contribution:	
Total in-kind contribution:	$28,909
Total of cash and in-kind:	$28,909

List each individual in-kind contribution below. Contributions should be fully explained to show how their value is determined. Use a continuation sheet if necessary.

List In-kind Donation(s) (e.g., Services, Goods, or Facilities Provided)	**Value Determination** (e.g., rate * hrs or sq.ft * $/sq.ft)	**Total Value**
Salaries	Percentage of FTEs for PTAC	$16,577
Fringe Benefits	See Attached	$6,673
Other	See Attached	$5,659

*** Note:** The PTAC must attach a document to describe the basis for valuing each in-kind donation in a clear manner such as the following: 3 bids or quotes in response to a competitive procurement process for similar cost items, sales literature, price catalogs, published schedules, independent appraisal of comparable space, rates paid for similar work within the host organization, or documented pricing for similar cost items previously paid for by the host organization.

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Funding for Public Transportation (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent

Recommendation: Approve the interlocal agreements for Sedgwick County and Butler County.

Background: Each year, the Federal Transit Administration (FTA) provides grant money for use in providing urban public transportation services. The amount of funding is based upon a complex formula involving miles driven, passenger rides provided, population area and density serviced, etc.

Analysis: The 2000 census figures enlarged the service area for which the City of Wichita is allowed to seek funds to include parts of Sedgwick County and other incorporated entities within the urbanized area (UZA). The City can request funds for public transportation services to enhance the programs of Sedgwick County and the urbanized area, and pass through a portion of the total annual apportionment. For fiscal year 2010, the pass-through funds will be for a total of $175,000 for planning and preventive maintenance, of which Sedgwick County will receive $150,000, and Butler County will receive $25,000. All figures are 80% federal and 20% local match.

Financial Considerations: None.

Goal Impact: Ensure an Efficient Infrastructure by maintaining and optimizing public facilities and assets.

Legal Considerations: The City will have no part in operating these transportation programs. It will give guidance for the federal reporting required under the grant. By the attached interlocal agreements, the counties of Sedgwick and Butler will agree to adhere to all federal program requirements attached to the grant. The City's Law Department has reviewed and approved these agreements as to form.

Recommendations/Actions: It is recommended that the City Council approve the interlocal agreements.

Attachments: Interlocal agreements for Sedgwick County and Butler County are available online.

INTERLOCAL AGREEMENT
For PLANNING and PREVENTIVE MAINTENANCE

This interlocal agreement (Agreement) is entered into by and between the City of Wichita, Kansas ("WICHITA") and the Board of County Commissioners of Butler County, Kansas ("COUNTY").

WICHITA and COUNTY both operate public transportation services within the WICHITA metropolitan area, and are committed to continuing such services in a cooperative and coordinated manner. The purpose of this Agreement is to provide for allocation of federal funds available under the Urban Mass Transportation Act of 1964 ("Act") to provide ongoing support to transit services provided by WICHITA and COUNTY. It is, therefore, mutually agreed as follows:

1. **Term.** The Agreement shall be effective upon execution by all parties hereto and shall be effective FY 2010, terminating after receipt of final payment, unless terminated earlier as allowed below.

2. **Operations and Management.** WICHITA and COUNTY shall each be solely responsible for the separate operation and management of their respected public transportation systems. WICHITA and COUNTY agree to act with due diligence and good faith in the exercise of the operation and management of their respective transit systems to comply with the terms of this Agreement and to work together in a mutually supportive manner to ensure the implementation of all provisions contained in this Agreement. WICHITA agrees to assist COUNTY in set-up guidance for proper reimbursement and payout documents, data submission for the National Transit Database, etc. COUNTY will be responsible for scheduling an annual meeting with WICHITA for review and future planning.

3. **Allocation of FY2010 Section 5307 Funds.** For FY2010, COUNTY shall be designated by WICHITA to be a subgrantee (pass-through) recipient to receive Section 5307 (CFDA 20.507) funding for planning and preventive maintenance. Section 5307 funding requires all subgrantee (pass-through) recipients to fund 20% of the total cost as a local match, the Federal Transit Administration (FTA) provides the remaining 80% federal portion for the total cost of the project. The total allocation for the planning and preventive maintenance functions for COUNTY's transportation system for FY2010 is **$25,000**; the federal portion is **$20,000** and COUNTY's portion is **$5,000** for the required 20% local match.

4. **Application for Section 5307 Funding.** WICHITA shall apply to the FTA for funding under Paragraph 3. The funds received by COUNTY shall be matched at an appropriate percentage (20% of the total allocation) by local funds secured by COUNTY and shall be available for use by COUNTY, as its governing body deems appropriate within the FTA requirements, as set out in Exhibit C and D attached.

5. **Future Section 5309 Applications.** WICHITA and COUNTY shall cooperate to pursue applications as may be appropriate for capital grants under Section 5309, which shall include funds for capital acquisitions by COUNTY.

6. **Carryover of Funds.** Funds allocated to COUNTY pursuant to Sections 4 and 5 may be carried over.

7. **Future Allocation of 5307 Funds.** Based on the amount of carryover funds available, COUNTY may be subject to less apportionment than the $20,000 FTA portion available for allocation in a fiscal year. This will be determined during the annual planning meeting.

8. **Compliance with Laws.** WICHITA and COUNTY hereby agree, in the performance of this Agreement, to comply with all applicable federal, state, and local laws, including specifically all

relevant requirements of the Act, as appropriate, which may separately and individually apply to their respective jurisdictions.

9. **Extension of Agreement.** WICHITA and COUNTY may extend this Agreement on a year-to-year basis with written approval of both parties. Funds are secured in the agreement year and subject to be spent within FTA requirements.

10. **Establishment and Maintenance of Records.** COUNTY shall establish and maintain records as prescribed by WICHITA, with respect to all matters covered by this Agreement. Except as otherwise authorized by WICHITA, COUNTY shall retain such financial and nonfinancial related records for a period of three (3) years after receipt of the final payment under this Agreement or termination of this Agreement. However, if any litigation, claim, negotiation, audit, oversight or other action involving the records has been started before the expiration of the three-year period, the records must be retained until the completion of the action and resolution of issues which arise from it or until the end of the regular three-year period, whichever is later.

11. **Reports and Information.** COUNTY, at such times and in such forms as WICHITA or its designates and authorized representative(s) may require, shall furnish to WICHITA, the FTA, or their designated and authorized representative(s) such statements, records, reports, data, and information as they may request pertaining to matters covered by this Agreement.

12. **Audits and Inspections.** COUNTY shall, at anytime, and as often as WICHITA may deem necessary, make available to WICHITA, or its designated and authorized representative(s), for examination of all its records and data pertaining to matters covered by this Agreement for the purpose of making audits, oversights, examinations, excerpts, and transcriptions. COUNTY is required to provide WICHITA with access to their single audit report.

13. Per OMB Circular A-133: **Pass-through Entity Responsibilities**. A pass-through entity shall perform the following for the federal awards it makes:

    a. Identify federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the federal award.

    b. Advise subrecipients of requirements imposed on them by federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

    c. Monitor the activities of subrecipients as necessary to ensure that federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

    d. Ensure that subrecipients expending $300,000 *($500,000 for fiscal years ending after December 31, 2003)* or more in federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

    e. Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

f. Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

g. Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

**Wichita will provide the applicable information from 13(1) when available.

14. **Discrimination.**

a. **Discrimination Prohibited.** No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, national origin, ancestry, religion, physical handicap, sex, or age. (Reference Title VI of the Civil Rights Act of 1964 – Pub. L. 88-352). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of COUNTY receiving funds pursuant to this Agreement.

b. COUNTY further agrees to implement and comply with the "Revised Nondiscrimination and Equal Employment Opportunity Statement" for contracts or Agreements as provided in Exhibit A attached hereto and to specifically comply with the requirements of the Americans with Disabilities Act of 1990, as amended.

15. **Payments.**

a. **Compensation and Method of Payment.** Compensation and method of payment to COUNTY relative to conducting the operations of the project activities and services as herein described will be carried out as specified in Exhibit B attached hereto and will be administered under the established accounting and fiscal policies of WICHITA.

b. **Total Payments.** Total payments to COUNTY will be in the contracted amount of $20,000 FTA portion starting January 1, 2010, unless carryover money remains, then carryover money will be drawn down first.

c. **Restriction on Disbursements.** No grant funds shall be disbursed to COUNTY or a contractor except pursuant to a written contract that incorporates by reference the general conditions of this Agreement.

16. **Termination Clause.** Whenever either of the parties hereto determines that termination of this Agreement is in such party's best interest, then the Agreement may be terminated by giving written notification to the other party. A determination may include, but not be limited to:

a. Failure of either party to comply with any or all items contained within Sections 1 through 15 of this Agreement, contract exhibits, and/or provisions of any subsequent contractual amendments executed relative to this Agreement;

b. This Agreement may be terminated if project funds to WICHITA under the grant are suspended or terminated;

c. Either party hereto may also, by giving thirty (30) days notice, terminate this Agreement for convenience; and

d. Upon receipt of notice of termination, COUNTY shall: (1) discontinue further commitments of contract funds to the extent they relate to the terminated portion of the Agreement; (2) promptly cancel all Agreements and/or orders to subcontractors utilizing funds under this Agreement; (3) submit, within a reasonable period of time to be specified by WICHITA, a cancellation settlement proposal which shall include a final statement for the Agreement, or reimbursement of unearned funds previously distributed.

17. **Appendices.** All exhibits referenced below and all amendments or mutually agreed upon modification(s) made by both parties are hereby incorporated as though fully set forth herein. In case of conflict in terms between this Agreement and Exhibit C, the terms of Exhibit C shall take precedence.

Exhibit A	Nondiscrimination and Equal Employment Opportunity Statement
Exhibit B	Scope of Services and Method of Payment
Exhibit C	FTA Master Agreement of October 1, 2006
Exhibit D	Fiscal Year 2010 Certifications and Assurances for FTA Assistance Programs

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

BOARD OF COUNTY COMMISSIONERS OF BUTLER COUNTY, KANSAS

Jeff Masterson, Chairperson

APPROVED AS TO FORM:

Norm Manley, County Counselor

ATTEST:

Ron Roberts, County Clerk

CITY OF WICHITA, KANSAS
By order of the City Council

Carl Brewer, Mayor

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

ATTEST:

Karen Sublett, City Clerk

Exhibit A
Nondiscrimination and Equal Employment Opportunity Statement

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

C. Requirements of the City of Wichita, Kansas, relating to Nondiscrimination – Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice nondiscrimination – equal employment opportunity in all employment relations, including, but not limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

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

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

3. The vendor, supplier, contractor, or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with nondiscrimination – equal employment opportunity requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor, or subcontractor shall be deemed to have breached the present contract, purchase order, or Agreement and it may be canceled, terminated, or suspended in whole or in part by the City or its agency, and further civil rights complaints or investigations may be referred to the State;

4. The vendor, supplier, contractor, or subcontractor shall include the provisions of Subsection 1 through 3, inclusive, of this present section in every subcontract, sub-purchase order, or sub-Agreement so that such provisions will be binding upon each subcontractor, sub-vendor, or sub-supplier; and

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

D. Exempted from these requirements are:

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

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

Exhibit B
Scope of Services and Method of Payment

COUNTY will provide preventive maintenance and planning activities in support of general public transportation services in Andover, Butler County, Kansas, under federal guidelines.

The amount of funds anticipated from the Federal Transit Administration Section 5307 grant in FY2010 is $20,000.00. The total allocation for the planning and preventive maintenance functions for COUNTY's transportation system for FY2010 is **$25,000**. The federal portion is **$20,000**, and the COUNTY's portion is **$5,000** for the required 20% local match. As the designated recipient of federal funds, the WICHITA will disperse the available federal funds that are appropriately matched under the terms of the grant.

COUNTY will submit an invoice for payment no later than 30 days after the end of each quarter. WICHITA will reimburse COUNTY for the invoiced amount no later than 30 days after the invoice is received. A line item list of expenses must be attached to the invoice for WICHITA to examine and determine if all expenses are FTA eligible. Any ineligible costs will be rejected by WICHITA and COUNTY must submit a revised invoice.

Exhibit C
FTA Master Agreement

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by
49 U.S.C. chapter 53, Title 23, United States Code (Highways),
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the Transportation Equity Act for the 21st Century, as amended,
the National Capital Transportation Act of 1969, as amended,
or other Federal laws that FTA administers.

FTA MA(13)
October 1, 2006

http://www.fta.dot.gov/documents/13-Master.doc

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UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

MASTER AGREEMENT

This is the official Master Agreement containing standard terms and conditions governing the administration of a Project supported with Federal assistance awarded by the Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Recipient, or supported by FTA through a Transportation Infrastructure Loan, Loan Guarantee, or Line of Credit with the Recipient. This Master Agreement applies to Federal assistance authorized by Federal public transportation laws at 49 U.S.C. chapter 53 or Title 23, United States Code (Highways); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109 -59, Aug. 10, 2005; the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, June 9, 1998, as amended, the National Capital Transportation Act of 1969, D.C. Official Code, §§ 9-1111.01 *et seq*., or other Federal legislation FTA administers to the extent FTA so determines.

FTA and the Recipient understand and agree that not every provision of this Master Agreement will apply to every Recipient or every Project for which FTA provides Federal assistance through a Grant Agreement or Cooperative Agreement. The type of Project, the Federal laws and regulations authorizing Federal assistance for the Project, and the legal status of the Recipient as a "State," "local government," private non-profit entity, or private for-profit entity will determine which Federal laws, regulations, and directives apply. Federal laws, regulations, and directives that do not apply will not be enforced. Nevertheless, the Recipient understands and agrees that it must comply with all applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing. Any violation of a Federal law, regulation, or directive applicable to the Recipient or its Project may result in penalties to the violating party.

This Master Agreement does not have an Expiration Date. The provisions of this Master Agreement will continue to apply to the Project unless or until modified or superseded by subsequent Federal laws, regulations, or directives, or subsequent Grant Agreements, Cooperative Agreements, or Master Agreements.

Thus, in consideration of the mutual covenants, promises, and representations herein, FTA and the Recipient agree as follows:

Section 1. Definitions.

A. Application means the signed and dated request for Federal assistance, including any amendment thereto, with all explanatory, supporting, and supplementary documents filed with FTA by or on behalf of the Recipient and accepted or approved by FTA.

B. Approval, Authorization, Concurrence, Waiver means a conscious written statement (transmitted in typewritten hard copy or electronically) of a Federal Government official authorized to permit the Recipient to take or omit an action required by the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement, which action may not be taken or omitted without such permission. Except to the extent that FTA determines otherwise in writing, such approval, authorization, concurrence, or waiver permitting the performance or omission of a specific action does not constitute permission to perform or omit other similar actions. An oral permission or interpretation has no legal force or effect.

C. Approved Project Budget means the most recent statement of the costs of the Project, the maximum amount of Federal assistance for which the Recipient is currently eligible, the specific tasks (including specific contingencies) covered, and the estimated cost of each task that has been approved by FTA. As used in the "Approved Project Budget," the term "Scopes" means categories and the term "Scope Level Codes" means category codes. Although "Scopes" and "Scope Level Codes" generally indicate the type of activities encompassed by the Project, the data listed under "Scopes" and "Scope Level Codes" (for example), do not necessarily reflect, and are not intended to be treated as, prima facie evidence of the precise limits or boundaries of a Project, except to the extent that FTA determines otherwise in writing. FTA reserves the right to consider other information in determining what constitutes the "Scope of the Project" when that term is used for legal purposes.

D. Cooperative Agreement means an instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA takes an active role or retains substantial control, as set forth in 31 U.S.C. § 6305. The Cooperative Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include additional Special Conditions, Special Requirements, or Special Provisions. This Master Agreement is incorporated by reference and made part of the Cooperative Agreement.

E. Federal Directive, for purposes of this Master Agreement, includes any Executive Order of the President of the United States, and any Federal document, irrespective of whether it takes the form of a published policy, administrative practice, circular, guideline, guidance document, or letter signed by the head of a Federal agency or his or her designee, that provides instructions concerning a Federal program, including application processing procedures, program management, or other similar matters. The term “Federal Directive” encompasses “FTA Directives,” “U.S. DOT Directives,” and similar documents issued by other agencies of the Federal Government.

F. Federal Government means the United States of America and any executive department or agency thereof.

G. Federal Transit Administration designates the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration is deemed a reference to the Federal Transit Administration.

H. Federal Transit Administrator designates the former Urban Mass Transportation Administrator. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administrator is deemed a reference to the Federal Transit Administrator.

I. FTA is the acronym for the Federal Transit Administration, an operating administration of the U.S. Department of Transportation (U.S. DOT). “FTA” replaces the acronym “UMTA.”

J. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA does not take an active role or retain substantial control, as set forth in 31 U.S.C. § 6304. The Grant Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include additional Special Conditions, Special Requirements, or Special Provisions. This Master Agreement is incorporated by reference and made part of the Grant Agreement.

K. Local Government includes a public transportation authority, as well as a county, municipality, city, town, township, special district, council of governments, public corporation, board, or commission established under the laws of a State (whether or not incorporated as a private nonprofit organization under State law), regional or interstate government entity, Indian tribe, or any agency or instrumentality thereof.

L. Project means the activity or activities (task or tasks) listed in Project Description, the Approved Project Budget, and any modifications set forth in the Conditions of Award in the Grant Agreement or Cooperative Agreement for the Project, and any other Special Conditions, Special Requirements, or Special Provisions applicable to the Project. To the extent that a Recipient is required by any provision of 49 U.S.C. chapter 53 to prepare a "Program of Projects," for purposes of this Master Agreement, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require. For a Loan, Loan Guarantee, or Line of Credit financed with Federal assistance authorized under the Transportation Infrastructure Finance and Innovation Act of 1998, as amended, 23 U.S.C. §§ 601 through 609, "Project" means the transportation activities financed by that Loan, Loan Guarantee, or Line of Credit. For purposes of legal interpretations and other matters, FTA reserves the right to consider information apart from the data listed in FTA's electronic management system under "Scopes" and "Scope Level Codes" of the "Approved Project Budget" to determine what constitutes the Scope of the Project or eligible project activities.

M. Public Transportation means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in 49 U.S.C. chapter 243 (Amtrak or a successor to Amtrak). The term "public transportation" also includes "mass transportation" and "transit."

N. Recipient means the entity that receives Federal assistance directly from FTA to support the Project. The term "Recipient" includes each "Grantee" that receives Federal assistance directly from FTA through a Grant and each Recipient that receives Federal assistance directly from FTA through a Cooperative Agreement. Even if a single organization within a legal entity is designated the Recipient in the Grant Agreement or Cooperative Agreement, the entire legal entity is the Recipient, except to the extent that FTA has determined otherwise in writing. Thus, unless FTA has determined otherwise in writing, if the Recipient is a consortium, partnership, or other multi-party entity, each participant in, member of, or party to that consortium, partnership, or multi-party entity is deemed a "Recipient" for purposes of compliance with applicable requirements of the Grant Agreement or Cooperative Agreement for its Project.

O. Subagreement means an agreement through which a Recipient awards Federal assistance derived from FTA to a subrecipient as defined below. The term "subagreement" also includes the term "subgrant," but does not include the term "third party subcontract."

P. Subrecipient means any entity that receives Federal assistance awarded by an FTA Recipient, rather than by FTA directly. The term "subrecipient" also includes the term "subgrantee," but does not include "third party contractor" or "third party subcontractor."

Q. Third Party Contract means a contract or purchase order awarded by the Recipient or subrecipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

R. Third Party Subcontract means a subcontract at any tier financed in whole or in part with Federal assistance originally derived from FTA that is entered into by the third party contractor or third party subcontractor.

S. U.S. DOT is the acronym for the United States Department of Transportation, including its operating administrations.

Section 2. Project Implementation.

A. General. The Recipient agrees to carry out the Project as follows:

1. Project Description. Because the "Project Description" in the FTA Award section of the Grant Agreement or Cooperative Agreement provides only a brief description of the Project or Projects to be funded, the Recipient agrees to perform the work as described in the "Project Description" and in its Application that is incorporated by reference in the approved Grant Agreement or Cooperative Agreement for the Project.

2. Effective Date. The effective date of the Grant Agreement, Cooperative Agreement, or Amendment thereto is the date on which the FTA Authorized Official awards Federal assistance as shown on the Grant Agreement, Cooperative Agreement, or Amendment thereto. The Recipient agrees to undertake Project work promptly after receiving notice that FTA has awarded Federal assistance for the Project.

3. Recipient's Capacity. The Recipient agrees to maintain or acquire sufficient legal, financial, technical, and managerial capacity to: (1) plan, manage, and complete the Project and provide for the use of Project property; (2) carry out the safety and security aspects of the Project and (3) comply with the terms of the Grant Agreement or Cooperative Agreement providing Federal assistance for the Project, this Master Agreement, the Approved Project Budget, the Project schedules, the Recipient's annual Certifications and Assurances to FTA, and all applicable Federal laws, regulations, and directives pertaining to the Project and the Recipient, except to the extent that FTA determines otherwise in writing.

4. Completion Dates. The Recipient agrees to complete the Project in a timely manner. Nevertheless, except in the case of a Full Funding Grant Agreement or as otherwise specified, FTA and the Recipient agree that milestone dates and other Project completion dates are to be treated as good faith estimates rather than precise and firm legal requirements.

B. U.S. DOT Administrative Requirements. The Recipient agrees to comply with the Federal administrative requirements that apply to the category in which it belongs:

1. U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18, apply to a Recipient that is a State, local, or Indian tribal government.

2. U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 C.F.R. Part 19, apply to a Recipient that is an institution of higher education or a nonprofit organization.

3. Except to the extent that FTA determines otherwise in writing, U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations," 49 C.F.R. Part 19, apply to a Recipient that is a private for-profit organization.

C. Application of Federal, State, and Local Laws, Regulations, and Directives.

1. Federal Laws, Regulations, and Directives. The Recipient agrees that Federal laws and regulations control Project award and implementation. The Recipient also agrees that Federal directives, as

defined in this Master Agreement, set forth Federal terms applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Recipient understands and agrees that unless FTA has provided express written approval of an alternative procedure or course of action differing from a procedure or course of action set forth in the applicable Federal directive, the Recipient may incur a violation of the terms of its Grant Agreement or Cooperative Agreement or this Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Recipient understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Applicant on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date on which the Recipient executes the Grant Agreement or Cooperative Agreement for the Project, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal laws, regulations, and directives will govern the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Recipient signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or otherwise conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. To accommodate changing Federal requirements, the Recipient agrees to include in each agreement with each subrecipient and each third party contract implementing the Project notice that Federal laws, regulations, and directives may change and that the changed requirements will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in this Master Agreement are minimum requirements, unless modified by FTA.

2. State, Territorial, and Local Law. Should a Federal law pre-empt a State, territorial, or local law, regulation, or ordinance, the Recipient must comply with the Federal law and implementing regulations. Nevertheless, no provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement requires the Recipient to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law, regulation, or ordinance. Thus if compliance with any provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement violates or would require the Recipient to violate any State, territorial, or local law, regulation, or ordinance, the Recipient agrees to notify FTA immediately in writing. Should this occur, FTA and the Recipient agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project expeditiously.

D. Recipient's Primary Responsibility to Comply with Federal Requirements. Irrespective of involvement by any other entity in the Project, the Recipient agrees that it, rather than any other entity, is ultimately responsible for compliance with all applicable Federal laws, regulations, and directives, this Master Agreement, and the underlying Grant Agreement or Cooperative Agreement for the Project, except to the extent that FTA determines otherwise in writing.

1. Significant Participation by a Subrecipient. Although the Recipient may delegate any or almost all Project responsibilities to one or more subrecipients, the Recipient agrees that it, rather than any subrecipient, is ultimately responsible for compliance with all applicable Federal laws, regulations,

and directives, except to the extent that FTA determines otherwise in writing.

2. Significant Participation by a Lessee of a Recipient. Although the Recipient may lease Project property and delegate some or many Project responsibilities to one or more lessees, the Recipient agrees that it, rather than any lessee, is ultimately responsible for compliance with all applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

3. Significant Participation by a Third Party Contractor. Although the Recipient may enter into a third party contract in which the third party contractor agrees to provide property or services in support of the Project, or even carry out Project activities normally performed by the Recipient (such as in a turnkey contract), the Recipient agrees that it, rather than the third party contractor, is ultimately responsible to FTA for compliance with all applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

4. Exceptions. The Recipient, however, is relieved of the requirement to comply with Federal requirements in the following two circumstances:

   a. When the Designated Recipient of Urbanized Area Formula Program assistance as defined at 49 U.S.C. § 5307(a)(2) has entered into a Supplemental Agreement with FTA and a Grantee covering the Project, the Designated Recipient is not responsible for compliance with Federal requirements in connection with the Project, or

   b. When the Federal Government, through appropriate official action, relieves the Recipient of a portion of or all responsibility to the Federal Government.

E. Recipient's Responsibility to Extend Federal Requirements to Other Entities.

1. Entities Affected. Only entities that are signatories to the Grant Agreement or Cooperative Agreement for the Project are parties to that Grant Agreement or Cooperative Agreement. To achieve compliance with certain Federal laws, regulations, or directives, however, other entities participating in the Project through their involvement with the Recipient, (such as a subrecipient, lessee, third party contractor, or other) will necessarily be affected. Accordingly, the Recipient agrees to take the appropriate measures necessary to ensure that all Project participants comply with applicable Federal laws, regulations, and directives affecting Project implementation, except to the extent FTA determines otherwise in writing. In addition, if an entity other than the Recipient is expected to fulfill responsibilities typically performed by the Recipient, the Recipient agrees to assure that the entity carries out the Recipient's responsibilities as set forth in the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement.

2. Documents Affected. The applicability provisions of Federal laws, regulations, and directives determine the extent to which those provisions affect an entity (such as a subrecipient, lessee, third party contractor or other) participating in the Project through the Recipient. Thus, the Recipient agrees to use a written document to ensure that each entity participating in the Project complies with applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

   a. Required Clauses. The Recipient agrees to use a written document (such as a subagreement, lease, third party contract or other) including appropriate clauses stating the entity's (subrecipient, lessee, third party contractor, or other) responsibilities under Federal laws,

regulations, or directives, except to the extent that FTA determines otherwise in writing.

b. Flowdown. The Recipient agrees to include in each document (subagreement, lease, third party contract, or other) any necessary provisions requiring the Project participant (third party contractor, subrecipient, or other) to impose applicable Federal requirements and directives on its subrecipients, lessees, third party contractors and other Project participants at the lowest tier necessary, except to the extent that FTA determines otherwise in writing.

c. Performance of Recipient's Responsibilities. When the document (subagreement, lease, third party contract or other) requires the Project participant (subrecipient, lessee, third party contractor, or other) to undertake responsibilities for the Project usually performed by the Recipient, the Recipient agrees also to include in that document (subagreement, lease, third party contract or other) appropriate provisions that would be applicable to the Recipient as set forth in the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement, and extend those provisions to the subrecipients, lessees, third party contractors, and other Project participants to the lowest tier necessary, except to the extent as FTA determines otherwise in writing.

F. No Federal Government Obligations to Third Parties. In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, or third party contract at any tier, the Federal Government has no obligations or liabilities to entity other than the Recipient, including any subrecipient, lessee, or third party contractor at any tier.

G. Changes in Project Performance (*i.e.*, Disputes, Breaches, Defaults, or Litigation). The Recipient agrees to notify FTA immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Recipient's ability to perform the Project in accordance with the terms of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. The Recipient also agrees to notify FTA immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations; and agrees to inform FTA, also in writing, before naming the Federal Government as a party to litigation for any reason, in any forum. At a minimum, the Recipient agrees to send each notice to FTA required by this subsection to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.

Section 3. Ethics.

A. Code of Ethics. The Recipient agrees to maintain a written code or standards of conduct that shall govern the actions of its officers, employees, board members, or agents engaged in the award or administration of subagreements, leases, or third party contracts supported with Federal assistance. The Recipient agrees that its code or standards of conduct shall specify that its officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential subrecipient, lessee, or third party contractor at any tier or agent thereof. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award. The Recipient may set *de minimis* rules where the

financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. The Recipient agrees that its code or standards shall also prohibit its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the Recipient agrees that its code or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by its officers, employees, board members, or their agents, or its third party contractors or subrecipients or their agents.

1. Personal Conflicts of Interest. The Recipient agrees that its code or standards of conduct shall prohibit the Recipient's employees, officers, board members, or agents from participating in the selection, award, or administration of any third party contract or subagreement supported by Federal assistance if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award.

2. Organizational Conflicts of Interest. The Recipient agrees that its code or standards of conduct shall include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or subagreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or subrecipient or impair its objectivity in performing the contract work.

B. Debarment and Suspension. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, or third party contractor at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29. The Recipient agrees to, and assures that its subrecipients, lessees, and third party contractors will review the "Excluded Parties Listing System" at http://epls.arnet.gov/ before entering into any third party contract or subagreement.

C. Bonus or Commission. The Recipient affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its Federal assistance application for the Project.

D. Lobbying Restrictions. The Recipient agrees that:

1. In compliance with 31 U.S.C. 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement or Cooperative Agreement;

2. In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities, designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

3. It will comply, and will assure the compliance of each subrecipient, lessee, or third party contractor at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.

E. Employee Political Activity. To the extent applicable, the Recipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 through 1508, and 7324 through 7326, and U.S. Office of Personnel

Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151. The Hatch Act limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with Federal funds including a Federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. § 5307(k)(2)(B) and 23 U.S.C. § 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act would not otherwise apply.

F. False or Fraudulent Statements or Claims. The Recipient acknowledges and agrees that:

1. Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq*., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

2. Criminal Fraud. If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

Section 4. Federal Assistance.

The Recipient agrees that FTA will provide Federal assistance for the Project equal to the smallest of the following amounts: (a) the maximum amount permitted by Federal law or regulations, (b) the "Maximum FTA Amount Approved," set forth in the Grant Agreement or Cooperative Agreement for the Project, or (c) the amount calculated in accordance with the "Maximum Percentage(s) of FTA Participation," as may be modified by the Conditions of Award or other Special Conditions, Special Requirements, or Special Provisions of the Grant Agreement or Cooperative Agreement for the Project. FTA's responsibility to make Federal assistance payments is limited to the amounts listed in the Approved Project Budget for the Project. The "Estimated Total Eligible Cost" in the Grant Agreement or Cooperative Agreement for the Project is the amount that forms the basis on which FTA determines the "Maximum FTA Amount Awarded."

A. "Net Project Cost". For any Project required by Federal law or by FTA to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Recipient for that portion of the Project that cannot reasonably be financed from the Recipient's revenues, *i.e*., "Net Project Cost" of the Project. Therefore, the amount stated as the "Estimated Total Eligible Cost" on the Grant Agreement or Cooperative Agreement is the "Estimated Net Project Cost" and is the amount that forms the basis on which FTA will calculate the amount of Federal assistance that will be awarded for the Project.

B. Other Basis for FTA Participation. For any Project not required by Federal law or FTA to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Recipient for all or part of the total Project cost that is eligible for Federal assistance. Therefore, the amount stated as the "Estimated Total Eligible Cost" on the Grant Agreement or Cooperative Agreement for the Project is the amount that forms the basis on which FTA will calculate the amount of Federal assistance that will be awarded for the Project.

Section 5. Local Share.

A Recipient that is required to provide a local share for the Project agrees as follows:

A. Restrictions on the Source of the Local Share. The Recipient agrees to provide sufficient funds or approved in-kind resources, together with the Federal assistance awarded, that will assure payment of the actual cost of each Project activity covered by the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that no local share funds provided will be derived from receipts from the use of Project facilities or equipment, revenues of the public transportation system in which such facilities or equipment are used, or other Federal funds, except as permitted by Federal law or regulation.

B. Duty to Obtain the Local Share. The Recipient agrees to complete all proceedings necessary to provide the local share of the Project costs at or before the time the local share is needed for Project costs, except to the extent that FTA determines otherwise in writing.

C. Prompt Payment of the Local Share. The Recipient agrees to provide the proportionate amount of the local share promptly as Project costs are incurred or become due, except to the extent that the Federal Government determines in writing that the local share may be deferred.

D. Reduction of the Local Share. The Recipient agrees that no refund or reduction of the local share may be made unless, at the same time, a refund of the proportional amount of the Federal assistance provided is made to the Federal Government.

Section 6. Approved Project Budget.

Except to the extent that FTA determines otherwise in writing, the Recipient agrees as follows: The Recipient will prepare a Project budget which, upon approval by FTA, is designated the "Approved Project Budget." The Recipient will incur obligations and make disbursements of Project funds only as authorized by the latest Approved Project Budget, which will be incorporated by reference and made part the underlying Grant Agreement or Cooperative Agreement for the Project. An amendment to the Approved Project Budget requires the issuance of a formal amendment to the underlying Grant Agreement or Cooperative Agreement, except that re-allocation of funds among budget items or fiscal years that does not increase the total amount of the Federal assistance awarded for the Project may be made consistent with applicable Federal laws, regulations and directives. Prior FTA approval is required for transfers of funds from non-construction to construction categories or vice versa or when, in non-construction grants, cumulative transfers of funds between total direct cost categories exceed ten (10) percent of the total budget. The Recipient agrees to obtain prior written approval for any budget revision that would result in the need for additional funds. An award of additional Federal assistance will require a new Approved Project Budget. If the Recipient estimates that it will have unobligated funds remaining after the end of the performance period of the Project, the Recipient agrees to report this to FTA at the earliest possible time and ask for disposition instructions.

Section 7. Accounting Records.

In compliance with applicable Federal laws, regulations, and directives, and except to the extent that FTA determines otherwise in writing, the Recipient agrees as follows:

A. Project Accounts. The Recipient agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The Recipient also agrees to maintain all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents related in whole or part to the Project so that they may be clearly identified, readily accessible, and available to FTA upon request and, to the extent feasible, kept separate from documents not related to the Project.

B. Funds Received or Made Available for the Project. The Recipient agrees to deposit in a financial institution all advance Project payments it receives from the Federal Government and to record in the Project Account all amounts provided by the Federal Government for the Project and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) in compliance with applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing. Use of financial institutions owned at least fifty (50) percent by minority group members is encouraged.

C. Documentation of Project Costs and Program Income. The Recipient agrees to support all costs charged to the Project, including any approved services or property contributed by the Recipient or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Recipient also agrees to maintain accurate records of all program income derived from Project implementation, except certain income FTA determines to be exempt from Federal program income requirements.

D. Checks, Orders, and Vouchers. The Recipient agrees that it will not draw checks, drafts, or orders for property or services to be charged against the Project Account until it has received and filed a properly signed voucher describing in proper detail the purpose for the expenditure.

Section 8. Reporting, Record Retention, and Access.

A. Types of Reports. The Recipient agrees to submit to FTA all reports required by Federal laws and regulations, and directives, the Grant Agreement or Cooperative Agreement for the Project, this Master Agreement, and any other reports FTA may specify, except to the extent that FTA determines otherwise in writing.

B. Report Formats. The Recipient agrees that all reports and other documents or information intended for public availability developed in the course of the Project and required to be submitted to FTA must be prepared and submitted in electronic and or typewritten hard copy formats as FTA may specify. Electronic submissions must comply with the electronic accessibility provisions of Subsections 12.g(9) and 15.u of this Master Agreement. FTA also reserves the right to specify that records be submitted in other formats.

C. Record Retention. During the course of the Project and for three years thereafter from the date of transmission of the final expenditure report, the Recipient agrees to maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the Federal Government may require.

D. Access to Records of Recipients and Subrecipients. The Recipient agrees to permit, and require its subrecipients to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its subrecipients pertaining to the Project, as required by 49 U.S.C. § 5325(g).

E. Project Closeout. The Recipient agrees that Project closeout does not alter the reporting and record retention requirements of this Section 8 of the Master Agreement.

Section 9. Payments.

The Recipient agrees that it will not seek payment from FTA for Project costs until it has executed the Grant Agreement or Cooperative Agreement for the Project.

A. Recipient's Request for Payment. Except to the extent that FTA determines otherwise in writing, to obtain a payment for Project expenses from FTA, the Recipient agrees to:

1. Demonstrate or certify that it will provide adequate local funds that, when combined with Federal payments, will cover all costs to be incurred for the Project. Except to the extent that the Federal Government determines in writing that the Recipient may defer provision of its local share for the Project, a Recipient required to provide a local share by Federal law, regulation, directive, the Grant Agreement or Cooperative Agreement for the Project agrees that it will not:

   a. Request or obtain Federal funds exceeding the amount justified by the local share previously provided, and

   b. Take any action that would cause the proportion of Federal funds made available to the Project at any time to exceed the percentage authorized by the Grant Agreement or Cooperative Agreement for the Project,

2. Submit to FTA all financial and progress reports required to date by the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement, and

3. Identify the source(s) of Federal assistance provided for the Project from which the payment is to be derived.

B. Payment by FTA. Except to the extent FTA determines otherwise in writing, the Recipient agrees that FTA will make all payments of Federal assistance through the Automated Clearing House (ACH) method of payment regardless of the amount involved, but not before the Recipient has executed the Grant Agreement or Cooperative Agreement for the Project, in accordance with the following provisions:

1. Electronic Clearing House Operation Payments. If payment is made through the FTA Electronic Clearinghouse Operation (ECHO) using an ECHO Control Number, the Recipient agrees to comply with: FTA's ECHO requirements that implement U.S. Department of Treasury (U.S. Treasury) Circular 1075, Part 205, "Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs;" Treasury Financial Manual, Vol. 1, Part 6, Chapter 2000; the ECHO System Operations Manual, "Guidelines for Disbursements" for FTA Projects; and the provisions of this Subsection 9.b(1). The Recipient also agrees that if it fails to comply with the following provisions of this Subsection 9.b(1), the Federal Government may revoke the unexpended portion of Federal assistance awarded for the Project.

a. The Recipient agrees to withdraw cash only when actually needed for immediate disbursement required for Project purposes. Except to the extent permitted otherwise by Federal law, regulation, or directive, the Recipient agrees to expend all Federal assistance obtained through the Project for Project purposes no later than three (3) days after receiving those funds. If the Recipient fails to expend that Federal assistance within three (3) days of receipt, fails to return withdrawn but unexpended Federal assistance to FTA within a reasonable period, or fails to establish procedures to minimize the time elapsing between cash advances and the disbursement, the Federal Government may revoke or temporarily suspend the Recipient's ECHO Control Number and the Recipient's access to the ECHO System. In addition, the Recipient agrees that if it fails to comply with these provisions, it may be subjected to other remedies or penalties authorized by Federal law or regulation.

b. The Recipient agrees to report its cash disbursements and balances promptly in compliance with applicable Federal laws, regulations, and directives.

c. The Recipient agrees to provide for control and accountability for all Federal assistance for the Project consistent with Federal requirements and procedures for use of the ECHO system.

d. The Recipient agrees that it will not withdraw Federal assistance for a Project in an amount exceeding the sum obligated by the Federal Government or the current available balance for that Project.

e. The Recipient agrees to withdraw Federal assistance only for payment of eligible Project costs.

f. The Recipient agrees that it will not withdraw Federal assistance until it is needed for disbursement for Project expenses.

g. The Recipient agrees to notify the appropriate Regional or Program Office when a single withdrawal will exceed $50,000,000 at least three days before the withdrawal is anticipated.

h. The Recipient agrees to remit interest to the Federal Government on any Federal assistance it has prematurely withdrawn, irrespective of whether that Federal assistance has been deposited in an interest-bearing account. The Recipient agrees that a debt for any premature withdrawal of Federal assistance does not qualify as a "claim" covered by the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, and that the interest provisions of this Subsection 9.b(1)(h) of this Master Agreement, rather than the interest provisions of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, will determine the amount of interest due for the Federal assistance it has prematurely withdrawn. The Recipient agrees that the amount of interest due the Federal Government depends on whether or not the Recipient is a State or State instrumentality.

(1) A Recipient that is a State or State instrumentality agrees to remit to the Federal Government the amount of interest calculated in accordance with U.S. Treasury regulations, "Rules and Procedures for Efficient Federal-State Funds Transfers," 31 C.F.R. Part 205, which implements section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b).

(2) A Recipient that is neither a State nor a State instrumentality agrees to remit to the Federal Government the amount of prejudgment common law interest, as authorized by joint U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury/U.S. DOJ)

regulations, “Standards for the Administrative Collection of Claims,” at 31 C.F.R. § 901.9(i).

2. Requisition. If the requisition method of payment is used, the Recipient agrees as follows:

a. Recipient Responsibilities. The Recipient agrees to complete and submit:

(1) "Payment Information Form – Echo-ACH Payment System, Revised 10/92,” to FTA's Accounting Division.

(2) Standard Form 270, "Request for Advance or Reimbursement," to the designated FTA office.

b. FTA Responsibilities. Upon receiving a request for payment and adequate supporting information, FTA will approve payment by direct deposit, provided that the Recipient has complied with the requirements of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement, has satisfied FTA that the Federal assistance requested is needed for Project purposes in that requisition period, and is making adequate progress toward Project completion. After the Recipient has demonstrated satisfactory compliance with the preceding requirements, FTA may reimburse the Recipient’s apparent allowable costs incurred (or to be incurred in the requisition period), as set forth in the Approved Project Budget for the Project, but not to exceed the maximum amount of Federal assistance that may be paid through the Federal fiscal year of that requisition.

c. Costs Reimbursed. The Recipient agrees that Project costs eligible for Federal participation must comply with all the following requirements. Except to the extent that FTA determines otherwise in writing, to be eligible for reimbursement, Project costs must be:

(1) Consistent with the Project Description, the Approved Project Budget, and other provisions of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement,

(2) Necessary in order to accomplish the Project,

(3) Reasonable for the goods or services purchased,

(4) Actual net costs to the Recipient (*i.e.*, the price paid minus any refunds, rebates, or other items of value received by the Recipient that have the effect of reducing the cost actually incurred, excluding program income),

(5) Incurred for work performed after the Effective Date of the Grant Agreement or Cooperative Agreement for the Project, except to the extent that the Federal Government determines otherwise in writing,

(6) Satisfactorily documented,

(7) Treated consistently in accordance with accounting principles and procedures approved by the Federal Government for the Recipient, and with accounting principles and procedures approved by the Recipient for its third party contractors and subrecipients,

(8) Eligible for Federal participation under Federal law, regulations, or directives, and

(9) In compliance with U.S. DOT regulations pertaining to allowable costs at 49 C.F.R. § 18.22(b) or 49 C.F.R. § 19.27, which regulations specify the applicability of U.S. Office of Management and Budget (U.S. OMB) circulars and Federal Acquisition Regulation (FAR) provisions as follows:

(a) U.S. OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 C.F.R. Part 225, applies to Project costs incurred by a Recipient that is a State, local, or Indian tribal government.

(b) U.S. OMB Guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 C.F.R. Part 220, applies to Project costs incurred by a Recipient that is an institution of higher education.

(c) U.S. OMB Guidance for Grants and Agreements "Cost Principles for Non-profit Organizations (OMB Circular A-122)," 2 C.F.R. Part 230, applies to Project costs incurred by a Recipient that is a private nonprofit organization.

(d) FAR, at 48 C.F.R. Chapter I, Subpart 31.2, "Contracts with Commercial Organizations" applies to Project costs incurred by a Recipient that is a for-profit organization.

d. Bond Interest and Other Financing Costs. To the extent permitted by Federal law, regulation, or directive, bond interest and other financing costs are allowable. The Recipient agrees that FTA's participation in Project interest costs will be limited to an amount that does not exceed the most favorable financing terms reasonably available for the Project at the time of borrowing, except to the extent FTA determines otherwise in writing.

e. Excluded Costs. The Recipient understands and agrees that, except to the extent FTA determines otherwise in writing, ineligible costs will be treated as follows:

(1) In determining the amount of Federal assistance FTA will provide for the Project, FTA will exclude:

(a) Any Project cost incurred by the Recipient before the Effective Date of the Grant Agreement, Cooperative Agreement or Amendment thereto, unless otherwise permitted by Federal law, regulation, or directive, or unless an authorized FTA official states in writing to the contrary;

(b) Any cost that is not included in the latest Approved Project Budget;

(c) Any cost for Project property or services received in connection with a subagreement, lease, third party contract, or other arrangement that is required to be, but has not been, concurred in or approved in writing by FTA;

(d) Any ordinary governmental or nonproject operating cost, consistent with the prohibitions of 49 U.S.C. § 5323(h); and

(e) Any cost ineligible for FTA participation as provided by applicable Federal laws, regulations, or directives, except to the extent the Federal Government determines otherwise in writing.

(2) The Recipient understands and agrees that payment to the Recipient for any Project cost does not constitute the Federal Government's final decision about whether that cost is allowable and eligible for payment and does not constitute a waiver of any violation by the Recipient of the terms of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. The Recipient acknowledges that the Federal Government will not make a final determination about the allowability and eligibility of any cost until an audit of the Project has been completed. If the Federal Government determines that the Recipient is not entitled to receive any portion of the Federal assistance requested or provided, the Federal Government will notify the Recipient in writing, stating its reasons. The Recipient agrees that Project closeout will not alter the Recipient's responsibility to return any funds due the Federal Government as a result of later refunds, corrections, or other transactions; nor will Project closeout alter the Federal Government's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by Federal law or regulation, the Federal Government may recover any Federal financial assistance made available for the Project as necessary to satisfy any outstanding monetary claims that the Federal Government may have against the Recipient.

f. Federal Claims, Excess Payments, Disallowed Costs, including Interest.

(1) Recipient's Responsibility to Pay. Upon notification to the Recipient that specific amounts are owed to the Federal Government, whether for excess payments of Federal assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Recipient agrees to remit to the Federal Government promptly the amounts owed, including applicable interest, penalties and administrative charges.

(2) Amount of Interest. The Recipient agrees that whether the amount due the Federal Government is treated as a Federal claim or is treated as a debt determines how interest is calculated thereon and becomes due. Thus, Recipient agrees to remit interest to the Federal Government in accordance with the following:

(a) Federal Claims against the Recipient. For claims pursuant to the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Recipient agrees that the amount of interest owed to the Federal Government will be determined in accordance with the provisions of joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest authorized by 31 C.F.R. § 901.9(i), whichever is applicable.

(b) Excess Payments. For excess payments made by the Federal Government to the Recipient that do not qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Recipient agrees that the amount of interest owed to the Federal Government depends on whether the Recipient is a State or State instrumentality.

1. A Recipient that is a State or State instrumentality agrees that interest owed to

the Federal Government will be determined in accordance with U.S. Treasury regulations, "Rules and Procedures for Efficient Federal-State Funds Transfers," 31 C.F.R. Part 205 that implement section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b).

2. A Recipient that is neither a State nor a State instrumentality agrees that common law interest owed to the Federal Government will be determined in accordance with joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i).

(c) Disallowed Costs. The Recipient agrees that a debt for a disallowed cost might, in certain cases, qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq*. Whether or not the disallowed cost qualifies as a "claim" under that Act, the Recipient agrees to pay either interest and related charges for disallowed costs as determined by the Federal Government in accordance with joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest authorized by 31 C.F.R. § 901.9(i), whichever is applicable.

g. De-obligation of Funds. The Recipient agrees that the Federal Government may de-obligate unexpended Federal funds before Project closeout.

Section 10. Project Completion, Audit, Settlement, and Closeout.

A. Project Completion. Within ninety (90) calendar days following Project completion or termination by the Federal Government, the Recipient agrees to submit a final Financial Status Report (either electronically or on Standard Form 269A), a certification of Project expenses, and third party audit reports, as applicable.

B. Audit of Recipients. Except to the extent the Federal Government determines otherwise in writing, the Recipient acknowledges and agrees as follows:

1. Audit Requirements. The Recipient agrees to have performed financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq*. As provided by 49 C.F.R. § 19.26, these financial and compliance audits must comply with the provisions of OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," the latest OMB A-133 Compliance Supplement for U.S. DOT, and any further revision or supplement thereto. The Recipient also agrees to obtain any other audits required by the Federal Government. The Recipient agrees that these audits will be conducted in accordance with U.S. Government Accountability Office, (U.S. GAO) "Government Auditing Standards." The Recipient agrees that Project closeout will not alter the Recipient's audit responsibilities.

2. Audit Costs. Audit costs for Project administration and management are allowable to the extent authorized by OMB Circular A-87, OMB Circular A-21, OMB Circular A-122, or the FAR at 48 C.F.R. Chapter I, Subpart 31.2, whichever is applicable.

C. Funds Owed to the Federal Government. The Recipient agrees to remit to the Federal Government any excess payments made to the Recipient, any costs disallowed by the Federal Government, and any amounts recovered by the Recipient from third parties or from other sources, as well as any penalties and any interest required by Subsection 9.f(2) of this Master Agreement.

D. Project Closeout. Project closeout occurs when FTA notifies the Recipient that FTA has closed the Project, and either forwards the final Federal assistance payment or acknowledges that the Recipient has remitted the proper refund. The Recipient agrees that Project closeout by FTA does not invalidate any continuing requirements imposed by the Grant Agreement or Cooperative Agreement for the Project, this Master Agreement, or any unmet requirements set forth in the Federal Government's final notification or acknowledgment.

Section 11. Right of the Federal Government to Terminate.

Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Recipient understands and agrees that any failure to make reasonable progress on the Project or violation of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Recipient before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Recipient has willfully misused Federal assistance by failing to make adequate progress, failing to make reasonable and appropriate use of Project property, or failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project.

Section 12. Civil Rights.

The Recipient agrees to comply with all applicable civil rights laws, regulations and directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

A. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

B. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to comply with any applicable implementing Federal directives that may be issued.

C. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier of the Project and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights

Act of 1964, as amended, 42 U.S.C. § 2000e, and implementing Federal regulations and any subsequent amendments thereto. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to comply with any applicable Federal EEO directives that may be issued. Accordingly:

1. General. The Recipient agrees as follows:

   a. The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

   b. If the Recipient is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. Failure by the Recipient to carry out the terms of that EEO program shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification to the Recipient of its failure to carry out the approved EEO program, the Federal Government may impose such remedies as it considers appropriate, including termination of Federal assistance in accordance with Section 11 of this Master Agreement, or other measures that may affect the Recipient's eligibility to obtain future Federal assistance for transportation Projects.

2. Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each third party contractor at any tier or subrecipient at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

D. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBE) in the Project and assures that each subrecipient, lessee, and third party contractor at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore:

1. The Recipient agrees and assures that it will comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

2. The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and will comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and

administration of all third party contracts and subagreements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26 and approved by U.S. DOT, the Recipient's DBE program, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and the Master Agreement. Upon notification by U.S. DOT to the Recipient of its failure to implement its approved DBE program, U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq*.

E. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.

F. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with applicable requirements of:

1. The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq*., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age.

2. The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625.

G. Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq*., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq*., which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the Recipient agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, as follows:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

3. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

4. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

5. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

6. U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

7. U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

8. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

9. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

10. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

11. Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

H. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq*., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq*., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 *et seq*., and any amendments to these laws.

I. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 *Fed. Reg*. 6733 *et seq*., January 22, 2001.

J. Environmental Justice. The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

K. Other Nondiscrimination Laws. The Recipient agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

Section 13. Planning and Private Enterprise.

A. General. The Recipient agrees to implement the Project consistent with the plans developed in accordance

with the following Federal planning and private enterprise provisions:

1. 49 U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1);

2. Joint Federal Highway Administration (FHWA)/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, as amended by joint FHWA/FTA guidance, "SAFETEA-LU Deadline for New Planning Requirements (July 1, 2007)," dated May 2, 2006 [*Clarifying Guidance on Implementation of SAFETEA-LU Planning Provisions*], and other subsequent Federal directives implementing SAFETEA-LU, except to the extent FTA determines otherwise in writing;

3. Joint FHWA/FTA regulations, "Planning Assistance and Standards," 23 C.F.R. Part 450 and 49 C.F.R. Part 613 to the extent that those regulations are consistent with the SAFETEA-LU amendments to public transportation planning and private enterprise laws and, when promulgated, any subsequent amendments to those regulations; and

4. FTA regulations, "Major Capital Investment Projects," 49 C.F.R. Part 611, to the extent that those regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws and, when promulgated, any subsequent amendments to those regulations.

B. Governmental and Private Nonprofit Providers of Nonemergency Transportation. In addition to providing opportunities to participate in planning as described in Subsection 13.a of this Master Agreement, to the extent feasible the Recipient agrees to comply with the provisions of 49 U.S.C. § 5323(k), which afford governmental agencies and nonprofit organizations that receive Federal assistance for nonemergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.

C. Infrastructure Investment. During the implementation of the Project, the Recipient agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

Section 14. Preference for United States Products and Services.

To the extent applicable, the Recipient agrees to comply with the following U.S. domestic preference requirements:

A. Buy America. The Recipient agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661 to the extent those regulations are consistent with SAFETEA-LU provisions, and subsequent amendments to those regulations that may be promulgated. The Recipient also agrees to comply with FTA directives to the extent those directives are consistent with SAFETEA-LU provisions, except to the extent that FTA determines otherwise in writing.

B. Cargo Preference-Use of United States-Flag Vessels. To the extent applicable, the Recipient agrees to comply with 46 App. U.S.C.A. § 1241(b)(1) and U.S. Maritime Administration regulations, "Cargo Preference-U.S.-Flag Vessels," 46 C.F.R. Part 381.

C. Fly America. The Recipient understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

Section 15. Procurement.

To the extent applicable, the Recipient agrees to comply with the following third party procurement provisions:

A. Federal Standards. The Recipient agrees to comply with the third party procurement requirements of 49 U.S.C. chapter 53 and other applicable Federal laws in effect now or as subsequently enacted; with U.S. DOT third party procurement regulations of 49 C.F.R. § 18.36 or at 49 C.F.R. §§ 19.40 through 19.48, and other applicable Federal regulations pertaining to third party procurements and subsequent amendments thereto, to the extent those regulations are consistent with SAFETEA-LU provisions. The Recipient also agrees to comply with the provisions of FTA Circular 4220.1E, "Third Party Contracting Requirements," to the extent those provisions are consistent with SAFETEA-LU provisions and to comply with any subsequent amendments thereto, except to the extent FTA determines otherwise in writing. Although the FTA "Best Practices Procurement Manual" provides additional procurement guidance, the Recipient understands that the FTA "Best Practices Procurement Manual" is focused on third party procurement processes and may omit certain Federal requirements applicable to the third party contract work to be performed.

B. Full and Open Competition. In accordance with 49 U.S.C. § 5325(a), the Recipient agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by FTA.

C. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal laws or regulations, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5325(h) by not using any Federal assistance awarded by FTA to support a procurement using exclusionary or discriminatory specifications.

D. Geographic Restrictions. The Recipient agrees that it will not use any State or local geographic preference, except State or local geographic preferences expressly mandated or as permitted by FTA. For example, in procuring architectural, engineering, or related services, however, the contractor's geographic location may be a selection criterion, provided that a sufficient number of qualified firms are eligible to compete.

E. In-State Bus Dealer Restrictions. In accordance with 49 U.S.C. § 5325(i), the Recipient agrees that any State law requiring buses to be purchased through in-State dealers will not apply to acquisitions of vehicles financed with Federal assistance authorized under 49 U.S.C. chapter 53.

F. Neutrality in Labor Relations. To the extent permitted by law, the Recipient agrees to comply with Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," Executive Order No. 13202, as amended by Executive Order No. 13208, 41 U.S.C. § 251 note, which among other things, prohibits requirements for affiliation with a labor organization as a condition for award of any third party contract or subcontract for construction or construction management services, except to the extent that the Federal Government determines otherwise in writing.

G. Federal Supply Schedules. State, local, or nonprofit Recipients may not use Federal Supply Schedules to acquire federally assisted property or services except to the extent permitted by U.S. GSA, U.S. DOT, or FTA laws, regulations, directives, or determinations.

H. Force Account. The Recipient agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.

I. FTA Technical Review. The Recipient agrees to permit FTA to review and approve the Recipient's technical specifications and requirements to the extent FTA believes necessary to ensure proper Project administration.

J. Project Approval/Third Party Contract Approval. Except to the extent FTA determines otherwise in writing, the Recipient agrees that FTA's award of Federal assistance for the Project does not, by itself, constitute pre-approval of any non-competitive third party contract associated with the Project.

K. Preference for Recycled Products. To the extent applicable, the Recipient agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and with subsequent Federal regulations that may be promulgated. Accordingly, the Recipient agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

L. Clean Air and Clean Water. The Recipient agrees to include in each third party contract and each subagreement exceeding $100,000 adequate provisions to ensure that each Project participant will agree to:

1. Report the use of facilities placed on or likely to be placed on the U.S. Environmental Protection Agency (U.S. EPA) "List of Violating Facilities,"

2. Refrain from using any violating facilities,

3. Report violations to FTA and the Regional U.S. EPA Office, and

4. Comply with the inspection and other applicable requirements of:

   a. Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and

   b. Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.

M. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

N. Rolling Stock. In acquiring rolling stock, the Recipient agrees as follows:

1. Method of Acquisition. In compliance with 49 U.S.C. § 5325(f), the Recipient agrees that any third party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.

2. Multi-year Options. In accordance with 49 U.S.C. § 5325(e)(1), a Recipient procuring rolling stock financed with Federal assistance under 49 U.S.C. chapter 53 may not enter into a multi-year contract with options, exceeding five (5) years after the date of the original contract, to purchase additional rolling stock and replacement parts.

3. Pre-Award and Post-Delivery Requirements. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663 and, when promulgated, any amendments to those regulations. The Recipient understands and agrees that to the extent the provisions of 49 U.S.C. § 5323(m), as amended by SAFETEA-LU conflict with FTA's implementing regulations as currently promulgated, the provisions of 49 U.S.C. § 5323(m), as amended, prevail.

4. Bus Testing. To the extent applicable, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5318(e) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

O. Bonding. Except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the following bonding requirements, as applicable:

1. Construction Activities. The Recipient agrees to provide bid guarantee, contract performance, and payment bonds to the extent deemed adequate by FTA and applicable Federal regulations, and comply with any other construction bonding provisions as FTA may determine.

2. Other Activities. The Recipient agrees to comply with any other bonding requirements or restrictions as FTA may determine.

P. Architectural, Engineering, Design, or Related Services. In compliance with 49 U.S.C. § 5325(b), the Recipient agrees to comply with the following requirements pertaining to the procurement of architectural, engineering, or related services that will be financed with funds authorized under 49 U.S.C. chapter 53 or required by Federal law to be administered in accordance with 49 U.S.C. chapter 53:

1. When procuring architectural, engineering, or related services, the Recipient agrees that it and its subcontractors at any tier will:

   a. Negotiate for those services in the same manner as a contract for architectural, engineering, or related services is negotiated under chapter 11 of Title 40, United States Code, or

   b. Comply with an equivalent State qualifications-based requirement for contracting for architectural, engineering, and design services, provided the State has adopted by law such requirement before August 10, 2005.

2. Upon awarding a contract for those services, the Recipient agrees that and its subcontractors at any tier will:

a. Perform and audit the third party contract or the third party subcontract in compliance with the cost principles of the FAR as set forth in 48 C.F.R. Part 31.

b. Will accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods, if those rates are not currently under dispute.

c. Apply the firm's indirect cost rates, without any limitation by administrative or de facto ceilings, for purposes of contract estimation, negotiation, administration, reporting, and contract payment, after the firm's indirect cost rates are accepted as described in Subsection 15.p(2)(b) of this Master Agreement.

d. The Recipient agrees and assures that it and any of a group of entities sharing cost or rate data described in Subsection 15.p(2)(c) of this Master Agreement shall:

(1) Notify any affected firm before requesting or using that data,

(2) Maintain the confidentiality of that data and assure that it is not accessible or provided to others, and

(3) Not disclose that data under any circumstances if doing so is prohibited by law.

Q. Design-Build Projects. In accordance with 49 U.S.C. § 5325(d)(2), the Recipient may use design-build procurements to implement its Projects after it has complied with requirements established by the Federal Government, whether through Federal regulations or through Federal directives, except to the extent the Federal Government determines otherwise in writing.

R. Award to Other than the Lowest Bidder. In accordance with 49 U.S.C. § 5325(c), a Recipient may award a third party contract to other than the lowest bidder, if the award furthers an objective (such as improved long-term operating efficiency and lower long-term costs) consistent with the purposes of 49 U.S.C. chapter 53 , and any implementing Federal regulations or directives that FTA may issue, except to the extent FTA determines otherwise in writing.

S. Award to Responsible Contractors. In compliance with 49 U.S.C. § 5325(j), the Recipient agrees to award third party contracts only to those contractors possessing the ability to successfully perform under the terms of the proposed procurement, and before awarding a third party contract, the Recipient agrees to consider:

1. The integrity of the third party contractor,

2. The third party contractor's compliance with public policy,

3. The third party contractor's past performance, including the performance reported in Contractor Performance Assessment Reports required by 49 U.S.C. § 5309(l)(2), if any, and

4. The third party contractor's financial and technical resources.

T. Access to Third Party Contract Records. The Recipient agrees to require its third party contractors and third party subcontractors, at as many tiers as required, to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all

third party contract records to the extent required by 49 U.S.C. § 5325(g). The Recipient further agrees to require its third party contractors and third party subcontractors, to provide sufficient access to third party procurement records as needed for compliance with Federal regulations or to assure proper Project management as determined by FTA.

U. Electronic and Information Technology. When using Federal assistance to procure reports or information to be delivered to the Recipient for distribution to FTA, among others, the Recipient agrees to include in its specifications a requirement that the reports or information will be prepared using electronic or information technology capable of assuring that the reports or information, when provided to FTA, will meet the applicable accessibility standards of section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

Section 16. Leases.

A. Capital Leases. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639, and any revision thereto.

B. Leases Involving Certificates of Participation. The Recipient agrees to obtain FTA concurrence before entering into any leasing arrangement involving the issuance of certificates of participation in connection with the acquisition of any capital asset.

Section 17. Patent Rights.

A. General. If any invention, improvement, or discovery of the Recipient or any subrecipient or any third party contractor at any tier is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

B. Federal Rights. The Recipient agrees that its rights and responsibilities, and those of each subrecipient and each third party contractor at any tier, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, or third party subcontract, as specified in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401 (implementing 35 U.S.C. §§ 200 *et seq*.), irrespective of the status of the Recipient, subrecipient, or third party contractor (i.e., a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, individual, etc.).

Section 18. Rights in Data and Copyrights.

A. Definition. The term "subject data," as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" does not include financial reports, cost analyses, or similar information used for Project administration.

B. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:

1. Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

2. The restrictions on publication of Subsection 18.b(1) of this Master Agreement, however, do not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.

C. Federal Rights in Data and Copyrights. The Recipient agrees to provide to the Federal Government a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of this Master Agreement. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

1. Any subject data developed under the Grant Agreement or Cooperative Agreement for the Project, or under a subagreement or third party contract supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and

2. Any rights of copyright to which a Recipient, subrecipient, or a third party contractor purchases ownership with Federal assistance.

D. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, except to the extent that FTA determines otherwise in writing, the Recipient of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of this Master Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of this Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use when the costs thereof are financed with Federal funds for capital Projects.

E. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.

F. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

G. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support, even though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

H. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or subsequent Federal laws or regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the provisions of the Freedom of Information Act (or another Federal law providing access to such records).

Section 19. Use of Real Property, Equipment, and Supplies.

The Recipient understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance (Project property) until, and to the extent, that the Federal Government relinquishes its Federal interest in that Project property. With respect to any Project property financed with Federal assistance under the Grant Agreement or Cooperative Agreement, the Recipient agrees to comply with the following provisions of this Master Agreement, except to the extent FTA determines otherwise in writing:

A. Use of Project Property. The Recipient agrees to maintain continuing control of the use of Project property to the extent satisfactory to FTA. The Recipient agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the award period and used to support public transportation activities) for the duration of the useful life of that property, as required by FTA. Should the Recipient unreasonably delay or fail to use Project property during the useful life of that property, the Recipient agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Recipient further agrees to notify FTA immediately when any Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Recipient has made in its Application or in the Project Description for the Grant Agreement or Cooperative Agreement for the Project.

B. General. A Recipient that is a State, local, or Indian tribal government agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto, and with other applicable Federal regulations and directives. A Recipient that is an institution of higher education or private nonprofit entity, agrees to comply with the property management standards of 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and with other applicable Federal regulations and directives. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, or the requirements of 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the Federal Government in writing. A Recipient that is a for-profit entity agrees to comply with property management standards satisfactory to FTA. The Recipient also agrees to comply with FTA's reimbursement

requirements for premature dispositions of certain Project equipment, as set forth in Subsection 19.g of this Master Agreement.

C. Maintenance. The Recipient agrees to maintain Project property in good operating order, in compliance with any applicable Federal regulations or directives that may be issued, except to the extent that FTA determines otherwise in writing.

D. Records. The Recipient agrees to keep satisfactory records pertaining to the use of Project property, and submit to FTA upon request such information as may be required to assure compliance with this Section 19 of this Master Agreement.

E. Incidental Use. The Recipient agrees that:

1. General. Any incidental use of Project property will not exceed that permitted under applicable Federal laws, regulations, and directives.

2. Alternative Fueling Facilities. In accordance with 49 U.S.C. § 5323(p), any incidental use of its federally financed alternative fueling facilities and equipment by nontransit public entities and private entities will be permitted, only if:

a. The incidental use does not interfere with the Recipient's Project or public transportation operations;

b. The Recipient fully recaptures all costs related to the incidental use from the nontransit public entity or private entity;

c. The Recipient uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and

d. Private entities pay all applicable excise taxes on fuel.

F. Encumbrance of Project Property. Unless FTA approves otherwise in writing, the Recipient agrees to maintain satisfactory continuing control of Project property as follows:

1. Written Transactions. Absent the express consent of the Federal Government, the Recipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal interest in that Project property.

2. Oral Transactions. Absent the express consent of the Federal Government, the Recipient agrees that it will not obligate itself to any third party with respect to Project property in any manner that would adversely affect the continuing Federal interest in any Project property.

3. Other Actions. The Recipient agrees that it will not take any action that would either adversely affect the Federal interest or adversely impair the Recipient's continuing control of the use of Project property.

G. Transfer of Project Property. The Recipient understands and agrees as follows:

1. Recipient Request. The Recipient may transfer any Project property financed with Federal assistance authorized under 49 U.S.C. chapter 53 to a local governmental authority to be used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by the Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(h)(1) through 5334(h)(3).

2. Federal Government Direction. The Recipient agrees that the Federal Government may direct the disposition of, and even require the Recipient to transfer title to, any Project property financed with Federal assistance awarded for the Grant Agreement or Cooperative Agreement.

3. Leasing Project Property to Another Party. Unless FTA has determined or determines otherwise in writing, if the Recipient leases any Project property to another party, the Recipient agrees to retain ownership of the leased Project property, and assures that the lessee will use the Project property appropriately, either through a written lease between the Recipient and lessee, or another similar document. Upon request by FTA, the Recipient agrees to provide a copy of any relevant documents.

H. Disposition of Project Property. With prior FTA approval, the Recipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects to the extent permitted by 49 U.S.C. § 5334(h)(4). The Recipient also agrees that FTA may establish the useful life of Project property, and that it will use Project property continuously and appropriately throughout the useful life of that property.

1. Project Property Whose Useful Life Has Expired. When the useful life of Project property has expired, the Recipient agrees to comply with FTA's disposition requirements.

2. Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Recipient agrees as follows:

a. Notification Requirement. The Recipient agrees to notify FTA immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

b. Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Recipient agrees that the Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the Federal interest in the Project property shall be determined on the basis of the ratio of the Federal assistance made available for the property to the actual cost of the property. The Recipient agrees that the fair market value of Project property prematurely withdrawn from use will be calculated as follows:

(1) Equipment and Supplies. Unless otherwise determined in writing by FTA, the Recipient agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation of that property, based on the useful life of the equipment or supplies as established or approved by FTA. The fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or

supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own disposition procedures, provided that those procedures comply with the laws of that State.

(2) Real Property. The Recipient agrees that the fair market value of real property financed under the Project shall be determined by FTA either on the basis of competent appraisal based on an appropriate date approved by FTA, as provided by 49 C.F.R. Part 24, by straight line depreciation of improvements to real property coupled with the value of the land as determined by FTA on the basis of appraisal, or other Federal law or regulations that may be applicable.

(3) Exceptional Circumstances. The Recipient agrees that the Federal Government may require the use of another method to determine the fair market value of withdrawn Project property. In unusual circumstances, the Recipient may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Recipient pertaining to the preservation of Project property no longer used for appropriate purposes.

c. Financial Obligations to the Federal Government. Unless otherwise approved in writing by the Federal Government, the Recipient agrees to remit to the Federal Government the Federal interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Recipient may fulfill its obligations to remit the Federal interest by either:

(1) Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided Federal assistance for the property that has been prematurely withdrawn from use; or

(2) Returning to the Federal Government an amount equal to the remaining Federal interest in the withdrawn Project property.

I. Insurance Proceeds. If the Recipient receives insurance proceeds as a result of damage or destruction to the Project property, the Recipient agrees to:

1. Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or

2. Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Project property.

J. Transportation - Hazardous Materials. The Recipient agrees to comply with applicable requirements of U.S. Pipeline and Hazardous Materials Safety Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173, in connection with the transportation of any hazardous materials.

K. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Recipient's knowledge and consent, the Recipient agrees to restore the Project property

to its original condition or refund the value of the Federal interest in that property, as the Federal Government may require.

L. Responsibilities After Project Closeout. The Recipient agrees that Project closeout will not change the Recipient's Project property management responsibilities as stated in Section 19 of this Master Agreement, and as may be set forth in subsequent Federal laws, regulations, and directives, except to the extent the Federal Government determines otherwise in writing.

Section 20. Insurance.

In addition to other insurance requirements that may apply, the Recipient agrees as follows:

A. Minimum Requirements. At a minimum, the Recipient agrees to comply with the insurance requirements normally imposed by its State and local laws, regulations, and ordinances, except to the extent that the Federal Government determines otherwise in writing.

B. Flood Hazards. To the extent applicable, the Recipient agrees to comply with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any Project activity involving construction or an acquisition having an insurable cost of $10,000 or more.

Section 21. Relocation.

When relocation of individuals or businesses is required, the Recipient agrees as follows:

A. Relocation Protections. The Recipient agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons displaced and persons whose property is acquired as a result of Federal and federally assisted programs. [*See*, new U.S. DOT final rule, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, at 70 *Fed. Reg*. 590 *et seq*., January 4, 2005.] These requirements apply to relocation in connection with all interests in real property acquired for the Project regardless of Federal participation in the costs of that real property.

B. Nondiscrimination in Housing. In carrying out its responsibilities to provide housing that may be required for compliance with Federal relocation requirements for individuals, the Recipient agrees to comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§ 3601 *et seq*., and with Executive Order No. 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," 42 U.S.C. § 3608 note.

C. Prohibition Against Use of Lead-Based Paint. In undertaking construction or rehabilitation of residential structures on behalf of individuals affected by real property acquisition in connection with the Project, the Recipient agrees that it will not use lead-based paint, consistent with the prohibitions of section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and the provisions of U.S. Housing and Urban Development regulations, "Lead-based Paint Poisoning in Certain Residential Structures," 42 C.F.R. Part 35.1.

Section 22. Real Property.

For real property acquired with Federal assistance, the Recipient agrees as follows:

A. Land Acquisition. The Recipient agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and with U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24. These requirements apply to all interests in real property acquired for Project purposes regardless of Federal participation in the cost of that real property.

B. Covenant Assuring Nondiscrimination. The Recipient agrees to include a covenant in the title of the real property acquired for the Project to assure nondiscrimination during the useful life of the Project.

C. Recording Title to Real Property. To the extent required by FTA, the Recipient agrees to record the Federal interest in title to real property used in connection with the Project.

D. FTA Approval of Changes in Real Property Ownership. The Recipient agrees that it will not dispose of, modify the use of, or change the terms of the real property title of, or any other interest in the site and facilities used in the Project without permission and instructions from FTA.

Section 23. Construction.

Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees as follows:

A. Drafting, Review, and Approval of Construction Plans and Specifications. The Recipient agrees to comply with FTA requests pertaining to the drafting, review, and approval of construction plans and specifications.

B. Supervision of Construction. The Recipient agrees to provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms to the approved plans and specifications.

C. Construction Reports. The Recipient agrees to provide progress reports and other data and information as may be required by FTA or the State in which the construction takes place.

D. Project Management for Major Capital Projects. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Project Management Oversight," 49 C.F.R. Part 633, and any subsequent Project Management Oversight regulations FTA may issue.

E. Seismic Safety. The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and with U.S. DOT regulations, “Seismic Safety,” 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

Section 24. Employee Protections.

A. Construction Activities. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with the following laws and regulations providing protections for construction employees:

1. Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq.*, pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5;

2. Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and

3. Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874, and implementing U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3.

B. Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

C. Activities Involving Commerce. The Recipient agrees that the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, applies to employees performing Project work involving commerce.

D. Public Transportation Employee Protective Arrangements. If the Grant Agreement or Cooperative Agreement for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Recipient agrees to comply with the applicable requirements for its Project as follows:

1. Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and as required by Federal law, the Recipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), and with the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection 24.d(1) of this Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities that are authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, or to Projects for nonurbanized areas authorized by 49 U.S.C. § 5311; separate requirements for those Projects are

contained in Subsections 24.d(2) and (3), respectively, of this Master Agreement.

2. Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority subrecipient participating a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), and the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

3. Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, U.S. DOL implementing procedures, and any revisions thereto.

Section 25. Environmental Protections.

The Recipient recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 through 4335; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q and scattered sections of Title 29, United States Code; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 6992k; the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, as well as environmental provisions within Title 23, United States Code, and 49 U.S.C. chapter 53. The Recipient also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and in the future are expected to issue, Federal regulations and directives that may affect the Project. Thus, the Recipient agrees to comply, and assures the compliance of each subrecipient and each third party contractor, with any applicable Federal laws, regulations and directives as the Federal Government are in effect now or become effective in the future, except to the extent the Federal Government determines otherwise in writing. Listed below are environmental provisions of particular concern to FTA and the Recipient. The Recipient understands and agrees that those laws, regulations, and directives may not constitute the Recipient's entire obligation to meet all Federal environmental and resource conservation requirements.

A. National Environmental Policy. Federal assistance is contingent upon the Recipient’s facilitating FTA’s compliance with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and subsequent Federal environmental protection

regulations that may be promulgated. As a result of enactment of 23 U.S.C. §§ 139 and 326 as well as to amendments to 23 U.S.C. § 138, environmental decisionmaking requirements imposed on FTA projects to be implemented consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued, except to the extent that FTA determines otherwise in writing.

B. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws, regulations, and directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. In addition:

1. The Recipient agrees to comply with the applicable requirements of section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued; with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 US.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, and any subsequent Federal conformity regulations that may be promulgated. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

2. U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, the Recipient agrees to comply with the following U.S. EPA regulations to the extent they apply to the Project: "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

3. The Recipient agrees to comply with the notice of violating facility provisions of Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

C. Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal regulations and directives issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

1. The Recipient agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

2. The Recipient agrees to comply with the notice of violating facility provisions of Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

D. Use of Public Lands. The Recipient agrees that in implementing its Project, it will not use any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, and it will not use any land from a historic site of national, state, or local significance, unless the Federal Government makes the findings required by 49 U.S.C. §§ 303(b) and 303(c). The Recipient also agrees to comply with joint FHWA/FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Parts 771 and 774, and 49 C.F.R. Part 622, when promulgated.

E. Wild and Scenic Rivers. The Recipient agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system; and to the extent applicable, with U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297, and with U.S. Bureau of Land Management regulations, "Management Areas," 43 C.F.R. Part 8350.

F. Coastal Zone Management. The Recipient agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 through 1465.

G. Wetlands. The Recipient agrees to facilitate compliance with the protections for wetlands of Executive Order No. 11990, as amended, "Protection of Wetlands," at 42 U.S.C. § 4321 note.

H. Floodplains. The Recipient agrees to facilitate compliance with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management," 42 U.S.C. § 4321 note.

I. Endangered Species and Fisheries Conservation. The Recipient agrees to comply with protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801 *et seq*.

J. Historic Preservation. The Recipient agrees to encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a through 469c, as follows:

1. In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the Recipient agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of those properties that are affected.

2. The Recipient agrees to comply with all applicable Federal regulations and directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.

K. Indian Sacred Sites. The Recipient agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, in accordance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and with Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except to the extent that the Federal Government determines otherwise in writing.

L. Mitigation of Adverse Environmental Effects. Should the proposed Project cause or result in adverse environmental effects, the Recipient agrees to take all reasonable measures to minimize the impact of those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including 23 C.F.R. Part 771 and 49 C.F.R. Part 622. The Recipient agrees to comply with all environmental mitigation measures that may be identified as commitments in applicable environmental documents, (*i.e.*, environmental assessments, environmental impact statements, memoranda of agreement, and other documents as required by 49 U.S.C. § 303) and agrees to comply with any conditions the Federal Government might impose in a finding of no significant impact or record of decision. The Recipient agrees that those environmental mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient also agrees that any deferred mitigation measures will be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project as soon as agreement with the Federal Government is reached. The Recipient agrees that those mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

Section 26. Energy Conservation.

The Recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Recipient agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

Section 27. State Management and Monitoring Systems.

The Recipient agrees to comply with joint FHWA/FTA regulations, "Management and Monitoring Systems," 23 C.F.R. Parts 500, Parts A and B, and FTA regulations, "Transportation Infrastructure Management," 49 C.F.R. Part 614, to the extent applicable.

Section 28. Charter Service Operations.

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142 will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any subsequent Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

Section 29. School Transportation Operations.

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53, or under 23 U.S.C. §§ 133 or 142 will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any subsequent School Transportation Operations regulations or FTA directives that may be issued, except to the extent that FTA determines

otherwise in writing. Any school transportation operations agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient understands and agrees that if it or an operator violates that school transportation operations agreement, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

Section 30. Metric System.

To the extent U.S. DOT or FTA directs, the Recipient agrees to use the metric system of measurement in its Project activities, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and U.S. DOT or FTA regulations and directives. As practicable and feasible, the Recipient agrees to accept products and services with dimensions expressed in the metric system of measurement.

Section 31. Geographic Information and Related Spatial Data.

In accordance with U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, the Recipient agrees to implement its Project so that any activities involving spatial data and geographic information systems activities financed directly or indirectly, in whole or in part, by Federal assistance, consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Section 32. Substance Abuse.

To the extent applicable, the Recipient agrees to comply with the following Federal regulations:

A. Drug-Free Workplace. U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 *et seq*.

B. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

Section 33. Motor Carrier Safety

To the extent applicable, the Recipient agrees to comply with, and assures the compliance of its subrecipients, lessees, and third party contractors with, applicable provisions of the following regulations promulgated by the U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA):

A. Financial Responsibility. The Recipient agrees as follows:

1. To the extent that the Recipient is engaged in interstate commerce and not within a defined commercial zone, the Recipient agrees to comply with U.S. FMCSA regulations, "Minimum Levels of Financial Responsibility for Motor Carriers," 49 U.S.C. Part 387, dealing with economic registration and insurance requirements. For Recipients of Federal assistance under 49 U.S.C. §§ 5307, 5310, or 5311, 49 C.F.R. Part 387 is modified by 49 U.S.C. § 31138(e)(4) which reduces the amount of insurance required of such Recipients to the highest amount of any state in which the transit provider operates.

2. To the extent that the Recipient is engaged in interstate commerce and not within a defined commercial zone and is not a unit of government (defined as Federal Government, a state, any political subdivision of a state or any agency established under a compact between states), the Recipient agrees to comply with U.S. FMCSA regulations, Subpart B, "Federal Motor Carrier Safety Regulations," at 49 CFR Parts 390 through 396.

B. Driver Qualifications. The Recipient agrees to comply with U.S. FMCSA's regulations, "Commercial Driver's License Standards, Requirements, and Penalties," 49 C.F.R. Part 383.

C. Substance Abuse Rules for Motor Carriers. The Recipient agrees to comply with U.S. FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements," 49 C.F.R. Part 382, which apply to transit providers that operate a commercial motor vehicle that has a gross vehicle weight rating over 26,000 pounds or is designed to transport sixteen (16) or more passengers, including the driver.

Section 34. State Safety Oversight of Rail Fixed Guideway Public Systems.

To the extent applicable, the Recipient agrees to comply with 49 U.S.C. § 5330, with FTA regulations, "Rail Fixed Guideway Systems; State Safety Oversight," 49 C.F.R. Part 659, and any Federal directives that may be issued to implement 49 U.S.C. § 5330, and any subsequent amendment or revision thereto.

Section 35. Seat Belt Use.

In accordance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, the Recipient is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any third party contracts, third party subcontracts, or subagreements involving the Project.

Section 36. Protection of Sensitive Security Information.

To the extent applicable, the Recipient agrees to comply with 49 U.S.C. § 40119(b) and implementing U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. § 114(s) and implementing U.S. Department of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.

Section 37. Special Notification Requirements for States.

To the extent required by Federal law, the State agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of Federal assistance for the Program or the Project shall indicate that FTA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as applicable, and the amount provided.

Section 38. Special Provisions for the Urbanized Area Formula Program.

The Recipient agrees that the following provisions apply to Urbanized Area Formula Program assistance authorized under 49 U.S.C. § 5307, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. Fares and Services. Before increasing fares or instituting a major reduction of service, the Recipient agrees to use its established administrative process to solicit and consider public comment.

B. Audit Requirements. The Recipient agrees that the Federal Government may conduct, or may require the Recipient to engage an independent entity to conduct, annual or more frequent reviews and audits as required by 49 U.S.C. § 5307(h) and any applicable Federal regulations or directives that may be issued. The Recipient agrees that such audits will be conducted in accordance with U.S. GAO "Government Auditing Standards."

C. Half-Fare Requirements. The Recipient agrees that the fares or rates it charges elderly individuals and handicapped individuals during nonpeak hours for public transportation using or involving Project facilities and equipment will not exceed one-half of the rates that generally apply to other individuals at peak hours, irrespective of whether the operation of Project facilities or equipment is by the Recipient or by another entity connected with the Project either through lease, third party contract, or otherwise. In addition, the Recipient agrees to give the rate required herein to any individual presenting a Medicare card duly issued to that individual pursuant to Title II or XVIII of the Social Security Act, 42 U.S.C. §§ 401 *et seq.*, or 42 U.S.C. §§ 1395 *et. seq.*, respectively.

D. Use of Formula Assistance for Operations. A Recipient authorized to use Federal assistance authorized under 49 U.S.C. § 5307 to support operations agrees as follows:

1. The Recipient will comply with the restrictions of 49 U.S.C. §§ 5307(b) and 5307(f) in using Urbanized Area Formula Program assistance for operations, unless permitted otherwise by subsequent Federal law, regulation, or directive.

2. Federal assistance authorized by 49 U.S.C. § 5307 may be applied to the Net Project Cost of the Recipient's operating expenses incurred during the Project time period as set forth in the Approved Project Budget and, with FTA approval, may be extended to a later date to the extent permitted by law, provided that applicable operating assistance limits are not exceeded.

E. Public Transportation Security. For each fiscal year, the Recipient agrees to spend at least one (1) percent of its Federal assistance authorized under 49 U.S.C. § 5307 for public transportation security projects as described in 49 U.S.C. § 5307(d)(1)(J)(i), unless the Recipient has determined that such expenditures for security projects are not necessary. For a Recipient serving an urbanized area with a population of 200,000 or more, only capital projects are eligible for support with that Federal assistance.

F. Public Transportation Enhancements. If the Recipient serves an urbanized area with a population of 200,000 or more, the Recipient agrees to spend each fiscal year at least one (1) percent of its Federal assistance authorized under 49 U.S.C. § 5307 for public transportation enhancements as defined at 49 U.S.C. § 5302(a), and submit an annual report listing the projects carried out in the preceding fiscal year with that Federal assistance.

G. Reporting Requirements. For each fiscal year, the Recipient agrees to conform, and assures that any public transportation operator to which the Recipient provides Federal assistance authorized under 49 U.S.C. § 5307 will conform to the National Transit Database reporting system and the uniform system of accounts and records required by 49 U.S.C. § 5335(a) for FTA's national transit database. FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630, and any subsequent reporting regulations and directives FTA may promulgate.

H. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in an Urbanized Area Formula Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement for the Project and this Master Agreement.

Section 39. Special Provisions for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program.

The Recipient agrees that the following provisions apply to Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program assistance authorized under 49 U.S.C. § 5310 as amended by SAFETEA-LU and subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, respectively, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. Eligible Subrecipients. The Recipient agrees to provide Federal assistance authorized under 49 U.S.C. § 5310 or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, only to a subrecipient that qualifies as: (1) a private nonprofit organization meeting the special needs of elderly individuals and individuals with disabilities for whom public transportation services are unavailable, insufficient, or inappropriate; (2) a governmental authority approved by the State to coordinate services for elderly individuals and individuals with disabilities; or (3) a governmental authority that certifies to the Governor that there are no nonprofit organizations in its area readily available to provide service meeting the special needs of the elderly individuals and individuals with disabilities.

B. State Procedures. The Recipient agrees to administer each Project financed with Federal assistance authorized under the Elderly Individuals and Individuals with Disabilities Formula Program in accordance with 49 U.S.C. § 5310. A Recipient participating in the Elderly Individuals and Individuals with Disabilities Pilot Program agrees to administer its Projects in accordance with subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note and applicable provisions of 49 U.S.C. § 5310. Except to the extent that FTA determines otherwise in writing, the provisions of FTA Circular 9070.1E, "Elderly and Persons with Disabilities Program Guidance and Application Instructions" including any revisions thereto, and other applicable FTA laws, regulations, and directives, apply to the Project to the extent the provisions of FTA Circular 9070.1E are consistent 49 U.S.C. § 5310 as amended by SAFETEA-LU, or subection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, if applicable. To the extent, however, that 49 U.S.C. § 5310 as amended by SAFETEA-LU, section 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, or any existing or subsequent Federal law or regulation conflicts with the provisions of FTA Circular 9070.1E or any subsequent revision thereto, the latest Federal law or regulation will apply. The Recipient also agrees that when FTA Circular 9070.1F "Elderly Individuals And Individuals With Disabilities Program Guidance and Application Instructions," is issued, the Recipient will comply with the procedures of that circular, except to the extent that FTA determines otherwise in writing. In summary, the Recipient agrees to comply with the latest guidance issued by FTA pertaining to the Elderly Individuals and Individuals with Disabilities Program.

C. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in an Elderly Individuals and Individuals with Disabilities Formula Project or Pilot Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement for the Project and this Master Agreement.

D. Eligible Project Activities. Federal assistance authorized under 49 U.S.C. § 5310 may be used for a Project to meet the special needs of elderly individuals and individuals with disabilities, as follows:

1. Capital Projects. Except as set forth in Subsection 39.d(2) of this Master Agreement below, only capital projects are eligible for Federal assistance authorized under 49 U.S.C. § 5310, and may include meal delivery service to the extent permitted by 49 U.S.C. § 5310(g).

2. Operating Assistance Limitation. Only if the Recipient is selected to participate in the Elderly Individuals and Individuals with Disabilities Pilot Program established by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, may Federal assistance authorized under 49 U.S.C. § 5310 be used to finance operating expenses, and then only 33 percent of the funds apportioned to that Recipient may be used to finance operating expenses for projects to meet the special needs of elderly individuals and individuals with disabilities.

E. Leasing of Vehicles. Vehicles acquired with Federal assistance authorized under 49 U.S.C. § 5310 may be leased to local governmental authorities to improve transportation services to meet the special needs of elderly individuals and individuals with disabilities.

F. Transfer of Project Property. In addition to 49 U.S.C. § 5334(h), which authorizes the transfer of Project property, 49 U.S.C. § 5310(h) also authorizes the Recipient to transfer Project property acquired with Federal assistance authorized under 49 U.S.C. § 5310 to any entity eligible to receive assistance under 49 U.S.C. chapter 53, provided the subrecipient currently possessing the Project property consents to the transfer, and the transferred Project property will continue to be used in accordance with the requirements of 49 U.S.C. § 5310.

Section 40. Special Provisions for the New Freedom Program

The Recipient agrees that the following provisions apply to New Freedom Program assistance authorized under 49 U.S.C. § 5317, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. General. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5317 and with other Federal laws that may be applicable, as well as with implementing Federal regulations and directives, when issued.

B. FTA Notice. The Recipient agrees to comply with the provisions of the most recent applicable FTA Notice pertaining to the New Freedom Program, and any subsequent revision thereto. In addition, the Recipient agrees to comply with FTA Circular, "New Freedom Program Guidance and Application Instructions," when issued.

C. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a New Freedom Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement.

Section 41. Special Provisions for the Nonurbanized Area Formula Program.

The Recipient agrees that the following provisions apply to Nonurbanized Area Formula Program assistance

administered by States and authorized under 49 U.S.C. § 5311(b), and agrees to comply with the requirements thereof:

A. Provisions Applicable to States.

1. State Procedures. The Recipient agrees to administer each Project in accordance with 49 U.S.C. § 5311(b) and other applicable provisions of 49 U.S.C. § 5311 as amended by SAFETEA-LU. Except to the extent that FTA determines otherwise in writing, the provisions of FTA Circular 9040.1E, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," including any revisions thereto, and other applicable FTA laws, regulations, and directives apply to the Project to the extent those provisions are consistent with 49 U.S.C. § 5311 as amended by SAFETEA-LU. To the extent, however, that 49 U.S.C. § 5311 as amended by SAFETEA-LU or any existing or subsequent Federal law or regulation conflicts with the provisions of FTA Circular 9040.1E or any subsequent revision thereto, the latest Federal law or regulation will apply. The Recipient also agrees that when FTA Circular 9040.1F "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," is issued, the Recipient will comply with the procedures of that circular, except to the extent that FTA determines otherwise in writing. In summary, the Recipient agrees to comply with the latest guidance issued by FTA pertaining to this program.

2. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a Nonurbanized Area Formula Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement for the Project and this Master Agreement.

3. Eligible Project Activities. Federal assistance provided for the Grant Agreement and subagreements may be used for public transportation Projects in areas other than urbanized areas. Projects financed with Federal assistance transferred from other Federal programs must be eligible for Federal assistance authorized under 49 U.S.C. § 5311(b), and may include purchase of service agreements with private providers of public transportation service, as well as capital and operating assistance, and meal delivery service, to the extent permitted by 49 U.S.C. § 5310(g).

4. Transfer of Project Property. In addition to 49 U.S.C. § 5334(h), which authorizes the Recipient to transfer Project facilities and equipment, 49 U.S.C. § 5311(h) also authorizes the Recipient to transfer Project property acquired with Federal assistance authorized under 49 U.S.C. § 5311 to any entity eligible to receive Federal assistance authorized under 49 U.S.C. chapter 53, provided that the subrecipient currently in possession of the Project property consents to the transfer, and the transferred Project property will continue to be used in accordance with the requirements of 49 U.S.C. § 5311.

5. Intercity Transportation. The Recipient agrees to spend a minimum of at least fifteen (15) percent of its Federal assistance authorized under 49 U.S.C. § 5311(f) each fiscal year for intercity transportation Projects, unless the chief executive officer of the State or duly authorized designee has certified to FTA that the intercity bus service needs within the State are being adequately fulfilled.

6. Reporting Requirements. As required by 49 U.S.C. §§ 5311(b)(4) and 5335(a), the Recipient agrees to conform, and assures that any public transportation operator to which the Recipient provides Federal assistance authorized under 49 U.S.C. § 5311(b) will conform, to the reporting system and

the uniform system of accounts and records required by 49 U.S.C. § 5335(a) for FTA's national transit database and FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630, and any subsequent implementing regulations and directives FTA may issue.

B. Provisions Applicable to Indian Tribes. The Recipient agrees as follows:

1. To the extent that an Indian tribe is a subrecipient of Federal assistance authorized under 49 U.S.C. § 5311(b), the Indian tribe will be required to comply with the requirements of Subsection 41.a of this Master Agreement that are applicable to other subrecipients of the State receiving funding derived from 49 U.S.C. § 5311(c)(2), except to the extent that FTA determines otherwise in writing.

2. An Indian tribe that administers a Tribal Transit Project financed with Federal assistance authorized under 49 U.S.C. § 5311(c)(1) is not subject to the provisions of Subsections 41(a) and 41(b)(1) of this Master Agreement with respect to its implementation of that Tribal Transit Project.

Section 42. Special Provisions for the Clean Fuels Grant Program.

The Recipient agrees that the following provisions apply to Clean Fuels Grant Program assistance authorized under 49 U.S.C. § 5308, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. General. The Recipient agrees to comply with 49 U.S.C. § 5308, and with provisions of 49 U.S.C. § 5307, and other Federal laws that may be applicable, as well as with implementing Federal regulations and directives, when issued.

B. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a Clean Fuels Grant Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement for the Project and this Master Agreement.

Section 43. Special Provisions for Research, Development, Demonstration, and Special Studies Projects.

The Recipient agrees to comply with the following provisions pertaining to Projects financed with Federal assistance authorized for research, development, demonstration or special studies projects, except to the extent that FTA determines otherwise in writing:

A. Project Report. The Recipient agrees to:

1. Prepare and make available a comprehensive report of the results of the Project, the conclusions reached, and the methods used.

2. Include appropriate notice in the report that: (a) the report is being disseminated under the sponsorship of the U.S. Department of Transportation, Federal Transit Administration, in order to foster information exchange, (b) the U.S. Government assumes no liability or responsibility for the contents of that report or the use of that report, (c) the U.S. Government is not endorsing any manufacturers, products, or services cited in that report, and (d) any trade name that may appear in that report has been included only because it is essential to the contents of that report.

B. Project Identification. The Recipient agrees that each tangible product developed in the course of or resulting from the Project shall contain or include an appropriate sign, designation, or notification stating that the Project has been financed with Federal assistance provided by the U.S. Department of Transportation, Federal Transit Administration. Unless determined otherwise in writing by FTA, this requirement applies to all equipment, hardware, construction, reports, data, or any similar items produced in the course of the Grant Agreement or Cooperative Agreement for the Project.

C. Protection of Human Subjects. The Recipient agrees to comply with the requirements of the National Research Act, Pub. L. 93-348, July 12, 1974, as amended, 42 U.S.C. §§ 289 *et seq.*, and U.S. DOT regulations, "Protection of Human Subjects," 49 C.F.R. Part 11, pertaining to protections for human subjects participating in or involved in research, development, and related activities in connection with the Project.

D. Protection of Animals. The Recipient agrees to comply with the requirements of the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. §§ 2131 *et seq.*, and U.S. Department of Agriculture regulations, "Animal Welfare," 9 C.F.R. Subchapter A, Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of warm blooded animals involved in Project research, development, and related activities.

E. Export Control. The Recipient agrees that any technical information developed in the course of implementing the Grant Agreement or Cooperative Agreement for the Project may be subject to export control regulations promulgated by the U.S. Department of Commerce, Bureau of Export Administration, and by other Federal Government departments, including the U.S. Department of State, the U.S. Department of the Treasury, and the U.S. Department of Defense. Thus, the Recipient agrees that it will not export to any countries or any foreign persons any technical information or any direct product of that technical information that is subject, directly or indirectly, to U.S. Export Control regulations, without first obtaining the necessary Federal license or licenses and complying with any applicable U.S. Export Control regulations.

Section 44. Special Provisions for the Medical Transportation Demonstration Projects.

The Recipient of Federal assistance under the Medical Transportation Demonstration Program agrees to comply with 49 U.S.C. § 5314(a)(6) and other applicable Federal laws, regulations, and directives when issued, except to the extent FTA determines otherwise in writing.

Section 45. Special Provisions for the National Technical Assistance Center for Senior Transportation.

The Recipient of Federal assistance authorized under the National Technical Assistance Center for Senior Transportation agrees to comply with the requirements of 49 U.S.C. § 5314(c) and other applicable Federal laws, regulations and directives when issued, except to the extent that FTA determines otherwise in writing.

Section 46. Special Provisions for Human Resources Fellowships.

The Recipient agrees that the following provisions apply to Human Resources Fellowships Program assistance authorized under 49 U.S.C. § 5322(b), and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. General. The Recipient agrees to comply with the 49 U.S.C. § 5322(b) and other applicable Federal regulations, and directives, when issued.

B. Fellowship Awards. The Recipient agrees any individual who receives a fellowship financed with Federal assistance under the Human Resources Fellowships Program will be selected on the basis of demonstrated ability and the contribution the individual reasonably can be expected to make to an efficient public transportation operation.

Section 47. Special Provisions for Job Access and Reverse Commute Formula Grant Program.

The Recipient agrees that the following provisions apply to Job Access and Reverse Commute (JARC) Formula Grant Program assistance authorized under 49 U.S.C. § 5316, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. General. The Recipient agrees to comply with 49 U.S.C. § 5316, and provisions of 49 U.S.C. § 5307 and with other Federal laws that may be applicable, and with Federal regulations and directives when issued.

B. FTA Notice. The Recipient agrees to comply with the provisions of the most recent applicable FTA Notice pertaining to the JARC Formula Grant Program, and any subsequent revision thereto. In addition, the Recipient agrees to comply with FTA Circular, "The Job Access And Reverse Commute (JARC) Program Guidance And Application Instructions," when issued.

C. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a Job Access and Reverse Commute Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement and this Master Agreement.

Section 48. Special Provisions for the Alternative Transportation in Parks and Public Lands Program

The Recipient agrees that the following provisions apply to Alternative Transportation in Parks and Public Lands Program financial assistance authorized under 49 U.S.C. § 5320, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. General. The Recipient agrees to comply with 49 U.S.C. § 5320, and provisions of 49 U.S.C. § 5307 and with other Federal laws that may be applicable, and with Federal regulations and directives, when issued.

B. FTA Notices. The Recipient agrees to comply with the provisions of the most recent applicable FTA Notices pertaining to the Alternative Transportation in Parks and Public Lands Program, and any subsequent revision thereto. Specifically, the Recipient agrees that the provisions of foregoing documents and revisions thereto will supersede conflicting provisions of this Master Agreement.

Section 49. Special Provisions for Over-the-Road Bus Accessibility Projects.

The Recipient agrees that the following provisions apply to Federal assistance authorized under the Over-the-Road Accessibility Program Grants, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. General. The Recipient agrees to comply with any applicable Federal directives that may be issued to implement the Over-the-Road Bus Accessibility Program authorized by section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note.

B. Accessibility. The Recipient agrees to comply with the "Over-the-Road Buses," regulations within "U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37, Subpart H, and with joint U.S. ATBCB/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38.

C. FTA Notice. The Recipient agrees to comply with the provisions of the most recent applicable FTA Notice pertaining to Over-the-Road Bus Accessibility Program Grants, and any subsequent revision thereto, supersede conflicting provisions of this Master Agreement.

Section 50. Special Provisions for State Infrastructure Bank Projects.

The Recipient agrees that the following provisions apply to a Project financed with Federal assistance deposited in a State Infrastructure Bank, and agrees to comply with the requirements thereof:

A. General. The Recipient agrees to administer its Project in accordance with laws applicable to the SIB that provides Federal assistance for the Project. Federal requirements for the Project may be set forth in: (1) 23 U.S.C. § 610, (2) section 1511 of TEA-21, 23 U.S.C. § 181 note to the extent it has not been superseded by 23 U.S.C. § 610, (3) section 350 of the National Highway System Designation Act of 1995, as amended, (NHS Act), 23 U.S.C. § 101 note, to the extent it has not been superseded by 23 U.S.C. § 610 (4) any law amending any of the foregoing, and any subsequent law applicable to the Project, (5) any other applicable Federal directives that may be issued, except to the extent FTA determines otherwise in writing, (6) the terms and conditions of U.S. Department of Labor Certification(s) of Public Transportation Employee Protective Arrangements, (7) the Cooperative Agreement establishing the State Infrastructure Bank (SIB) program in the State (entered into by the Federal Highway Administrator, Federal Transit Administrator, and authorized State official), and (8) the FTA Grant Agreement providing Federal assistance for the SIB Project; except, however, any provision of this Master Agreement conflicting with applicable Federal law, applicable Federal SIB Guidelines, the Cooperative Agreement establishing the SIB program within the State, or this Grant Agreement will not apply to the Grant Agreement or the Project to the extent the SIB program is involved, except to the extent FTA determines otherwise in writing.

B. Limitations on Accessing Federal Assistance in the Transit Account. The Recipient understands that the total amount of Federal assistance awarded under the Grant Agreement for the SIB may not be available for immediate withdrawal. Thus, the State agrees to restrict the amount of Federal assistance it withdraws to an amount not exceeding the limitations specified in its Grant Agreement or the Approved Project Budget for that Grant Agreement.

Section 51. Special Provisions for TIFIA Projects.

To the extent applicable, the Recipient agrees to administer each Project financed with Federal assistance authorized under the Transportation Infrastructure Finance and Innovation Act, as amended, in accordance with: (1) 23 U.S.C. §§ 601 through 609, including any further amendments thereto that may be enacted; (2) 49 U.S.C. §§ 5307, 5309, and 5323(o); (3) joint U.S. DOT/FTA regulations, "Credit Assistance for Surface Transportation Projects," 49 C.F.R. Part 80 and 49 C.F.R. Part 640, to the extent those regulations have not been superseded by SAFETEA-LU, and any subsequent amendments to those regulations when promulgated. Any provision of this Master Agreement that conflicts with 23 U.S.C. §§ 601 through 609, 49 U.S.C. §§ 5307, 5309, 5323(o), or the foregoing joint U.S. DOT/FTA regulations, or amendments thereto will not apply to the TIFIA Loan or Loan Guarantee for the Project. The Recipient agrees that FTA may declare the Recipient in violation of the Master Agreement if the Recipient has defaulted on a TIFIA Loan or a Loan guaranteed under TIFIA and such default

has not been cured within 90 days.

Section 52. Disputes, Breaches, Defaults, or Other Litigation.

The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

A. Notification to FTA. The Recipient agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform FTA in writing before doing so. Each notice to FTA under this Section shall be sent, at a minimum, to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.

B. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery, except that the Recipient may return any liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

C. Enforcement. The Recipient agrees to pursue all legal rights provided within any third party contract.

D. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.

E. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

Section 53. Amendments to the Project.

The Recipient agrees that a change in Project circumstances causing an inconsistency with the terms of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement will require an amendment to the Grant Agreement or Cooperative Agreement for the Project signed by the original signatories or their authorized designees or successors. The Recipient agrees that a change in the fundamental information submitted in its Application will also require an Amendment to its Application or the Grant Agreement or Cooperative Agreement for the Project.

Section 54. FTA's Electronic Management System.

A. Recipient Use. Unless FTA permits otherwise in writing, the Recipient agrees to use FTA's electronic management system to submit information and reports to FTA. FTA, however, reserves the right to determine the extent to which the Recipient may use FTA's electronic management system to execute legal documents pertaining to FTA Projects.

B. TEAM System Terminology. The Recipient and FTA agree that the terms used by FTA in its current Transportation Electronic Management (TEAM) system do not necessarily reflect, and are not intended to be treated as, the exclusive evidence of what such matters as Project, its scope, activities, etc. include, except to the extent FTA so states in writing. FTA reserves the right to treat information other than that reflected in the TEAM system as determinative of what constitutes the “Project,” “Scope of the Project,” and “Project Activities.”

Section 55. Information Obtained Through Internet Links.

This Master Agreement may include electronic links to Federal laws, regulations, and directives. FTA does not guarantee the accuracy of information accessed through such links. Accordingly, the Recipient agrees that information obtained through any electronic link within this Master Agreement does not represent an official version of a Federal law, regulation, or directive, and might be inaccurate. Thus, information obtained through such links is neither incorporated by reference nor made part of this Master Agreement. The Federal Register and the Code of Federal Regulations are the official sources for regulatory information pertaining to the Federal Government.

Section 56. Severability.

If any provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement is determined invalid, the remainder of that Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable Federal laws or regulations.

Exhibit D
Fiscal Year 2011 Certifications and Assurances for FTA Assistance Programs

These will be on file for review at Wichita Transit, 777 E. Waterman, when Wichita Transit applies for Section 5307 grant funds in 2011.

INTERLOCAL AGREEMENT
For PLANNING and PREVENTIVE MAINTENANCE

This interlocal agreement (Agreement) is entered into by and between the City of Wichita, Kansas ("WICHITA") and the Board of County Commissioners of Sedgwick County, Kansas ("COUNTY").

WICHITA and COUNTY both operate public transportation services within the WICHITA metropolitan area, and are committed to continuing such services in a cooperative and coordinated manner. The purpose of this Agreement is to provide for allocation of federal funds available under the Urban Mass Transportation Act of 1964 ("Act") to provide ongoing support to transit services provided by WICHITA and COUNTY. It is, therefore, mutually agreed as follows:

1. **Term.** The Agreement shall be effective upon execution by all parties hereto and shall be effective FY 2010, terminating after receipt of final payment, unless terminated earlier as allowed below.

2. **Operations and Management.** WICHITA and COUNTY shall each be solely responsible for the separate operation and management of their respected public transportation systems. WICHITA and COUNTY agree to act with due diligence and good faith in the exercise of the operation and management of their respective transit systems to comply with the terms of this Agreement and to work together in a mutually supportive manner to ensure the implementation of all provisions contained in this Agreement. WICHITA agrees to assist COUNTY in set-up guidance for proper reimbursement and payout documents, data submission for the National Transit Database, etc. COUNTY will be responsible for scheduling an annual meeting with WICHITA for review and future planning.

3. **Allocation of FY2010 Section 5307 Funds.** For FY2010, COUNTY shall be designated by WICHITA to be a subgrantee (pass-through) recipient to receive Section 5307 (CFDA 20.507) funding for planning and preventive maintenance. Section 5307 funding requires all subgrantee (pass-through) recipients to fund 20% of the total cost as a local match, the Federal Transit Administration (FTA) provides the remaining 80% federal portion for the total cost of the project. The total allocation for the planning and preventive maintenance functions for COUNTY's transportation system for FY2010 is **$150,000**; the federal portion is **$120,000** and COUNTY's portion is **$30,000** for the required 20% local match.

4. **Application for Section 5307 Funding.** WICHITA shall apply to the FTA for funding under Paragraph 3. The funds received by COUNTY shall be matched at an appropriate percentage (20% of the total allocation) by local funds secured by COUNTY and shall be available for use by COUNTY, as its governing body deems appropriate within the FTA requirements, as set out in Exhibit C and D attached.

5. **Future Section 5309 Applications.** WICHITA and COUNTY shall cooperate to pursue applications as may be appropriate for capital grants under Section 5309, which shall include funds for capital acquisitions by COUNTY.

6. **Carryover of Funds.** Funds allocated to COUNTY pursuant to Sections 4 and 5 may be carried over.

7. **Future Allocation of 5307 Funds.** Based on the amount of carryover funds available, COUNTY may be subject to less apportionment than the $120,000 FTA portion available for allocation in a fiscal year. This will be determined during the annual planning meeting.

8. **Compliance with Laws.** WICHITA and COUNTY hereby agree, in the performance of this Agreement, to comply with all applicable federal, state, and local laws, including specifically all

relevant requirements of the Act, as appropriate, which may separately and individually apply to their respective jurisdictions.

9. **Extension of Agreement.** WICHITA and COUNTY may extend this Agreement on a year-to-year basis with written approval of both parties. Funds are secured in the agreement year and subject to be spent within FTA requirements.

10. **Establishment and Maintenance of Records.** COUNTY shall establish and maintain records as prescribed by WICHITA, with respect to all matters covered by this Agreement. Except as otherwise authorized by WICHITA, COUNTYY shall retain such financial and nonfinancial related records for a period of three (3) years after receipt of the final payment under this Agreement or termination of this Agreement. However, if any litigation, claim, negotiation, audit, oversight or other action involving the records has been started before the expiration of the three-year period, the records must be retained until the completion of the action and resolution of issues which arise from it or until the end of the regular three-year period, whichever is later.

11. **Reports and Information.** COUNTY, at such times and in such forms as WICHITA or its designates and authorized representative(s) may require, shall furnish to WICHITA, the FTA, or their designated and authorized representative(s) such statements, records, reports, data, and information as they may request pertaining to matters covered by this Agreement.

12. **Audits and Inspections.** COUNTY shall, at anytime, and as often as WICHITA may deem necessary, make available to WICHITA, or its designated and authorized representative(s), for examination of all its records and data pertaining to matters covered by this Agreement for the purpose of making audits, oversights, examinations, excerpts, and transcriptions. COUNTY is required to provide WICHITA with access to their single audit report.

13. Per OMB Circular A-133: **Pass-through Entity Responsibilities**. A pass-through entity shall perform the following for the federal awards it makes:

    a. Identify federal awards made by informing each subrecipient of CFDA title and number, award name and number, award year, if the award is R&D, and name of federal agency. When some of this information is not available, the pass-through entity shall provide the best information available to describe the federal award.

    b. Advise subrecipients of requirements imposed on them by federal laws, regulations, and the provisions of contracts or grant agreements as well as any supplemental requirements imposed by the pass-through entity.

    c. Monitor the activities of subrecipients as necessary to ensure that federal awards are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.

    d. Ensure that subrecipients expending $300,000 *($500,000 for fiscal years ending after December 31, 2003)* or more in federal awards during the subrecipient's fiscal year have met the audit requirements of this part for that fiscal year.

    e. Issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and ensure that the subrecipient takes appropriate and timely corrective action.

f. Consider whether subrecipient audits necessitate adjustment of the pass-through entity's own records.

g. Require each subrecipient to permit the pass-through entity and auditors to have access to the records and financial statements as necessary for the pass-through entity to comply with this part.

**Wichita will provide the applicable information from 13(1) when available.

14. **Discrimination.**

a. **Discrimination Prohibited.** No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, national origin, ancestry, religion, physical handicap, sex, or age. (Reference Title VI of the Civil Rights Act of 1964 – Pub. L. 88-352). For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of COUNTY receiving funds pursuant to this Agreement.

b. COUNTY further agrees to implement and comply with the "Revised Nondiscrimination and Equal Employment Opportunity Statement" for contracts or Agreements as provided in Exhibit A attached hereto and to specifically comply with the requirements of the Americans with Disabilities Act of 1990, as amended.

15. **Payments.**

a. **Compensation and Method of Payment.** Compensation and method of payment to COUNTY relative to conducting the operations of the project activities and services as herein described will be carried out as specified in Exhibit B attached hereto and will be administered under the established accounting and fiscal policies of WICHITA.

b. **Total Payments.** Total payments to COUNTY will be in the contracted amount of $120,000 FTA portion starting January 1, 2010, unless carryover money remains, then carryover money will be drawn down first.

c. **Restriction on Disbursements.** No grant funds shall be disbursed to COUNTY or a contractor except pursuant to a written contract that incorporates by reference the general conditions of this Agreement.

16. **Termination Clause.** Whenever either of the parties hereto determines that termination of this Agreement is in such party's best interest, then the Agreement may be terminated by giving written notification to the other party. A determination may include, but not be limited to:

a. Failure of either party to comply with any or all items contained within Sections 1 through 15 of this Agreement, contract exhibits, and/or provisions of any subsequent contractual amendments executed relative to this Agreement;

b. This Agreement may be terminated if project funds to WICHITA under the grant are suspended or terminated;

c. Either party hereto may also, by giving thirty (30) days notice, terminate this Agreement for convenience; and

d. Upon receipt of notice of termination, COUNTY shall: (1) discontinue further commitments of contract funds to the extent they relate to the terminated portion of the Agreement; (2) promptly cancel all Agreements and/or orders to subcontractors utilizing funds under this Agreement; (3) submit, within a reasonable period of time to be specified by WICHITA, a cancellation settlement proposal which shall include a final statement for the Agreement, or reimbursement of unearned funds previously distributed.

17. **Appendices.** All exhibits referenced below and all amendments or mutually agreed upon modification(s) made by both parties are hereby incorporated as though fully set forth herein. In case of conflict in terms between this Agreement and Exhibit C, the terms of Exhibit C shall take precedence.

Exhibit A	Nondiscrimination and Equal Employment Opportunity Statement
Exhibit B	Scope of Services and Method of Payment
Exhibit C	FTA Master Agreement of October 1, 2006
Exhibit D	Fiscal Year 2010 Certifications and Assurances for FTA Assistance Programs

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

BOARD OF COUNTY COMMISSIONERS OF SEDGWICK COUNTY, KANSAS

Karl Peterjohn, Chairman
3rd District

APPROVED AS TO FORM:

Richard A. Euson, County Counselor

ATTEST:

Kelly B. Arnold, County Clerk

CITY OF WICHITA, KANSAS
By order of the City Council

Carl Brewer, Mayor

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

ATTEST:

Karen Sublett, City Clerk

Exhibit A
Nondiscrimination and Equal Employment Opportunity Statement

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

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

B. Requirements of the State of Kansas:

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

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

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

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

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

C. Requirements of the City of Wichita, Kansas, relating to Nondiscrimination – Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice nondiscrimination – equal employment opportunity in all employment relations, including, but not limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

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

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

3. The vendor, supplier, contractor, or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with nondiscrimination – equal employment opportunity requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor, or subcontractor shall be deemed to have breached the present contract, purchase order, or Agreement and it may be canceled, terminated, or suspended in whole or in part by the City or its agency, and further civil rights complaints or investigations may be referred to the State;

4. The vendor, supplier, contractor, or subcontractor shall include the provisions of Subsection 1 through 3, inclusive, of this present section in every subcontract, sub-purchase order, or sub-Agreement so that such provisions will be binding upon each subcontractor, sub-vendor, or sub-supplier; and

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

D. Exempted from these requirements are:

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

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

Exhibit B
Scope of Services and Method of Payment

COUNTY will provide preventive maintenance and planning activities in support of general public transportation services in Bel Aire, Derby, Haysville, Kechi, Maize, Mulvane, Park City, Goddard and Valley Center, Sedgwick County, Kansas, under federal guidelines.

The amount of funds anticipated from the Federal Transit Administration Section 5307 grant in FY2010 is $120,000.00. The total allocation for the planning and preventive maintenance functions for COUNTY's transportation system for FY2010 is **$150,000**. The federal portion is **$120,000**, and the COUNTY's portion is **$30,000** for the required 20% local match. As the designated recipient of federal funds, the WICHITA will disperse the available federal funds that are appropriately matched under the terms of the grant.

COUNTY will submit an invoice for payment no later than 30 days after the end of each quarter. WICHITA will reimburse COUNTY for the invoiced amount no later than 30 days after the invoice is received. A line item list of expenses must be attached to the invoice for WICHITA to examine and determine if all expenses are FTA eligible. Any ineligible costs will be rejected by WICHITA and COUNTY must submit a revised invoice.

Exhibit C
FTA Master Agreement

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

MASTER AGREEMENT

For Federal Transit Administration Agreements authorized by
49 U.S.C. chapter 53, Title 23, United States Code (Highways),
the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, the Transportation Equity Act for the 21st Century, as amended,
the National Capital Transportation Act of 1969, as amended,
or other Federal laws that FTA administers.

FTA MA(13)
October 1, 2006

http://www.fta.dot.gov/documents/13-Master.doc

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UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

MASTER AGREEMENT

This is the official Master Agreement containing standard terms and conditions governing the administration of a Project supported with Federal assistance awarded by the Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Recipient, or supported by FTA through a Transportation Infrastructure Loan, Loan Guarantee, or Line of Credit with the Recipient. This Master Agreement applies to Federal assistance authorized by Federal public transportation laws at 49 U.S.C. chapter 53 or Title 23, United States Code (Highways); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109 -59, Aug. 10, 2005; the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, June 9, 1998, as amended, the National Capital Transportation Act of 1969, D.C. Official Code, §§ 9-1111.01 *et seq*., or other Federal legislation FTA administers to the extent FTA so determines.

FTA and the Recipient understand and agree that not every provision of this Master Agreement will apply to every Recipient or every Project for which FTA provides Federal assistance through a Grant Agreement or Cooperative Agreement. The type of Project, the Federal laws and regulations authorizing Federal assistance for the Project, and the legal status of the Recipient as a "State," "local government," private non-profit entity, or private for-profit entity will determine which Federal laws, regulations, and directives apply. Federal laws, regulations, and directives that do not apply will not be enforced. Nevertheless, the Recipient understands and agrees that it must comply with all applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing. Any violation of a Federal law, regulation, or directive applicable to the Recipient or its Project may result in penalties to the violating party.

This Master Agreement does not have an Expiration Date. The provisions of this Master Agreement will continue to apply to the Project unless or until modified or superseded by subsequent Federal laws, regulations, or directives, or subsequent Grant Agreements, Cooperative Agreements, or Master Agreements.

Thus, in consideration of the mutual covenants, promises, and representations herein, FTA and the Recipient agree as follows:

Section 1. Definitions.

A. Application means the signed and dated request for Federal assistance, including any amendment thereto, with all explanatory, supporting, and supplementary documents filed with FTA by or on behalf of the Recipient and accepted or approved by FTA.

B. Approval, Authorization, Concurrence, Waiver means a conscious written statement (transmitted in typewritten hard copy or electronically) of a Federal Government official authorized to permit the Recipient to take or omit an action required by the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement, which action may not be taken or omitted without such permission. Except to the extent that FTA determines otherwise in writing, such approval, authorization, concurrence, or waiver permitting the performance or omission of a specific action does not constitute permission to perform or omit other similar actions. An oral permission or interpretation has no legal force or effect.

C. Approved Project Budget means the most recent statement of the costs of the Project, the maximum amount of Federal assistance for which the Recipient is currently eligible, the specific tasks (including specific contingencies) covered, and the estimated cost of each task that has been approved by FTA. As used in the "Approved Project Budget," the term "Scopes" means categories and the term "Scope Level Codes" means category codes. Although "Scopes" and "Scope Level Codes" generally indicate the type of activities encompassed by the Project, the data listed under "Scopes" and "Scope Level Codes" (for example), do not necessarily reflect, and are not intended to be treated as, prima facie evidence of the precise limits or boundaries of a Project, except to the extent that FTA determines otherwise in writing. FTA reserves the right to consider other information in determining what constitutes the "Scope of the Project" when that term is used for legal purposes.

D. Cooperative Agreement means an instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA takes an active role or retains substantial control, as set forth in 31 U.S.C. § 6305. The Cooperative Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include additional Special Conditions, Special Requirements, or Special Provisions. This Master Agreement is incorporated by reference and made part of the Cooperative Agreement.

E. Federal Directive, for purposes of this Master Agreement, includes any Executive Order of the President of the United States, and any Federal document, irrespective of whether it takes the form of a published policy, administrative practice, circular, guideline, guidance document, or letter signed by the head of a Federal agency or his or her designee, that provides instructions concerning a Federal program, including application processing procedures, program management, or other similar matters. The term “Federal Directive” encompasses “FTA Directives,” “U.S. DOT Directives,” and similar documents issued by other agencies of the Federal Government.

F. Federal Government means the United States of America and any executive department or agency thereof.

G. Federal Transit Administration designates the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration is deemed a reference to the Federal Transit Administration.

H. Federal Transit Administrator designates the former Urban Mass Transportation Administrator. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administrator is deemed a reference to the Federal Transit Administrator.

I. FTA is the acronym for the Federal Transit Administration, an operating administration of the U.S. Department of Transportation (U.S. DOT). “FTA” replaces the acronym “UMTA.”

J. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA does not take an active role or retain substantial control, as set forth in 31 U.S.C. § 6304. The Grant Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include additional Special Conditions, Special Requirements, or Special Provisions. This Master Agreement is incorporated by reference and made part of the Grant Agreement.

K. Local Government includes a public transportation authority, as well as a county, municipality, city, town, township, special district, council of governments, public corporation, board, or commission established under the laws of a State (whether or not incorporated as a private nonprofit organization under State law), regional or interstate government entity, Indian tribe, or any agency or instrumentality thereof.

L. Project means the activity or activities (task or tasks) listed in Project Description, the Approved Project Budget, and any modifications set forth in the Conditions of Award in the Grant Agreement or Cooperative Agreement for the Project, and any other Special Conditions, Special Requirements, or Special Provisions applicable to the Project. To the extent that a Recipient is required by any provision of 49 U.S.C. chapter 53 to prepare a "Program of Projects," for purposes of this Master Agreement, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require. For a Loan, Loan Guarantee, or Line of Credit financed with Federal assistance authorized under the Transportation Infrastructure Finance and Innovation Act of 1998, as amended, 23 U.S.C. §§ 601 through 609, "Project" means the transportation activities financed by that Loan, Loan Guarantee, or Line of Credit. For purposes of legal interpretations and other matters, FTA reserves the right to consider information apart from the data listed in FTA's electronic management system under "Scopes" and "Scope Level Codes" of the "Approved Project Budget" to determine what constitutes the Scope of the Project or eligible project activities.

M. Public Transportation means transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include schoolbus, charter, or intercity bus transportation or intercity passenger rail transportation provided by the entity described in 49 U.S.C. chapter 243 (Amtrak or a successor to Amtrak). The term "public transportation" also includes "mass transportation" and "transit."

N. Recipient means the entity that receives Federal assistance directly from FTA to support the Project. The term "Recipient" includes each "Grantee" that receives Federal assistance directly from FTA through a Grant and each Recipient that receives Federal assistance directly from FTA through a Cooperative Agreement. Even if a single organization within a legal entity is designated the Recipient in the Grant Agreement or Cooperative Agreement, the entire legal entity is the Recipient, except to the extent that FTA has determined otherwise in writing. Thus, unless FTA has determined otherwise in writing, if the Recipient is a consortium, partnership, or other multi-party entity, each participant in, member of, or party to that consortium, partnership, or multi-party entity is deemed a "Recipient" for purposes of compliance with applicable requirements of the Grant Agreement or Cooperative Agreement for its Project.

O. Subagreement means an agreement through which a Recipient awards Federal assistance derived from FTA to a subrecipient as defined below. The term "subagreement" also includes the term "subgrant," but does not include the term "third party subcontract."

P. Subrecipient means any entity that receives Federal assistance awarded by an FTA Recipient, rather than by FTA directly. The term "subrecipient" also includes the term "subgrantee," but does not include "third party contractor" or "third party subcontractor."

Q. Third Party Contract means a contract or purchase order awarded by the Recipient or subrecipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

R. Third Party Subcontract means a subcontract at any tier financed in whole or in part with Federal assistance originally derived from FTA that is entered into by the third party contractor or third party subcontractor.

S. U.S. DOT is the acronym for the United States Department of Transportation, including its operating administrations.

Section 2. Project Implementation.

A. General. The Recipient agrees to carry out the Project as follows:

1. Project Description. Because the "Project Description" in the FTA Award section of the Grant Agreement or Cooperative Agreement provides only a brief description of the Project or Projects to be funded, the Recipient agrees to perform the work as described in the "Project Description" and in its Application that is incorporated by reference in the approved Grant Agreement or Cooperative Agreement for the Project.

2. Effective Date. The effective date of the Grant Agreement, Cooperative Agreement, or Amendment thereto is the date on which the FTA Authorized Official awards Federal assistance as shown on the Grant Agreement, Cooperative Agreement, or Amendment thereto. The Recipient agrees to undertake Project work promptly after receiving notice that FTA has awarded Federal assistance for the Project.

3. Recipient's Capacity. The Recipient agrees to maintain or acquire sufficient legal, financial, technical, and managerial capacity to: (1) plan, manage, and complete the Project and provide for the use of Project property; (2) carry out the safety and security aspects of the Project and (3) comply with the terms of the Grant Agreement or Cooperative Agreement providing Federal assistance for the Project, this Master Agreement, the Approved Project Budget, the Project schedules, the Recipient's annual Certifications and Assurances to FTA, and all applicable Federal laws, regulations, and directives pertaining to the Project and the Recipient, except to the extent that FTA determines otherwise in writing.

4. Completion Dates. The Recipient agrees to complete the Project in a timely manner. Nevertheless, except in the case of a Full Funding Grant Agreement or as otherwise specified, FTA and the Recipient agree that milestone dates and other Project completion dates are to be treated as good faith estimates rather than precise and firm legal requirements.

B. U.S. DOT Administrative Requirements. The Recipient agrees to comply with the Federal administrative requirements that apply to the category in which it belongs:

1. U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18, apply to a Recipient that is a State, local, or Indian tribal government.

2. U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 C.F.R. Part 19, apply to a Recipient that is an institution of higher education or a nonprofit organization.

3. Except to the extent that FTA determines otherwise in writing, U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations," 49 C.F.R. Part 19, apply to a Recipient that is a private for-profit organization.

C. Application of Federal, State, and Local Laws, Regulations, and Directives.

1. Federal Laws, Regulations, and Directives. The Recipient agrees that Federal laws and regulations control Project award and implementation. The Recipient also agrees that Federal directives, as

defined in this Master Agreement, set forth Federal terms applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Recipient understands and agrees that unless FTA has provided express written approval of an alternative procedure or course of action differing from a procedure or course of action set forth in the applicable Federal directive, the Recipient may incur a violation of the terms of its Grant Agreement or Cooperative Agreement or this Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Recipient understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Applicant on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date on which the Recipient executes the Grant Agreement or Cooperative Agreement for the Project, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal laws, regulations, and directives will govern the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision, or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Recipient signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or otherwise conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. To accommodate changing Federal requirements, the Recipient agrees to include in each agreement with each subrecipient and each third party contract implementing the Project notice that Federal laws, regulations, and directives may change and that the changed requirements will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in this Master Agreement are minimum requirements, unless modified by FTA.

2. State, Territorial, and Local Law. Should a Federal law pre-empt a State, territorial, or local law, regulation, or ordinance, the Recipient must comply with the Federal law and implementing regulations. Nevertheless, no provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement requires the Recipient to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law, regulation, or ordinance. Thus if compliance with any provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement violates or would require the Recipient to violate any State, territorial, or local law, regulation, or ordinance, the Recipient agrees to notify FTA immediately in writing. Should this occur, FTA and the Recipient agree that they will make appropriate arrangements to proceed with or, if necessary, terminate the Project expeditiously.

D. Recipient's Primary Responsibility to Comply with Federal Requirements. Irrespective of involvement by any other entity in the Project, the Recipient agrees that it, rather than any other entity, is ultimately responsible for compliance with all applicable Federal laws, regulations, and directives, this Master Agreement, and the underlying Grant Agreement or Cooperative Agreement for the Project, except to the extent that FTA determines otherwise in writing.

1. Significant Participation by a Subrecipient. Although the Recipient may delegate any or almost all Project responsibilities to one or more subrecipients, the Recipient agrees that it, rather than any subrecipient, is ultimately responsible for compliance with all applicable Federal laws, regulations,

and directives, except to the extent that FTA determines otherwise in writing.

2. Significant Participation by a Lessee of a Recipient. Although the Recipient may lease Project property and delegate some or many Project responsibilities to one or more lessees, the Recipient agrees that it, rather than any lessee, is ultimately responsible for compliance with all applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

3. Significant Participation by a Third Party Contractor. Although the Recipient may enter into a third party contract in which the third party contractor agrees to provide property or services in support of the Project, or even carry out Project activities normally performed by the Recipient (such as in a turnkey contract), the Recipient agrees that it, rather than the third party contractor, is ultimately responsible to FTA for compliance with all applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

4. Exceptions. The Recipient, however, is relieved of the requirement to comply with Federal requirements in the following two circumstances:

   a. When the Designated Recipient of Urbanized Area Formula Program assistance as defined at 49 U.S.C. § 5307(a)(2) has entered into a Supplemental Agreement with FTA and a Grantee covering the Project, the Designated Recipient is not responsible for compliance with Federal requirements in connection with the Project, or

   b. When the Federal Government, through appropriate official action, relieves the Recipient of a portion of or all responsibility to the Federal Government.

E. Recipient's Responsibility to Extend Federal Requirements to Other Entities.

1. Entities Affected. Only entities that are signatories to the Grant Agreement or Cooperative Agreement for the Project are parties to that Grant Agreement or Cooperative Agreement. To achieve compliance with certain Federal laws, regulations, or directives, however, other entities participating in the Project through their involvement with the Recipient, (such as a subrecipient, lessee, third party contractor, or other) will necessarily be affected. Accordingly, the Recipient agrees to take the appropriate measures necessary to ensure that all Project participants comply with applicable Federal laws, regulations, and directives affecting Project implementation, except to the extent FTA determines otherwise in writing. In addition, if an entity other than the Recipient is expected to fulfill responsibilities typically performed by the Recipient, the Recipient agrees to assure that the entity carries out the Recipient's responsibilities as set forth in the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement.

2. Documents Affected. The applicability provisions of Federal laws, regulations, and directives determine the extent to which those provisions affect an entity (such as a subrecipient, lessee, third party contractor or other) participating in the Project through the Recipient. Thus, the Recipient agrees to use a written document to ensure that each entity participating in the Project complies with applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing.

   a. Required Clauses. The Recipient agrees to use a written document (such as a subagreement, lease, third party contract or other) including appropriate clauses stating the entity's (subrecipient, lessee, third party contractor, or other) responsibilities under Federal laws,

regulations, or directives, except to the extent that FTA determines otherwise in writing.

b. Flowdown. The Recipient agrees to include in each document (subagreement, lease, third party contract, or other) any necessary provisions requiring the Project participant (third party contractor, subrecipient, or other) to impose applicable Federal requirements and directives on its subrecipients, lessees, third party contractors and other Project participants at the lowest tier necessary, except to the extent that FTA determines otherwise in writing.

c. Performance of Recipient's Responsibilities. When the document (subagreement, lease, third party contract or other) requires the Project participant (subrecipient, lessee, third party contractor, or other) to undertake responsibilities for the Project usually performed by the Recipient, the Recipient agrees also to include in that document (subagreement, lease, third party contract or other) appropriate provisions that would be applicable to the Recipient as set forth in the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement, and extend those provisions to the subrecipients, lessees, third party contractors, and other Project participants to the lowest tier necessary, except to the extent as FTA determines otherwise in writing.

F. No Federal Government Obligations to Third Parties. In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, or third party contract at any tier, the Federal Government has no obligations or liabilities to entity other than the Recipient, including any subrecipient, lessee, or third party contractor at any tier.

G. Changes in Project Performance (*i.e.*, Disputes, Breaches, Defaults, or Litigation). The Recipient agrees to notify FTA immediately, in writing, of any change in local law, conditions (including its legal, financial, or technical capacity), or any other event that may adversely affect the Recipient's ability to perform the Project in accordance with the terms of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. The Recipient also agrees to notify FTA immediately, in writing, of any current or prospective major dispute, breach, default, or litigation that may adversely affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations; and agrees to inform FTA, also in writing, before naming the Federal Government as a party to litigation for any reason, in any forum. At a minimum, the Recipient agrees to send each notice to FTA required by this subsection to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.

Section 3. Ethics.

A. Code of Ethics. The Recipient agrees to maintain a written code or standards of conduct that shall govern the actions of its officers, employees, board members, or agents engaged in the award or administration of subagreements, leases, or third party contracts supported with Federal assistance. The Recipient agrees that its code or standards of conduct shall specify that its officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential subrecipient, lessee, or third party contractor at any tier or agent thereof. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award. The Recipient may set *de minimis* rules where the

financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. The Recipient agrees that its code or standards shall also prohibit its officers, employees, board members, or agents from using their respective positions in a manner that presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the Recipient agrees that its code or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by its officers, employees, board members, or their agents, or its third party contractors or subrecipients or their agents.

1. Personal Conflicts of Interest. The Recipient agrees that its code or standards of conduct shall prohibit the Recipient's employees, officers, board members, or agents from participating in the selection, award, or administration of any third party contract or subagreement supported by Federal assistance if a real or apparent conflict of interest would be involved. Such a conflict would arise when an employee, officer, board member, or agent, including any member of his or her immediate family, partner, or organization that employs, or intends to employ, any of the parties listed herein has a financial interest in the firm selected for award.

2. Organizational Conflicts of Interest. The Recipient agrees that its code or standards of conduct shall include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or subagreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or subrecipient or impair its objectivity in performing the contract work.

B. Debarment and Suspension. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, or third party contractor at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," 49 C.F.R. Part 29. The Recipient agrees to, and assures that its subrecipients, lessees, and third party contractors will review the "Excluded Parties Listing System" at http://epls.arnet.gov/ before entering into any third party contract or subagreement.

C. Bonus or Commission. The Recipient affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its Federal assistance application for the Project.

D. Lobbying Restrictions. The Recipient agrees that:

1. In compliance with 31 U.S.C. 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement or Cooperative Agreement;

2. In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities, designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and

3. It will comply, and will assure the compliance of each subrecipient, lessee, or third party contractor at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.

E. Employee Political Activity. To the extent applicable, the Recipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 through 1508, and 7324 through 7326, and U.S. Office of Personnel

Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151. The Hatch Act limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with Federal funds including a Federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. § 5307(k)(2)(B) and 23 U.S.C. § 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act would not otherwise apply.

F. False or Fraudulent Statements or Claims. The Recipient acknowledges and agrees that:

1. Civil Fraud. The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq*., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply, the Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government, the Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, to the extent the Federal Government deems appropriate.

2. Criminal Fraud. If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(l), 18 U.S.C. § 1001 or other applicable Federal law to the extent the Federal Government deems appropriate.

Section 4. Federal Assistance.

The Recipient agrees that FTA will provide Federal assistance for the Project equal to the smallest of the following amounts: (a) the maximum amount permitted by Federal law or regulations, (b) the "Maximum FTA Amount Approved," set forth in the Grant Agreement or Cooperative Agreement for the Project, or (c) the amount calculated in accordance with the "Maximum Percentage(s) of FTA Participation," as may be modified by the Conditions of Award or other Special Conditions, Special Requirements, or Special Provisions of the Grant Agreement or Cooperative Agreement for the Project. FTA's responsibility to make Federal assistance payments is limited to the amounts listed in the Approved Project Budget for the Project. The "Estimated Total Eligible Cost" in the Grant Agreement or Cooperative Agreement for the Project is the amount that forms the basis on which FTA determines the "Maximum FTA Amount Awarded."

A. "Net Project Cost". For any Project required by Federal law or by FTA to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Recipient for that portion of the Project that cannot reasonably be financed from the Recipient's revenues, *i.e*., "Net Project Cost" of the Project. Therefore, the amount stated as the "Estimated Total Eligible Cost" on the Grant Agreement or Cooperative Agreement is the "Estimated Net Project Cost" and is the amount that forms the basis on which FTA will calculate the amount of Federal assistance that will be awarded for the Project.

B. Other Basis for FTA Participation. For any Project not required by Federal law or FTA to be financed on the basis of its "Net Project Cost" as defined by 49 U.S.C. § 5302(a)(8), FTA intends to provide Federal assistance to the Recipient for all or part of the total Project cost that is eligible for Federal assistance. Therefore, the amount stated as the "Estimated Total Eligible Cost" on the Grant Agreement or Cooperative Agreement for the Project is the amount that forms the basis on which FTA will calculate the amount of Federal assistance that will be awarded for the Project.

Section 5. Local Share.

A Recipient that is required to provide a local share for the Project agrees as follows:

A. Restrictions on the Source of the Local Share. The Recipient agrees to provide sufficient funds or approved in-kind resources, together with the Federal assistance awarded, that will assure payment of the actual cost of each Project activity covered by the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that no local share funds provided will be derived from receipts from the use of Project facilities or equipment, revenues of the public transportation system in which such facilities or equipment are used, or other Federal funds, except as permitted by Federal law or regulation.

B. Duty to Obtain the Local Share. The Recipient agrees to complete all proceedings necessary to provide the local share of the Project costs at or before the time the local share is needed for Project costs, except to the extent that FTA determines otherwise in writing.

C. Prompt Payment of the Local Share. The Recipient agrees to provide the proportionate amount of the local share promptly as Project costs are incurred or become due, except to the extent that the Federal Government determines in writing that the local share may be deferred.

D. Reduction of the Local Share. The Recipient agrees that no refund or reduction of the local share may be made unless, at the same time, a refund of the proportional amount of the Federal assistance provided is made to the Federal Government.

Section 6. Approved Project Budget.

Except to the extent that FTA determines otherwise in writing, the Recipient agrees as follows: The Recipient will prepare a Project budget which, upon approval by FTA, is designated the "Approved Project Budget." The Recipient will incur obligations and make disbursements of Project funds only as authorized by the latest Approved Project Budget, which will be incorporated by reference and made part the underlying Grant Agreement or Cooperative Agreement for the Project. An amendment to the Approved Project Budget requires the issuance of a formal amendment to the underlying Grant Agreement or Cooperative Agreement, except that re-allocation of funds among budget items or fiscal years that does not increase the total amount of the Federal assistance awarded for the Project may be made consistent with applicable Federal laws, regulations and directives. Prior FTA approval is required for transfers of funds from non-construction to construction categories or vice versa or when, in non-construction grants, cumulative transfers of funds between total direct cost categories exceed ten (10) percent of the total budget. The Recipient agrees to obtain prior written approval for any budget revision that would result in the need for additional funds. An award of additional Federal assistance will require a new Approved Project Budget. If the Recipient estimates that it will have unobligated funds remaining after the end of the performance period of the Project, the Recipient agrees to report this to FTA at the earliest possible time and ask for disposition instructions.

Section 7. Accounting Records.

In compliance with applicable Federal laws, regulations, and directives, and except to the extent that FTA determines otherwise in writing, the Recipient agrees as follows:

A. Project Accounts. The Recipient agrees to establish and maintain for the Project either a separate set of accounts or separate accounts within the framework of an established accounting system that can be identified with the Project. The Recipient also agrees to maintain all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents related in whole or part to the Project so that they may be clearly identified, readily accessible, and available to FTA upon request and, to the extent feasible, kept separate from documents not related to the Project.

B. Funds Received or Made Available for the Project. The Recipient agrees to deposit in a financial institution all advance Project payments it receives from the Federal Government and to record in the Project Account all amounts provided by the Federal Government for the Project and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) in compliance with applicable Federal laws, regulations, and directives, except to the extent that FTA determines otherwise in writing. Use of financial institutions owned at least fifty (50) percent by minority group members is encouraged.

C. Documentation of Project Costs and Program Income. The Recipient agrees to support all costs charged to the Project, including any approved services or property contributed by the Recipient or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Recipient also agrees to maintain accurate records of all program income derived from Project implementation, except certain income FTA determines to be exempt from Federal program income requirements.

D. Checks, Orders, and Vouchers. The Recipient agrees that it will not draw checks, drafts, or orders for property or services to be charged against the Project Account until it has received and filed a properly signed voucher describing in proper detail the purpose for the expenditure.

Section 8. Reporting, Record Retention, and Access.

A. Types of Reports. The Recipient agrees to submit to FTA all reports required by Federal laws and regulations, and directives, the Grant Agreement or Cooperative Agreement for the Project, this Master Agreement, and any other reports FTA may specify, except to the extent that FTA determines otherwise in writing.

B. Report Formats. The Recipient agrees that all reports and other documents or information intended for public availability developed in the course of the Project and required to be submitted to FTA must be prepared and submitted in electronic and or typewritten hard copy formats as FTA may specify. Electronic submissions must comply with the electronic accessibility provisions of Subsections 12.g(9) and 15.u of this Master Agreement. FTA also reserves the right to specify that records be submitted in other formats.

C. Record Retention. During the course of the Project and for three years thereafter from the date of transmission of the final expenditure report, the Recipient agrees to maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as the Federal Government may require.

D. Access to Records of Recipients and Subrecipients. The Recipient agrees to permit, and require its subrecipients to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its subrecipients pertaining to the Project, as required by 49 U.S.C. § 5325(g).

E. Project Closeout. The Recipient agrees that Project closeout does not alter the reporting and record retention requirements of this Section 8 of the Master Agreement.

Section 9. Payments.

The Recipient agrees that it will not seek payment from FTA for Project costs until it has executed the Grant Agreement or Cooperative Agreement for the Project.

A. Recipient's Request for Payment. Except to the extent that FTA determines otherwise in writing, to obtain a payment for Project expenses from FTA, the Recipient agrees to:

1. Demonstrate or certify that it will provide adequate local funds that, when combined with Federal payments, will cover all costs to be incurred for the Project. Except to the extent that the Federal Government determines in writing that the Recipient may defer provision of its local share for the Project, a Recipient required to provide a local share by Federal law, regulation, directive, the Grant Agreement or Cooperative Agreement for the Project agrees that it will not:

   a. Request or obtain Federal funds exceeding the amount justified by the local share previously provided, and

   b. Take any action that would cause the proportion of Federal funds made available to the Project at any time to exceed the percentage authorized by the Grant Agreement or Cooperative Agreement for the Project,

2. Submit to FTA all financial and progress reports required to date by the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement, and

3. Identify the source(s) of Federal assistance provided for the Project from which the payment is to be derived.

B. Payment by FTA. Except to the extent FTA determines otherwise in writing, the Recipient agrees that FTA will make all payments of Federal assistance through the Automated Clearing House (ACH) method of payment regardless of the amount involved, but not before the Recipient has executed the Grant Agreement or Cooperative Agreement for the Project, in accordance with the following provisions:

1. Electronic Clearing House Operation Payments. If payment is made through the FTA Electronic Clearinghouse Operation (ECHO) using an ECHO Control Number, the Recipient agrees to comply with: FTA's ECHO requirements that implement U.S. Department of Treasury (U.S. Treasury) Circular 1075, Part 205, "Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs;" Treasury Financial Manual, Vol. 1, Part 6, Chapter 2000; the ECHO System Operations Manual, "Guidelines for Disbursements" for FTA Projects; and the provisions of this Subsection 9.b(1). The Recipient also agrees that if it fails to comply with the following provisions of this Subsection 9.b(1), the Federal Government may revoke the unexpended portion of Federal assistance awarded for the Project.

a. The Recipient agrees to withdraw cash only when actually needed for immediate disbursement required for Project purposes. Except to the extent permitted otherwise by Federal law, regulation, or directive, the Recipient agrees to expend all Federal assistance obtained through the Project for Project purposes no later than three (3) days after receiving those funds. If the Recipient fails to expend that Federal assistance within three (3) days of receipt, fails to return withdrawn but unexpended Federal assistance to FTA within a reasonable period, or fails to establish procedures to minimize the time elapsing between cash advances and the disbursement, the Federal Government may revoke or temporarily suspend the Recipient's ECHO Control Number and the Recipient's access to the ECHO System. In addition, the Recipient agrees that if it fails to comply with these provisions, it may be subjected to other remedies or penalties authorized by Federal law or regulation.

b. The Recipient agrees to report its cash disbursements and balances promptly in compliance with applicable Federal laws, regulations, and directives.

c. The Recipient agrees to provide for control and accountability for all Federal assistance for the Project consistent with Federal requirements and procedures for use of the ECHO system.

d. The Recipient agrees that it will not withdraw Federal assistance for a Project in an amount exceeding the sum obligated by the Federal Government or the current available balance for that Project.

e. The Recipient agrees to withdraw Federal assistance only for payment of eligible Project costs.

f. The Recipient agrees that it will not withdraw Federal assistance until it is needed for disbursement for Project expenses.

g. The Recipient agrees to notify the appropriate Regional or Program Office when a single withdrawal will exceed $50,000,000 at least three days before the withdrawal is anticipated.

h. The Recipient agrees to remit interest to the Federal Government on any Federal assistance it has prematurely withdrawn, irrespective of whether that Federal assistance has been deposited in an interest-bearing account. The Recipient agrees that a debt for any premature withdrawal of Federal assistance does not qualify as a "claim" covered by the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, and that the interest provisions of this Subsection 9.b(1)(h) of this Master Agreement, rather than the interest provisions of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, will determine the amount of interest due for the Federal assistance it has prematurely withdrawn. The Recipient agrees that the amount of interest due the Federal Government depends on whether or not the Recipient is a State or State instrumentality.

(1) A Recipient that is a State or State instrumentality agrees to remit to the Federal Government the amount of interest calculated in accordance with U.S. Treasury regulations, "Rules and Procedures for Efficient Federal-State Funds Transfers," 31 C.F.R. Part 205, which implements section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b).

(2) A Recipient that is neither a State nor a State instrumentality agrees to remit to the Federal Government the amount of prejudgment common law interest, as authorized by

joint U.S. Treasury and U.S. Department of Justice (joint U.S. Treasury/U.S. DOJ) regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i).

2. Requisition. If the requisition method of payment is used, the Recipient agrees as follows:

a. Recipient Responsibilities. The Recipient agrees to complete and submit:

(1) "Payment Information Form – Echo-ACH Payment System, Revised 10/92," to FTA's Accounting Division.

(2) Standard Form 270, "Request for Advance or Reimbursement," to the designated FTA office.

b. FTA Responsibilities. Upon receiving a request for payment and adequate supporting information, FTA will approve payment by direct deposit, provided that the Recipient has complied with the requirements of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement, has satisfied FTA that the Federal assistance requested is needed for Project purposes in that requisition period, and is making adequate progress toward Project completion. After the Recipient has demonstrated satisfactory compliance with the preceding requirements, FTA may reimburse the Recipient's apparent allowable costs incurred (or to be incurred in the requisition period), as set forth in the Approved Project Budget for the Project, but not to exceed the maximum amount of Federal assistance that may be paid through the Federal fiscal year of that requisition.

c. Costs Reimbursed. The Recipient agrees that Project costs eligible for Federal participation must comply with all the following requirements. Except to the extent that FTA determines otherwise in writing, to be eligible for reimbursement, Project costs must be:

(1) Consistent with the Project Description, the Approved Project Budget, and other provisions of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement,

(2) Necessary in order to accomplish the Project,

(3) Reasonable for the goods or services purchased,

(4) Actual net costs to the Recipient (*i.e.*, the price paid minus any refunds, rebates, or other items of value received by the Recipient that have the effect of reducing the cost actually incurred, excluding program income),

(5) Incurred for work performed after the Effective Date of the Grant Agreement or Cooperative Agreement for the Project, except to the extent that the Federal Government determines otherwise in writing,

(6) Satisfactorily documented,

(7) Treated consistently in accordance with accounting principles and procedures approved by the Federal Government for the Recipient, and with accounting principles and procedures approved by the Recipient for its third party contractors and subrecipients,

(8) Eligible for Federal participation under Federal law, regulations, or directives, and

(9) In compliance with U.S. DOT regulations pertaining to allowable costs at 49 C.F.R. § 18.22(b) or 49 C.F.R. § 19.27, which regulations specify the applicability of U.S. Office of Management and Budget (U.S. OMB) circulars and Federal Acquisition Regulation (FAR) provisions as follows:

(a) U.S. OMB Guidance for Grants and Agreements, "Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87)," 2 C.F.R. Part 225, applies to Project costs incurred by a Recipient that is a State, local, or Indian tribal government.

(b) U.S. OMB Guidance for Grants and Agreements, "Cost Principles for Educational Institutions (OMB Circular A-21)," 2 C.F.R. Part 220, applies to Project costs incurred by a Recipient that is an institution of higher education.

(c) U.S. OMB Guidance for Grants and Agreements "Cost Principles for Non-profit Organizations (OMB Circular A-122)," 2 C.F.R. Part 230, applies to Project costs incurred by a Recipient that is a private nonprofit organization.

(d) FAR, at 48 C.F.R. Chapter I, Subpart 31.2, "Contracts with Commercial Organizations" applies to Project costs incurred by a Recipient that is a for-profit organization.

d. Bond Interest and Other Financing Costs. To the extent permitted by Federal law, regulation, or directive, bond interest and other financing costs are allowable. The Recipient agrees that FTA's participation in Project interest costs will be limited to an amount that does not exceed the most favorable financing terms reasonably available for the Project at the time of borrowing, except to the extent FTA determines otherwise in writing.

e. Excluded Costs. The Recipient understands and agrees that, except to the extent FTA determines otherwise in writing, ineligible costs will be treated as follows:

(1) In determining the amount of Federal assistance FTA will provide for the Project, FTA will exclude:

(a) Any Project cost incurred by the Recipient before the Effective Date of the Grant Agreement, Cooperative Agreement or Amendment thereto, unless otherwise permitted by Federal law, regulation, or directive, or unless an authorized FTA official states in writing to the contrary;

(b) Any cost that is not included in the latest Approved Project Budget;

(c) Any cost for Project property or services received in connection with a subagreement, lease, third party contract, or other arrangement that is required to be, but has not been, concurred in or approved in writing by FTA;

(d) Any ordinary governmental or nonproject operating cost, consistent with the prohibitions of 49 U.S.C. § 5323(h); and

(e) Any cost ineligible for FTA participation as provided by applicable Federal laws, regulations, or directives, except to the extent the Federal Government determines otherwise in writing.

(2) The Recipient understands and agrees that payment to the Recipient for any Project cost does not constitute the Federal Government's final decision about whether that cost is allowable and eligible for payment and does not constitute a waiver of any violation by the Recipient of the terms of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement. The Recipient acknowledges that the Federal Government will not make a final determination about the allowability and eligibility of any cost until an audit of the Project has been completed. If the Federal Government determines that the Recipient is not entitled to receive any portion of the Federal assistance requested or provided, the Federal Government will notify the Recipient in writing, stating its reasons. The Recipient agrees that Project closeout will not alter the Recipient's responsibility to return any funds due the Federal Government as a result of later refunds, corrections, or other transactions; nor will Project closeout alter the Federal Government's right to disallow costs and recover funds on the basis of a later audit or other review. Unless prohibited by Federal law or regulation, the Federal Government may recover any Federal financial assistance made available for the Project as necessary to satisfy any outstanding monetary claims that the Federal Government may have against the Recipient.

f. Federal Claims, Excess Payments, Disallowed Costs, including Interest.

(1) Recipient's Responsibility to Pay. Upon notification to the Recipient that specific amounts are owed to the Federal Government, whether for excess payments of Federal assistance, disallowed costs, or funds recovered from third parties or elsewhere, the Recipient agrees to remit to the Federal Government promptly the amounts owed, including applicable interest, penalties and administrative charges.

(2) Amount of Interest. The Recipient agrees that whether the amount due the Federal Government is treated as a Federal claim or is treated as a debt determines how interest is calculated thereon and becomes due. Thus, Recipient agrees to remit interest to the Federal Government in accordance with the following:

(a) Federal Claims against the Recipient. For claims pursuant to the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Recipient agrees that the amount of interest owed to the Federal Government will be determined in accordance with the provisions of joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest authorized by 31 C.F.R. § 901.9(i), whichever is applicable.

(b) Excess Payments. For excess payments made by the Federal Government to the Recipient that do not qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq.*, the Recipient agrees that the amount of interest owed to the Federal Government depends on whether the Recipient is a State or State instrumentality.

1. A Recipient that is a State or State instrumentality agrees that interest owed to the Federal Government will be determined in accordance with U.S. Treasury regulations, "Rules and Procedures for Efficient Federal-State Funds Transfers," 31 C.F.R. Part 205 that implement section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b).

2. A Recipient that is neither a State nor a State instrumentality agrees that common law interest owed to the Federal Government will be determined in accordance with joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i).

(c) Disallowed Costs. The Recipient agrees that a debt for a disallowed cost might, in certain cases, qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 *et seq*. Whether or not the disallowed cost qualifies as a "claim" under that Act, the Recipient agrees to pay either interest and related charges for disallowed costs as determined by the Federal Government in accordance with joint U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(a) through (g) or common law interest authorized by 31 C.F.R. § 901.9(i), whichever is applicable.

g. De-obligation of Funds. The Recipient agrees that the Federal Government may de-obligate unexpended Federal funds before Project closeout.

Section 10. Project Completion, Audit, Settlement, and Closeout.

A. Project Completion. Within ninety (90) calendar days following Project completion or termination by the Federal Government, the Recipient agrees to submit a final Financial Status Report (either electronically or on Standard Form 269A), a certification of Project expenses, and third party audit reports, as applicable.

B. Audit of Recipients. Except to the extent the Federal Government determines otherwise in writing, the Recipient acknowledges and agrees as follows:

1. Audit Requirements. The Recipient agrees to have performed financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq*. As provided by 49 C.F.R. § 19.26, these financial and compliance audits must comply with the provisions of OMB Circular A-133, Revised, "Audits of States, Local Governments, and Non-Profit Organizations," the latest OMB A-133 Compliance Supplement for U.S. DOT, and any further revision or supplement thereto. The Recipient also agrees to obtain any other audits required by the Federal Government. The Recipient agrees that these audits will be conducted in accordance with U.S. Government Accountability Office, (U.S. GAO) "Government Auditing Standards." The Recipient agrees that Project closeout will not alter the Recipient's audit responsibilities.

2. Audit Costs. Audit costs for Project administration and management are allowable to the extent authorized by OMB Circular A-87, OMB Circular A-21, OMB Circular A-122, or the FAR at 48 C.F.R. Chapter I, Subpart 31.2, whichever is applicable.

C. Funds Owed to the Federal Government. The Recipient agrees to remit to the Federal Government any excess payments made to the Recipient, any costs disallowed by the Federal Government, and any amounts recovered by the Recipient from third parties or from other sources, as well as any penalties and

any interest required by Subsection 9.f(2) of this Master Agreement.

D. Project Closeout. Project closeout occurs when FTA notifies the Recipient that FTA has closed the Project, and either forwards the final Federal assistance payment or acknowledges that the Recipient has remitted the proper refund. The Recipient agrees that Project closeout by FTA does not invalidate any continuing requirements imposed by the Grant Agreement or Cooperative Agreement for the Project, this Master Agreement, or any unmet requirements set forth in the Federal Government's final notification or acknowledgment.

Section 11. Right of the Federal Government to Terminate.

Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Recipient understands and agrees that any failure to make reasonable progress on the Project or violation of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Recipient before the termination date to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Recipient has willfully misused Federal assistance by failing to make adequate progress, failing to make reasonable and appropriate use of Project property, or failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project.

Section 12. Civil Rights.

The Recipient agrees to comply with all applicable civil rights laws, regulations and directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

A. Nondiscrimination in Federal Public Transportation Programs. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

B. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to comply with any applicable implementing Federal directives that may be issued.

C. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each third party contractor at any tier of the Project and each subrecipient at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and implementing Federal regulations and any subsequent amendments thereto. Except to the extent FTA determines otherwise in writing, the Recipient also agrees to comply with any applicable Federal EEO directives that may be issued. Accordingly:

1. General. The Recipient agrees as follows:

   a. The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

   b. If the Recipient is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. Failure by the Recipient to carry out the terms of that EEO program shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification to the Recipient of its failure to carry out the approved EEO program, the Federal Government may impose such remedies as it considers appropriate, including termination of Federal assistance in accordance with Section 11 of this Master Agreement, or other measures that may affect the Recipient's eligibility to obtain future Federal assistance for transportation Projects.

2. Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient agrees to comply and assures the compliance of each third party contractor at any tier or subrecipient at any tier of the Project, with all applicable equal employment opportunity requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and also with any Federal laws, regulations, and directives affecting construction undertaken as part of the Project.

D. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBE) in the Project and assures that each subrecipient, lessee, and third party contractor at any tier of the Project will facilitate participation by DBEs in the Project to the extent applicable. Therefore:

1. The Recipient agrees and assures that it will comply with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.

2. The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any third party contract, or subagreement supported

with Federal assistance derived from U.S. DOT in the administration of its DBE program and will comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26 and approved by U.S. DOT, the Recipient's DBE program, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and the Master Agreement. Upon notification by U.S. DOT to the Recipient of its failure to implement its approved DBE program, U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq*.

E. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing Federal regulations that prohibit discrimination on the basis of sex that may be applicable.

F. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with applicable requirements of:

1. The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq*., and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance, 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age.

2. The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. Part 1625.

G. Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq*., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq*., which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the Recipient agrees to comply with applicable implementing Federal regulations and directives and any subsequent amendments thereto, as follows:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

2. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

3. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;

4. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

5. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

6. U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

7. U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

8. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

9. U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

10. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and

11. Federal civil rights and nondiscrimination directives implementing the foregoing regulations, except to the extent the Federal Government determines otherwise in writing.

H. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq*., with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq*., and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 201 *et seq*., and any amendments to these laws.

I. Access to Services for Persons with Limited English Proficiency. To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 ***Fed. Reg***. 6733 *et seq*., January 22, 2001.

J. Environmental Justice. The Recipient agrees to comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.

K. Other Nondiscrimination Laws. The Recipient agrees to comply with all applicable provisions of other Federal laws, regulations, and directives pertaining to and prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing.

Section 13. Planning and Private Enterprise.

A. General. The Recipient agrees to implement the Project consistent with the plans developed in accordance with the following Federal planning and private enterprise provisions:

1. 49 U.S.C. §§ 5303, 5304, 5306, and 5323(a)(1);

2. Joint Federal Highway Administration (FHWA)/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, as amended by joint FHWA/FTA guidance, "SAFETEA-LU Deadline for New Planning Requirements (July 1, 2007)," dated May 2, 2006 [*Clarifying Guidance on Implementation of SAFETEA-LU Planning Provisions*], and other subsequent Federal directives implementing SAFETEA-LU, except to the extent FTA determines otherwise in writing;

3. Joint FHWA/FTA regulations, "Planning Assistance and Standards," 23 C.F.R. Part 450 and 49 C.F.R. Part 613 to the extent that those regulations are consistent with the SAFETEA-LU amendments to public transportation planning and private enterprise laws and, when promulgated, any subsequent amendments to those regulations; and

4. FTA regulations, "Major Capital Investment Projects," 49 C.F.R. Part 611, to the extent that those regulations are consistent with the SAFETEA-LU amendments to the public transportation planning and private enterprise laws and, when promulgated, any subsequent amendments to those regulations.

B. Governmental and Private Nonprofit Providers of Nonemergency Transportation. In addition to providing opportunities to participate in planning as described in Subsection 13.a of this Master Agreement, to the extent feasible the Recipient agrees to comply with the provisions of 49 U.S.C. § 5323(k), which afford governmental agencies and nonprofit organizations that receive Federal assistance for nonemergency transportation from Federal Government sources (other than U.S. DOT) an opportunity to be included in the design, coordination, and planning of transportation services.

C. Infrastructure Investment. During the implementation of the Project, the Recipient agrees to take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

Section 14. Preference for United States Products and Services.

To the extent applicable, the Recipient agrees to comply with the following U.S. domestic preference requirements:

A. Buy America. The Recipient agrees to comply with 49 U.S.C. § 5323(j) and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661 to the extent those regulations are consistent with SAFETEA-LU provisions, and subsequent amendments to those regulations that may be promulgated. The Recipient also agrees to comply with FTA directives to the extent those directives are consistent with SAFETEA-LU provisions, except to the extent that FTA determines otherwise in writing.

B. Cargo Preference-Use of United States-Flag Vessels. To the extent applicable, the Recipient agrees to comply with 46 App. U.S.C.A. § 1241(b)(1) and U.S. Maritime Administration regulations, "Cargo

Preference-U.S.-Flag Vessels," 46 C.F.R. Part 381.

C. Fly America. The Recipient understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the requirements of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

Section 15. Procurement.

To the extent applicable, the Recipient agrees to comply with the following third party procurement provisions:

A. Federal Standards. The Recipient agrees to comply with the third party procurement requirements of 49 U.S.C. chapter 53 and other applicable Federal laws in effect now or as subsequently enacted; with U.S. DOT third party procurement regulations of 49 C.F.R. § 18.36 or at 49 C.F.R. §§ 19.40 through 19.48, and other applicable Federal regulations pertaining to third party procurements and subsequent amendments thereto, to the extent those regulations are consistent with SAFETEA-LU provisions. The Recipient also agrees to comply with the provisions of FTA Circular 4220.1E, "Third Party Contracting Requirements," to the extent those provisions are consistent with SAFETEA-LU provisions and to comply with any subsequent amendments thereto, except to the extent FTA determines otherwise in writing. Although the FTA "Best Practices Procurement Manual" provides additional procurement guidance, the Recipient understands that the FTA "Best Practices Procurement Manual" is focused on third party procurement processes and may omit certain Federal requirements applicable to the third party contract work to be performed.

B. Full and Open Competition. In accordance with 49 U.S.C. § 5325(a), the Recipient agrees to conduct all procurement transactions in a manner that provides full and open competition as determined by FTA.

C. Exclusionary or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal laws or regulations, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5325(h) by not using any Federal assistance awarded by FTA to support a procurement using exclusionary or discriminatory specifications.

D. Geographic Restrictions. The Recipient agrees that it will not use any State or local geographic preference, except State or local geographic preferences expressly mandated or as permitted by FTA. For example, in procuring architectural, engineering, or related services, however, the contractor's geographic location may be a selection criterion, provided that a sufficient number of qualified firms are eligible to compete.

E. In-State Bus Dealer Restrictions. In accordance with 49 U.S.C. § 5325(i), the Recipient agrees that any State law requiring buses to be purchased through in-State dealers will not apply to acquisitions of vehicles financed with Federal assistance authorized under 49 U.S.C. chapter 53.

F. Neutrality in Labor Relations. To the extent permitted by law, the Recipient agrees to comply with Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," Executive Order No. 13202, as amended by Executive Order No. 13208, 41 U.S.C. § 251 note, which among other things, prohibits requirements for affiliation with a labor organization as a condition for award of any third party contract or subcontract for construction or construction management services,

except to the extent that the Federal Government determines otherwise in writing.

G. Federal Supply Schedules. State, local, or nonprofit Recipients may not use Federal Supply Schedules to acquire federally assisted property or services except to the extent permitted by U.S. GSA, U.S. DOT, or FTA laws, regulations, directives, or determinations.

H. Force Account. The Recipient agrees that FTA may determine the extent to which Federal assistance may be used to participate in force account costs.

I. FTA Technical Review. The Recipient agrees to permit FTA to review and approve the Recipient's technical specifications and requirements to the extent FTA believes necessary to ensure proper Project administration.

J. Project Approval/Third Party Contract Approval. Except to the extent FTA determines otherwise in writing, the Recipient agrees that FTA's award of Federal assistance for the Project does not, by itself, constitute pre-approval of any non-competitive third party contract associated with the Project.

K. Preference for Recycled Products. To the extent applicable, the Recipient agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, which implements section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and with subsequent Federal regulations that may be promulgated. Accordingly, the Recipient agrees to provide a competitive preference for products and services that conserve natural resources, protect the environment, and are energy efficient, except to the extent that the Federal Government determines otherwise in writing.

L. Clean Air and Clean Water. The Recipient agrees to include in each third party contract and each subagreement exceeding $100,000 adequate provisions to ensure that each Project participant will agree to:

1. Report the use of facilities placed on or likely to be placed on the U.S. Environmental Protection Agency (U.S. EPA) "List of Violating Facilities,"

2. Refrain from using any violating facilities,

3. Report violations to FTA and the Regional U.S. EPA Office, and

4. Comply with the inspection and other applicable requirements of:

   a. Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and

   b. Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.

M. National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Recipient agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and comply with FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 *Fed. Reg.* 1455 *et seq.*, January 8, 2001, and any subsequent further implementing directives, except to the extent FTA determines otherwise in writing.

N. Rolling Stock. In acquiring rolling stock, the Recipient agrees as follows:

1. Method of Acquisition. In compliance with 49 U.S.C. § 5325(f), the Recipient agrees that any third party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.

2. Multi-year Options. In accordance with 49 U.S.C. § 5325(e)(1), a Recipient procuring rolling stock financed with Federal assistance under 49 U.S.C. chapter 53 may not enter into a multi-year contract with options, exceeding five (5) years after the date of the original contract, to purchase additional rolling stock and replacement parts.

3. Pre-Award and Post-Delivery Requirements. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663 and, when promulgated, any amendments to those regulations. The Recipient understands and agrees that to the extent the provisions of 49 U.S.C. § 5323(m), as amended by SAFETEA-LU conflict with FTA's implementing regulations as currently promulgated, the provisions of 49 U.S.C. § 5323(m), as amended, prevail.

4. Bus Testing. To the extent applicable, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5318(e) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

O. Bonding. Except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the following bonding requirements, as applicable:

1. Construction Activities. The Recipient agrees to provide bid guarantee, contract performance, and payment bonds to the extent deemed adequate by FTA and applicable Federal regulations, and comply with any other construction bonding provisions as FTA may determine.

2. Other Activities. The Recipient agrees to comply with any other bonding requirements or restrictions as FTA may determine.

P. Architectural, Engineering, Design, or Related Services. In compliance with 49 U.S.C. § 5325(b), the Recipient agrees to comply with the following requirements pertaining to the procurement of architectural, engineering, or related services that will be financed with funds authorized under 49 U.S.C. chapter 53 or required by Federal law to be administered in accordance with 49 U.S.C. chapter 53:

1. When procuring architectural, engineering, or related services, the Recipient agrees that it and its subcontractors at any tier will:

   a. Negotiate for those services in the same manner as a contract for architectural, engineering, or related services is negotiated under chapter 11 of Title 40, United States Code, or

   b. Comply with an equivalent State qualifications-based requirement for contracting for architectural, engineering, and design services, provided the State has adopted by law such requirement before August 10, 2005.

2. Upon awarding a contract for those services, the Recipient agrees that and its subcontractors at any tier will:

a. Perform and audit the third party contract or the third party subcontract in compliance with the cost principles of the FAR as set forth in 48 C.F.R. Part 31.

b. Will accept the indirect cost rates established by a cognizant Federal or State government agency in accordance with the FAR for one-year applicable accounting periods, if those rates are not currently under dispute.

c. Apply the firm's indirect cost rates, without any limitation by administrative or de facto ceilings, for purposes of contract estimation, negotiation, administration, reporting, and contract payment, after the firm's indirect cost rates are accepted as described in Subsection 15.p(2)(b) of this Master Agreement.

d. The Recipient agrees and assures that it and any of a group of entities sharing cost or rate data described in Subsection 15.p(2)(c) of this Master Agreement shall:

(1) Notify any affected firm before requesting or using that data,

(2) Maintain the confidentiality of that data and assure that it is not accessible or provided to others, and

(3) Not disclose that data under any circumstances if doing so is prohibited by law.

Q. Design-Build Projects. In accordance with 49 U.S.C. § 5325(d)(2), the Recipient may use design-build procurements to implement its Projects after it has complied with requirements established by the Federal Government, whether through Federal regulations or through Federal directives, except to the extent the Federal Government determines otherwise in writing.

R. Award to Other than the Lowest Bidder. In accordance with 49 U.S.C. § 5325(c), a Recipient may award a third party contract to other than the lowest bidder, if the award furthers an objective (such as improved long-term operating efficiency and lower long-term costs) consistent with the purposes of 49 U.S.C. chapter 53 , and any implementing Federal regulations or directives that FTA may issue, except to the extent FTA determines otherwise in writing.

S. Award to Responsible Contractors. In compliance with 49 U.S.C. § 5325(j), the Recipient agrees to award third party contracts only to those contractors possessing the ability to successfully perform under the terms of the proposed procurement, and before awarding a third party contract, the Recipient agrees to consider:

1. The integrity of the third party contractor,

2. The third party contractor's compliance with public policy,

3. The third party contractor's past performance, including the performance reported in Contractor Performance Assessment Reports required by 49 U.S.C. § 5309(l)(2), if any, and

4. The third party contractor's financial and technical resources.

T. Access to Third Party Contract Records. The Recipient agrees to require its third party contractors and third party subcontractors, at as many tiers as required, to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all

third party contract records to the extent required by 49 U.S.C. § 5325(g). The Recipient further agrees to require its third party contractors and third party subcontractors, to provide sufficient access to third party procurement records as needed for compliance with Federal regulations or to assure proper Project management as determined by FTA.

U. Electronic and Information Technology. When using Federal assistance to procure reports or information to be delivered to the Recipient for distribution to FTA, among others, the Recipient agrees to include in its specifications a requirement that the reports or information will be prepared using electronic or information technology capable of assuring that the reports or information, when provided to FTA, will meet the applicable accessibility standards of section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

Section 16. Leases.

A. Capital Leases. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Capital Leases," 49 C.F.R. Part 639, and any revision thereto.

B. Leases Involving Certificates of Participation. The Recipient agrees to obtain FTA concurrence before entering into any leasing arrangement involving the issuance of certificates of participation in connection with the acquisition of any capital asset.

Section 17. Patent Rights.

A. General. If any invention, improvement, or discovery of the Recipient or any subrecipient or any third party contractor at any tier is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify FTA immediately and provide a detailed report in a format satisfactory to FTA.

B. Federal Rights. The Recipient agrees that its rights and responsibilities, and those of each subrecipient and each third party contractor at any tier, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, or third party subcontract, as specified in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401 (implementing 35 U.S.C. §§ 200 *et seq*.), irrespective of the status of the Recipient, subrecipient, or third party contractor (i.e., a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, individual, etc.).

Section 18. Rights in Data and Copyrights.

A. Definition. The term "subject data," as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" does not include financial reports, cost analyses, or similar information used for Project administration.

B. General. The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:

1. Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

2. The restrictions on publication of Subsection 18.b(1) of this Master Agreement, however, do not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.

C. Federal Rights in Data and Copyrights. The Recipient agrees to provide to the Federal Government a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of this Master Agreement. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:

1. Any subject data developed under the Grant Agreement or Cooperative Agreement for the Project, or under a subagreement or third party contract supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and

2. Any rights of copyright to which a Recipient, subrecipient, or a third party contractor purchases ownership with Federal assistance.

D. Special Federal Rights in Data for Research, Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, except to the extent that FTA determines otherwise in writing, the Recipient of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of this Master Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.a of this Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use when the costs thereof are financed with Federal funds for capital Projects.

E. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing, upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such

liability caused by the wrongful acts of Federal employees or agents.

F. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.

G. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support, even though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."

H. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or subsequent Federal laws or regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the provisions of the Freedom of Information Act (or another Federal law providing access to such records).

Section 19. Use of Real Property, Equipment, and Supplies.

The Recipient understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance (Project property) until, and to the extent, that the Federal Government relinquishes its Federal interest in that Project property. With respect to any Project property financed with Federal assistance under the Grant Agreement or Cooperative Agreement, the Recipient agrees to comply with the following provisions of this Master Agreement, except to the extent FTA determines otherwise in writing:

A. Use of Project Property. The Recipient agrees to maintain continuing control of the use of Project property to the extent satisfactory to FTA. The Recipient agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the award period and used to support public transportation activities) for the duration of the useful life of that property, as required by FTA. Should the Recipient unreasonably delay or fail to use Project property during the useful life of that property, the Recipient agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Recipient further agrees to notify FTA immediately when any Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Recipient has made in its Application or in the Project Description for the Grant Agreement or Cooperative Agreement for the Project.

B. General. A Recipient that is a State, local, or Indian tribal government agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto, and with other applicable Federal regulations and directives. A Recipient that is an institution of higher education or private nonprofit entity, agrees to comply with the property management standards of 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and with other applicable Federal regulations and directives. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, or the requirements of 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the Federal

Government in writing. A Recipient that is a for-profit entity agrees to comply with property management standards satisfactory to FTA. The Recipient also agrees to comply with FTA's reimbursement requirements for premature dispositions of certain Project equipment, as set forth in Subsection 19.g of this Master Agreement.

C. Maintenance. The Recipient agrees to maintain Project property in good operating order, in compliance with any applicable Federal regulations or directives that may be issued, except to the extent that FTA determines otherwise in writing.

D. Records. The Recipient agrees to keep satisfactory records pertaining to the use of Project property, and submit to FTA upon request such information as may be required to assure compliance with this Section 19 of this Master Agreement.

E. Incidental Use. The Recipient agrees that:

1. General. Any incidental use of Project property will not exceed that permitted under applicable Federal laws, regulations, and directives.

2. Alternative Fueling Facilities. In accordance with 49 U.S.C. § 5323(p), any incidental use of its federally financed alternative fueling facilities and equipment by nontransit public entities and private entities will be permitted, only if:

a. The incidental use does not interfere with the Recipient's Project or public transportation operations;

b. The Recipient fully recaptures all costs related to the incidental use from the nontransit public entity or private entity;

c. The Recipient uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and

d. Private entities pay all applicable excise taxes on fuel.

F. Encumbrance of Project Property. Unless FTA approves otherwise in writing, the Recipient agrees to maintain satisfactory continuing control of Project property as follows:

1. Written Transactions. Absent the express consent of the Federal Government, the Recipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, subagreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal interest in that Project property.

2. Oral Transactions. Absent the express consent of the Federal Government, the Recipient agrees that it will not obligate itself to any third party with respect to Project property in any manner that would adversely affect the continuing Federal interest in any Project property.

3. Other Actions. The Recipient agrees that it will not take any action that would either adversely affect the Federal interest or adversely impair the Recipient's continuing control of the use of Project property.

G. Transfer of Project Property. The Recipient understands and agrees as follows:

1. Recipient Request. The Recipient may transfer any Project property financed with Federal assistance authorized under 49 U.S.C. chapter 53 to a local governmental authority to be used for any public purpose with no further obligation to the Federal Government, provided the transfer is approved by the Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(h)(1) through 5334(h)(3).

2. Federal Government Direction. The Recipient agrees that the Federal Government may direct the disposition of, and even require the Recipient to transfer title to, any Project property financed with Federal assistance awarded for the Grant Agreement or Cooperative Agreement.

3. Leasing Project Property to Another Party. Unless FTA has determined or determines otherwise in writing, if the Recipient leases any Project property to another party, the Recipient agrees to retain ownership of the leased Project property, and assures that the lessee will use the Project property appropriately, either through a written lease between the Recipient and lessee, or another similar document. Upon request by FTA, the Recipient agrees to provide a copy of any relevant documents.

H. Disposition of Project Property. With prior FTA approval, the Recipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects to the extent permitted by 49 U.S.C. § 5334(h)(4). The Recipient also agrees that FTA may establish the useful life of Project property, and that it will use Project property continuously and appropriately throughout the useful life of that property.

1. Project Property Whose Useful Life Has Expired. When the useful life of Project property has expired, the Recipient agrees to comply with FTA's disposition requirements.

2. Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Recipient agrees as follows:

a. Notification Requirement. The Recipient agrees to notify FTA immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

b. Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Recipient agrees that the Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the Federal interest in the Project property shall be determined on the basis of the ratio of the Federal assistance made available for the property to the actual cost of the property. The Recipient agrees that the fair market value of Project property prematurely withdrawn from use will be calculated as follows:

(1) Equipment and Supplies. Unless otherwise determined in writing by FTA, the Recipient agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation of that property, based on the useful life of the equipment or supplies as established or approved by FTA. The fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or

supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own disposition procedures, provided that those procedures comply with the laws of that State.

(2) Real Property. The Recipient agrees that the fair market value of real property financed under the Project shall be determined by FTA either on the basis of competent appraisal based on an appropriate date approved by FTA, as provided by 49 C.F.R. Part 24, by straight line depreciation of improvements to real property coupled with the value of the land as determined by FTA on the basis of appraisal, or other Federal law or regulations that may be applicable.

(3) Exceptional Circumstances. The Recipient agrees that the Federal Government may require the use of another method to determine the fair market value of withdrawn Project property. In unusual circumstances, the Recipient may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Recipient pertaining to the preservation of Project property no longer used for appropriate purposes.

c. Financial Obligations to the Federal Government. Unless otherwise approved in writing by the Federal Government, the Recipient agrees to remit to the Federal Government the Federal interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Recipient may fulfill its obligations to remit the Federal interest by either:

(1) Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided Federal assistance for the property that has been prematurely withdrawn from use; or

(2) Returning to the Federal Government an amount equal to the remaining Federal interest in the withdrawn Project property.

I. Insurance Proceeds. If the Recipient receives insurance proceeds as a result of damage or destruction to the Project property, the Recipient agrees to:

1. Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or

2. Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Project property.

J. Transportation - Hazardous Materials. The Recipient agrees to comply with applicable requirements of U.S. Pipeline and Hazardous Materials Safety Administration regulations, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173, in connection with the transportation of any hazardous materials.

K. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Recipient's knowledge and consent, the Recipient agrees to restore the Project property

to its original condition or refund the value of the Federal interest in that property, as the Federal Government may require.

L. Responsibilities After Project Closeout. The Recipient agrees that Project closeout will not change the Recipient's Project property management responsibilities as stated in Section 19 of this Master Agreement, and as may be set forth in subsequent Federal laws, regulations, and directives, except to the extent the Federal Government determines otherwise in writing.

Section 20. Insurance.

In addition to other insurance requirements that may apply, the Recipient agrees as follows:

A. Minimum Requirements. At a minimum, the Recipient agrees to comply with the insurance requirements normally imposed by its State and local laws, regulations, and ordinances, except to the extent that the Federal Government determines otherwise in writing.

B. Flood Hazards. To the extent applicable, the Recipient agrees to comply with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any Project activity involving construction or an acquisition having an insurable cost of $10,000 or more.

Section 21. Relocation.

When relocation of individuals or businesses is required, the Recipient agrees as follows:

A. Relocation Protections. The Recipient agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons displaced and persons whose property is acquired as a result of Federal and federally assisted programs. [*See*, new U.S. DOT final rule, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, at 70 *Fed. Reg*. 590 *et seq*., January 4, 2005.] These requirements apply to relocation in connection with all interests in real property acquired for the Project regardless of Federal participation in the costs of that real property.

B. Nondiscrimination in Housing. In carrying out its responsibilities to provide housing that may be required for compliance with Federal relocation requirements for individuals, the Recipient agrees to comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§ 3601 *et seq*., and with Executive Order No. 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," 42 U.S.C. § 3608 note.

C. Prohibition Against Use of Lead-Based Paint. In undertaking construction or rehabilitation of residential structures on behalf of individuals affected by real property acquisition in connection with the Project, the Recipient agrees that it will not use lead-based paint, consistent with the prohibitions of section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b), and the provisions of U.S. Housing and Urban Development regulations, "Lead-based Paint Poisoning in Certain Residential Structures," 42 C.F.R. Part 35.1.

Section 22. Real Property.

For real property acquired with Federal assistance, the Recipient agrees as follows:

A. Land Acquisition. The Recipient agrees to comply with 49 U.S.C. § 5324(a), which requires compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and with U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24. These requirements apply to all interests in real property acquired for Project purposes regardless of Federal participation in the cost of that real property.

B. Covenant Assuring Nondiscrimination. The Recipient agrees to include a covenant in the title of the real property acquired for the Project to assure nondiscrimination during the useful life of the Project.

C. Recording Title to Real Property. To the extent required by FTA, the Recipient agrees to record the Federal interest in title to real property used in connection with the Project.

D. FTA Approval of Changes in Real Property Ownership. The Recipient agrees that it will not dispose of, modify the use of, or change the terms of the real property title of, or any other interest in the site and facilities used in the Project without permission and instructions from FTA.

Section 23. Construction.

Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees as follows:

A. Drafting, Review, and Approval of Construction Plans and Specifications. The Recipient agrees to comply with FTA requests pertaining to the drafting, review, and approval of construction plans and specifications.

B. Supervision of Construction. The Recipient agrees to provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms to the approved plans and specifications.

C. Construction Reports. The Recipient agrees to provide progress reports and other data and information as may be required by FTA or the State in which the construction takes place.

D. Project Management for Major Capital Projects. To the extent applicable, the Recipient agrees to comply with FTA regulations, "Project Management Oversight," 49 C.F.R. Part 633, and any subsequent Project Management Oversight regulations FTA may issue.

E. Seismic Safety. The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and with U.S. DOT regulations, “Seismic Safety,” 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117).

Section 24. Employee Protections.

A. Construction Activities. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with the following laws and regulations providing protections for construction employees:

1. Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141 *et seq.*, pursuant to FTA enabling legislation requiring compliance with the Davis-Bacon Act at 49 U.S.C. § 5333(a), and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5;

2. Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, specifically, the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and implementing U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5; and the safety requirements of section 107 of that Act at 40 U.S.C. § 3704, and implementing U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and

3. Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874, and implementing U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3.

B. Activities Not Involving Construction. The Recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with the employee protection requirements for nonconstruction employees of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 3701 *et seq.*, in particular with the wage and hour requirements of section 102 of that Act at 40 U.S.C. § 3702, and with U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

C. Activities Involving Commerce. The Recipient agrees that the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, applies to employees performing Project work involving commerce.

D. Public Transportation Employee Protective Arrangements. If the Grant Agreement or Cooperative Agreement for the Project indicates that public transportation employee protective arrangements required by U.S. DOL apply to public transportation operations performed in connection with the Project, the Recipient agrees to comply with the applicable requirements for its Project as follows:

1. Standard Public Transportation Employee Protective Arrangements. To the extent that the Project involves public transportation operations and as required by Federal law, the Recipient agrees to implement the Project in accordance with the terms and conditions that the U.S. Secretary of Labor has determined to be fair and equitable to protect the interests of any employees affected by the Project and that comply with the requirements of 49 U.S.C. § 5333(b), and with the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," 29 C.F.R. Part 215 and any amendments thereto. These terms and conditions are identified in U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees to implement the Project in accordance with the conditions stated in that U.S. DOL certification. That certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The requirements of this Subsection 24.d(1) of this Master Agreement do not apply to Projects for elderly individuals or individuals with disabilities that are authorized by 49 U.S.C. § 5310(a)(2) or subsection 3012(b) of SAFETEA-LU, or to Projects for

nonurbanized areas authorized by 49 U.S.C. § 5311; separate requirements for those Projects are contained in Subsections 24.d(2) and (3), respectively, of this Master Agreement.

2. Public Transportation Employee Protective Arrangements for Elderly Individuals and Individuals with Disabilities for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program. To the extent that the U.S. Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. § 5333(b) are necessary or appropriate for a governmental authority subrecipient participating a Project authorized by 49 U.S.C. § 5310(b)(2) or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, the Recipient agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor necessary to comply with the requirements of 49 U.S.C. § 5333(b), and the U.S. DOL guidelines, "Section 5333(b), Federal Transit Law," at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's certification of public transportation employee protective arrangements to FTA, the date of which appears in the Grant Agreement. The Recipient agrees to implement the Project in compliance with the conditions stated in that U.S. DOL certification. That U.S. DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement.

3. Public Transportation Employee Protective Arrangements for Projects in Nonurbanized Areas Authorized by 49 U.S.C. § 5311. The Recipient agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, U.S. DOL implementing procedures, and any revisions thereto.

Section 25. Environmental Protections.

The Recipient recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major Federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 through 4335; the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q and scattered sections of Title 29, United States Code; the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901 through 6992k; the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 through 9675, as well as environmental provisions within Title 23, United States Code, and 49 U.S.C. chapter 53. The Recipient also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and in the future are expected to issue, Federal regulations and directives that may affect the Project. Thus, the Recipient agrees to comply, and assures the compliance of each subrecipient and each third party contractor, with any applicable Federal laws, regulations and directives as the Federal Government are in effect now or become effective in the future, except to the extent the Federal Government determines otherwise in writing. Listed below are environmental provisions of particular concern to FTA and the Recipient. The Recipient understands and agrees that those laws, regulations, and directives may not constitute the Recipient's entire obligation to meet all Federal environmental and resource conservation requirements.

A. National Environmental Policy. Federal assistance is contingent upon the Recipient’s facilitating FTA’s compliance with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 through 4335 (as restricted by 42 U.S.C. § 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; FTA statutory requirements at 49 U.S.C. § 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related

Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and subsequent Federal environmental protection regulations that may be promulgated. As a result of enactment of 23 U.S.C. §§ 139 and 326 as well as to amendments to 23 U.S.C. § 138, environmental decisionmaking requirements imposed on FTA projects to be implemented consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued, except to the extent that FTA determines otherwise in writing.

B. Air Quality. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws, regulations, and directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. In addition:

1. The Recipient agrees to comply with the applicable requirements of section 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c), consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA-LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued; with U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 US.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, and any subsequent Federal conformity regulations that may be promulgated. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

2. U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to public transportation operators, particularly operators of large public transportation bus fleets. Accordingly, the Recipient agrees to comply with the following U.S. EPA regulations to the extent they apply to the Project: "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

3. The Recipient agrees to comply with the notice of violating facility provisions of Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

C. Clean Water. Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal regulations and directives issued pursuant to the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. Specifically:

1. The Recipient agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.

2. The Recipient agrees to comply with the notice of violating facility provisions of Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

D. Use of Public Lands. The Recipient agrees that in implementing its Project, it will not use any publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, and it will not use any land from a historic site of national, state, or local significance, unless the Federal Government makes the findings required by 49 U.S.C. §§ 303(b) and 303(c). The Recipient also agrees to comply with joint FHWA/FTA regulations, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites," 23 C.F.R. Parts 771 and 774, and 49 C.F.R. Part 622, when promulgated.

E. Wild and Scenic Rivers. The Recipient agrees to comply with applicable provisions of the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 through 1287, relating to protecting components of the national wild and scenic rivers system; and to the extent applicable, with U.S. Forest Service regulations, "Wild and Scenic Rivers," 36 C.F.R. Part 297, and with U.S. Bureau of Land Management regulations, "Management Areas," 43 C.F.R. Part 8350.

F. Coastal Zone Management. The Recipient agrees to assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. §§ 1451 through 1465.

G. Wetlands. The Recipient agrees to facilitate compliance with the protections for wetlands of Executive Order No. 11990, as amended, "Protection of Wetlands," at 42 U.S.C. § 4321 note.

H. Floodplains. The Recipient agrees to facilitate compliance with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management," 42 U.S.C. § 4321 note.

I. Endangered Species and Fisheries Conservation. The Recipient agrees to comply with protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 through 1544, and the Magnuson Stevens Fisheries Conservation Act, as amended, 16 U.S.C. §§ 1801 *et seq*.

J. Historic Preservation. The Recipient agrees to encourage compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a through 469c, as follows:

1. In accordance with U.S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the Recipient agrees to consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and agrees to notify FTA of those properties that are affected.

2. The Recipient agrees to comply with all applicable Federal regulations and directives to avoid or mitigate adverse effects on those historic properties, except to the extent the Federal Government determines otherwise in writing.

K. Indian Sacred Sites. The Recipient agrees to facilitate compliance with the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, in accordance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and with Executive Order No. 13007, "Indian Sacred Sites," 42 U.S.C. § 1996 note, except to the extent that the Federal

Government determines otherwise in writing.

L. Mitigation of Adverse Environmental Effects. Should the proposed Project cause or result in adverse environmental effects, the Recipient agrees to take all reasonable measures to minimize the impact of those adverse effects, as required by 49 U.S.C. § 5324(b), and other applicable Federal laws and regulations, including 23 C.F.R. Part 771 and 49 C.F.R. Part 622. The Recipient agrees to comply with all environmental mitigation measures that may be identified as commitments in applicable environmental documents, (*i.e.*, environmental assessments, environmental impact statements, memoranda of agreement, and other documents as required by 49 U.S.C. § 303) and agrees to comply with any conditions the Federal Government might impose in a finding of no significant impact or record of decision. The Recipient agrees that those environmental mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient also agrees that any deferred mitigation measures will be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project as soon as agreement with the Federal Government is reached. The Recipient agrees that those mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

Section 26. Energy Conservation.

The Recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Recipient agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

Section 27. State Management and Monitoring Systems.

The Recipient agrees to comply with joint FHWA/FTA regulations, "Management and Monitoring Systems," 23 C.F.R. Parts 500, Parts A and B, and FTA regulations, "Transportation Infrastructure Management," 49 C.F.R. Part 614, to the extent applicable.

Section 28. Charter Service Operations.

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142 will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, "Charter Service," 49 C.F.R. Part 604, and any subsequent Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any charter service agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient understands and agrees that in addition to any remedy specified in the charter service agreement, if a pattern of violations of that agreement is found, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

Section 29. School Transportation Operations.

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53, or under 23 U.S.C. §§ 133 or 142 will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605, and any subsequent School Transportation

Operations regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. Any school transportation operations agreement required by FTA regulations is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient understands and agrees that if it or an operator violates that school transportation operations agreement, the violator will be barred from receiving Federal transit assistance in an amount to be determined by FTA or U.S. DOT.

Section 30. Metric System.

To the extent U.S. DOT or FTA directs, the Recipient agrees to use the metric system of measurement in its Project activities, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and U.S. DOT or FTA regulations and directives. As practicable and feasible, the Recipient agrees to accept products and services with dimensions expressed in the metric system of measurement.

Section 31. Geographic Information and Related Spatial Data.

In accordance with U.S. OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities," August 19, 2002, the Recipient agrees to implement its Project so that any activities involving spatial data and geographic information systems activities financed directly or indirectly, in whole or in part, by Federal assistance, consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

Section 32. Substance Abuse.

To the extent applicable, the Recipient agrees to comply with the following Federal regulations:

A. Drug-Free Workplace. U.S. DOT regulations, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)," 49 C.F.R. Part 32, that implement the Drug-Free Workplace Act of 1988, 41 U.S.C. §§ 701 *et seq*.

B. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 655, that implement 49 U.S.C. § 5331.

Section 33. Motor Carrier Safety

To the extent applicable, the Recipient agrees to comply with, and assures the compliance of its subrecipients, lessees, and third party contractors with, applicable provisions of the following regulations promulgated by the U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA):

A. Financial Responsibility. The Recipient agrees as follows:

1. To the extent that the Recipient is engaged in interstate commerce and not within a defined commercial zone, the Recipient agrees to comply with U.S. FMCSA regulations, "Minimum Levels of Financial Responsibility for Motor Carriers," 49 U.S.C. Part 387, dealing with economic registration and insurance requirements. For Recipients of Federal assistance under 49 U.S.C. §§ 5307, 5310, or 5311, 49 C.F.R. Part 387 is modified by 49 U.S.C. § 31138(e)(4) which reduces the amount of insurance required of such Recipients to the highest amount of any state in which the transit provider operates.

2. To the extent that the Recipient is engaged in interstate commerce and not within a defined commercial zone and is not a unit of government (defined as Federal Government, a state, any political subdivision of a state or any agency established under a compact between states), the Recipient agrees to comply with U.S. FMCSA regulations, Subpart B, "Federal Motor Carrier Safety Regulations," at 49 CFR Parts 390 through 396.

B. Driver Qualifications. The Recipient agrees to comply with U.S. FMCSA's regulations, "Commercial Driver's License Standards, Requirements, and Penalties," 49 C.F.R. Part 383.

C. Substance Abuse Rules for Motor Carriers. The Recipient agrees to comply with U.S. FMCSA's regulations, "Drug and Alcohol Use and Testing Requirements," 49 C.F.R. Part 382, which apply to transit providers that operate a commercial motor vehicle that has a gross vehicle weight rating over 26,000 pounds or is designed to transport sixteen (16) or more passengers, including the driver.

Section 34. State Safety Oversight of Rail Fixed Guideway Public Systems.

To the extent applicable, the Recipient agrees to comply with 49 U.S.C. § 5330, with FTA regulations, "Rail Fixed Guideway Systems; State Safety Oversight," 49 C.F.R. Part 659, and any Federal directives that may be issued to implement 49 U.S.C. § 5330, and any subsequent amendment or revision thereto.

Section 35. Seat Belt Use.

In accordance with Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, the Recipient is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned, rented, or personally operated vehicles, and to include this provision in any third party contracts, third party subcontracts, or subagreements involving the Project.

Section 36. Protection of Sensitive Security Information.

To the extent applicable, the Recipient agrees to comply with 49 U.S.C. § 40119(b) and implementing U.S. DOT regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 15, and with 49 U.S.C. § 114(s) and implementing U.S. Department of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.

Section 37. Special Notification Requirements for States.

To the extent required by Federal law, the State agrees that, in administering any Federal assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of Federal assistance for the Program or the Project shall indicate that FTA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as applicable, and the amount provided.

Section 38. Special Provisions for the Urbanized Area Formula Program.

The Recipient agrees that the following provisions apply to Urbanized Area Formula Program assistance authorized under 49 U.S.C. § 5307, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. Fares and Services. Before increasing fares or instituting a major reduction of service, the Recipient agrees to use its established administrative process to solicit and consider public comment.

B. Audit Requirements. The Recipient agrees that the Federal Government may conduct, or may require the Recipient to engage an independent entity to conduct, annual or more frequent reviews and audits as required by 49 U.S.C. § 5307(h) and any applicable Federal regulations or directives that may be issued. The Recipient agrees that such audits will be conducted in accordance with U.S. GAO "Government Auditing Standards."

C. Half-Fare Requirements. The Recipient agrees that the fares or rates it charges elderly individuals and handicapped individuals during nonpeak hours for public transportation using or involving Project facilities and equipment will not exceed one-half of the rates that generally apply to other individuals at peak hours, irrespective of whether the operation of Project facilities or equipment is by the Recipient or by another entity connected with the Project either through lease, third party contract, or otherwise. In addition, the Recipient agrees to give the rate required herein to any individual presenting a Medicare card duly issued to that individual pursuant to Title II or XVIII of the Social Security Act, 42 U.S.C. §§ 401 *et seq.*, or 42 U.S.C. §§ 1395 *et. seq.*, respectively.

D. Use of Formula Assistance for Operations. A Recipient authorized to use Federal assistance authorized under 49 U.S.C. § 5307 to support operations agrees as follows:

1. The Recipient will comply with the restrictions of 49 U.S.C. §§ 5307(b) and 5307(f) in using Urbanized Area Formula Program assistance for operations, unless permitted otherwise by subsequent Federal law, regulation, or directive.

2. Federal assistance authorized by 49 U.S.C. § 5307 may be applied to the Net Project Cost of the Recipient's operating expenses incurred during the Project time period as set forth in the Approved Project Budget and, with FTA approval, may be extended to a later date to the extent permitted by law, provided that applicable operating assistance limits are not exceeded.

E. Public Transportation Security. For each fiscal year, the Recipient agrees to spend at least one (1) percent of its Federal assistance authorized under 49 U.S.C. § 5307 for public transportation security projects as described in 49 U.S.C. § 5307(d)(1)(J)(i), unless the Recipient has determined that such expenditures for security projects are not necessary. For a Recipient serving an urbanized area with a population of 200,000 or more, only capital projects are eligible for support with that Federal assistance.

F. Public Transportation Enhancements. If the Recipient serves an urbanized area with a population of 200,000 or more, the Recipient agrees to spend each fiscal year at least one (1) percent of its Federal assistance authorized under 49 U.S.C. § 5307 for public transportation enhancements as defined at 49 U.S.C. § 5302(a), and submit an annual report listing the projects carried out in the preceding fiscal year with that Federal assistance.

G. Reporting Requirements. For each fiscal year, the Recipient agrees to conform, and assures that any public transportation operator to which the Recipient provides Federal assistance authorized under 49 U.S.C. § 5307 will conform to the National Transit Database reporting system and the uniform system of accounts and records required by 49 U.S.C. § 5335(a) for FTA's national transit database. FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630, and any subsequent reporting regulations and directives FTA may promulgate.

H. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in an Urbanized Area Formula Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement for the Project and this Master Agreement.

Section 39. Special Provisions for the Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program.

The Recipient agrees that the following provisions apply to Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program assistance authorized under 49 U.S.C. § 5310 as amended by SAFETEA-LU and subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, respectively, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. Eligible Subrecipients. The Recipient agrees to provide Federal assistance authorized under 49 U.S.C. § 5310 or subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, only to a subrecipient that qualifies as: (1) a private nonprofit organization meeting the special needs of elderly individuals and individuals with disabilities for whom public transportation services are unavailable, insufficient, or inappropriate; (2) a governmental authority approved by the State to coordinate services for elderly individuals and individuals with disabilities; or (3) a governmental authority that certifies to the Governor that there are no nonprofit organizations in its area readily available to provide service meeting the special needs of the elderly individuals and individuals with disabilities.

B. State Procedures. The Recipient agrees to administer each Project financed with Federal assistance authorized under the Elderly Individuals and Individuals with Disabilities Formula Program in accordance with 49 U.S.C. § 5310. A Recipient participating in the Elderly Individuals and Individuals with Disabilities Pilot Program agrees to administer its Projects in accordance with subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note and applicable provisions of 49 U.S.C. § 5310. Except to the extent that FTA determines otherwise in writing, the provisions of FTA Circular 9070.1E, "Elderly and Persons with Disabilities Program Guidance and Application Instructions" including any revisions thereto, and other applicable FTA laws, regulations, and directives, apply to the Project to the extent the provisions of FTA Circular 9070.1E are consistent 49 U.S.C. § 5310 as amended by SAFETEA-LU, or subection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, if applicable. To the extent, however, that 49 U.S.C. § 5310 as amended by SAFETEA-LU, section 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, or any existing or subsequent Federal law or regulation conflicts with the provisions of FTA Circular 9070.1E or any subsequent revision thereto, the latest Federal law or regulation will apply. The Recipient also agrees that when FTA Circular 9070.1F "Elderly Individuals And Individuals With Disabilities Program Guidance and Application Instructions," is issued, the Recipient will comply with the procedures of that circular, except to the extent that FTA determines otherwise in writing. In summary, the Recipient agrees to comply with the latest guidance issued by FTA pertaining to the Elderly Individuals and Individuals with Disabilities Program.

C. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in an Elderly Individuals and Individuals with Disabilities Formula Project or Pilot Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement for the Project and this Master Agreement.

D. Eligible Project Activities. Federal assistance authorized under 49 U.S.C. § 5310 may be used for a Project to meet the special needs of elderly individuals and individuals with disabilities, as follows:

1. Capital Projects. Except as set forth in Subsection 39.d(2) of this Master Agreement below, only capital projects are eligible for Federal assistance authorized under 49 U.S.C. § 5310, and may include meal delivery service to the extent permitted by 49 U.S.C. § 5310(g).

2. Operating Assistance Limitation. Only if the Recipient is selected to participate in the Elderly Individuals and Individuals with Disabilities Pilot Program established by subsection 3012(b) of SAFETEA-LU, 49 U.S.C. § 5310 note, may Federal assistance authorized under 49 U.S.C. § 5310 be used to finance operating expenses, and then only 33 percent of the funds apportioned to that Recipient may be used to finance operating expenses for projects to meet the special needs of elderly individuals and individuals with disabilities.

E. Leasing of Vehicles. Vehicles acquired with Federal assistance authorized under 49 U.S.C. § 5310 may be leased to local governmental authorities to improve transportation services to meet the special needs of elderly individuals and individuals with disabilities.

F. Transfer of Project Property. In addition to 49 U.S.C. § 5334(h), which authorizes the transfer of Project property, 49 U.S.C. § 5310(h) also authorizes the Recipient to transfer Project property acquired with Federal assistance authorized under 49 U.S.C. § 5310 to any entity eligible to receive assistance under 49 U.S.C. chapter 53, provided the subrecipient currently possessing the Project property consents to the transfer, and the transferred Project property will continue to be used in accordance with the requirements of 49 U.S.C. § 5310.

Section 40. Special Provisions for the New Freedom Program

The Recipient agrees that the following provisions apply to New Freedom Program assistance authorized under 49 U.S.C. § 5317, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. General. The Recipient agrees to comply with the requirements of 49 U.S.C. § 5317 and with other Federal laws that may be applicable, as well as with implementing Federal regulations and directives, when issued.

B. FTA Notice. The Recipient agrees to comply with the provisions of the most recent applicable FTA Notice pertaining to the New Freedom Program, and any subsequent revision thereto. In addition, the Recipient agrees to comply with FTA Circular, "New Freedom Program Guidance and Application Instructions," when issued.

C. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a New Freedom Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement.

Section 41. Special Provisions for the Nonurbanized Area Formula Program.

The Recipient agrees that the following provisions apply to Nonurbanized Area Formula Program assistance

administered by States and authorized under 49 U.S.C. § 5311(b), and agrees to comply with the requirements thereof:

A. Provisions Applicable to States.

1. State Procedures. The Recipient agrees to administer each Project in accordance with 49 U.S.C. § 5311(b) and other applicable provisions of 49 U.S.C. § 5311 as amended by SAFETEA-LU. Except to the extent that FTA determines otherwise in writing, the provisions of FTA Circular 9040.1E, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," including any revisions thereto, and other applicable FTA laws, regulations, and directives apply to the Project to the extent those provisions are consistent with 49 U.S.C. § 5311 as amended by SAFETEA-LU. To the extent, however, that 49 U.S.C. § 5311 as amended by SAFETEA-LU or any existing or subsequent Federal law or regulation conflicts with the provisions of FTA Circular 9040.1E or any subsequent revision thereto, the latest Federal law or regulation will apply. The Recipient also agrees that when FTA Circular 9040.1F "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," is issued, the Recipient will comply with the procedures of that circular, except to the extent that FTA determines otherwise in writing. In summary, the Recipient agrees to comply with the latest guidance issued by FTA pertaining to this program.

2. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a Nonurbanized Area Formula Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement for the Project and this Master Agreement.

3. Eligible Project Activities. Federal assistance provided for the Grant Agreement and subagreements may be used for public transportation Projects in areas other than urbanized areas. Projects financed with Federal assistance transferred from other Federal programs must be eligible for Federal assistance authorized under 49 U.S.C. § 5311(b), and may include purchase of service agreements with private providers of public transportation service, as well as capital and operating assistance, and meal delivery service, to the extent permitted by 49 U.S.C. § 5310(g).

4. Transfer of Project Property. In addition to 49 U.S.C. § 5334(h), which authorizes the Recipient to transfer Project facilities and equipment, 49 U.S.C. § 5311(h) also authorizes the Recipient to transfer Project property acquired with Federal assistance authorized under 49 U.S.C. § 5311 to any entity eligible to receive Federal assistance authorized under 49 U.S.C. chapter 53, provided that the subrecipient currently in possession of the Project property consents to the transfer, and the transferred Project property will continue to be used in accordance with the requirements of 49 U.S.C. § 5311.

5. Intercity Transportation. The Recipient agrees to spend a minimum of at least fifteen (15) percent of its Federal assistance authorized under 49 U.S.C. § 5311(f) each fiscal year for intercity transportation Projects, unless the chief executive officer of the State or duly authorized designee has certified to FTA that the intercity bus service needs within the State are being adequately fulfilled.

6. Reporting Requirements. As required by 49 U.S.C. §§ 5311(b)(4) and 5335(a), the Recipient agrees to conform, and assures that any public transportation operator to which the Recipient provides Federal assistance authorized under 49 U.S.C. § 5311(b) will conform, to the reporting system and

the uniform system of accounts and records required by 49 U.S.C. § 5335(a) for FTA's national transit database and FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630, and any subsequent implementing regulations and directives FTA may issue.

B. Provisions Applicable to Indian Tribes. The Recipient agrees as follows:

1. To the extent that an Indian tribe is a subrecipient of Federal assistance authorized under 49 U.S.C. § 5311(b), the Indian tribe will be required to comply with the requirements of Subsection 41.a of this Master Agreement that are applicable to other subrecipients of the State receiving funding derived from 49 U.S.C. § 5311(c)(2), except to the extent that FTA determines otherwise in writing.

2. An Indian tribe that administers a Tribal Transit Project financed with Federal assistance authorized under 49 U.S.C. § 5311(c)(1) is not subject to the provisions of Subsections 41(a) and 41(b)(1) of this Master Agreement with respect to its implementation of that Tribal Transit Project.

Section 42. Special Provisions for the Clean Fuels Grant Program.

The Recipient agrees that the following provisions apply to Clean Fuels Grant Program assistance authorized under 49 U.S.C. § 5308, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. General. The Recipient agrees to comply with 49 U.S.C. § 5308, and with provisions of 49 U.S.C. § 5307, and other Federal laws that may be applicable, as well as with implementing Federal regulations and directives, when issued.

B. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a Clean Fuels Grant Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement for the Project and this Master Agreement.

Section 43. Special Provisions for Research, Development, Demonstration, and Special Studies Projects.

The Recipient agrees to comply with the following provisions pertaining to Projects financed with Federal assistance authorized for research, development, demonstration or special studies projects, except to the extent that FTA determines otherwise in writing:

A. Project Report. The Recipient agrees to:

1. Prepare and make available a comprehensive report of the results of the Project, the conclusions reached, and the methods used.

2. Include appropriate notice in the report that: (a) the report is being disseminated under the sponsorship of the U.S. Department of Transportation, Federal Transit Administration, in order to foster information exchange, (b) the U.S. Government assumes no liability or responsibility for the contents of that report or the use of that report, (c) the U.S. Government is not endorsing any manufacturers, products, or services cited in that report, and (d) any trade name that may appear in that report has been included only because it is essential to the contents of that report.

B. Project Identification. The Recipient agrees that each tangible product developed in the course of or resulting from the Project shall contain or include an appropriate sign, designation, or notification stating that the Project has been financed with Federal assistance provided by the U.S. Department of Transportation, Federal Transit Administration. Unless determined otherwise in writing by FTA, this requirement applies to all equipment, hardware, construction, reports, data, or any similar items produced in the course of the Grant Agreement or Cooperative Agreement for the Project.

C. Protection of Human Subjects. The Recipient agrees to comply with the requirements of the National Research Act, Pub. L. 93-348, July 12, 1974, as amended, 42 U.S.C. §§ 289 *et seq*., and U.S. DOT regulations, "Protection of Human Subjects," 49 C.F.R. Part 11, pertaining to protections for human subjects participating in or involved in research, development, and related activities in connection with the Project.

D. Protection of Animals. The Recipient agrees to comply with the requirements of the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. §§ 2131 *et seq*., and U.S. Department of Agriculture regulations, "Animal Welfare," 9 C.F.R. Subchapter A, Parts 1, 2, 3, and 4 pertaining to the care, handling, and treatment of warm blooded animals involved in Project research, development, and related activities.

E. Export Control. The Recipient agrees that any technical information developed in the course of implementing the Grant Agreement or Cooperative Agreement for the Project may be subject to export control regulations promulgated by the U.S. Department of Commerce, Bureau of Export Administration, and by other Federal Government departments, including the U.S. Department of State, the U.S. Department of the Treasury, and the U.S. Department of Defense. Thus, the Recipient agrees that it will not export to any countries or any foreign persons any technical information or any direct product of that technical information that is subject, directly or indirectly, to U.S. Export Control regulations, without first obtaining the necessary Federal license or licenses and complying with any applicable U.S. Export Control regulations.

Section 44. Special Provisions for the Medical Transportation Demonstration Projects.

The Recipient of Federal assistance under the Medical Transportation Demonstration Program agrees to comply with 49 U.S.C. § 5314(a)(6) and other applicable Federal laws, regulations, and directives when issued, except to the extent FTA determines otherwise in writing.

Section 45. Special Provisions for the National Technical Assistance Center for Senior Transportation.

The Recipient of Federal assistance authorized under the National Technical Assistance Center for Senior Transportation agrees to comply with the requirements of 49 U.S.C. § 5314(c) and other applicable Federal laws, regulations and directives when issued, except to the extent that FTA determines otherwise in writing.

Section 46. Special Provisions for Human Resources Fellowships.

The Recipient agrees that the following provisions apply to Human Resources Fellowships Program assistance authorized under 49 U.S.C. § 5322(b), and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. General. The Recipient agrees to comply with the 49 U.S.C. § 5322(b) and other applicable Federal regulations, and directives, when issued.

B. Fellowship Awards. The Recipient agrees any individual who receives a fellowship financed with Federal assistance under the Human Resources Fellowships Program will be selected on the basis of demonstrated ability and the contribution the individual reasonably can be expected to make to an efficient public transportation operation.

Section 47. Special Provisions for Job Access and Reverse Commute Formula Grant Program.

The Recipient agrees that the following provisions apply to Job Access and Reverse Commute (JARC) Formula Grant Program assistance authorized under 49 U.S.C. § 5316, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. General. The Recipient agrees to comply with 49 U.S.C. § 5316, and provisions of 49 U.S.C. § 5307 and with other Federal laws that may be applicable, and with Federal regulations and directives when issued.

B. FTA Notice. The Recipient agrees to comply with the provisions of the most recent applicable FTA Notice pertaining to the JARC Formula Grant Program, and any subsequent revision thereto. In addition, the Recipient agrees to comply with FTA Circular, "The Job Access And Reverse Commute (JARC) Program Guidance And Application Instructions," when issued.

C. Participation of Subrecipients. The Recipient agrees to enter into a written agreement with each subrecipient participating in a Job Access and Reverse Commute Project, which agreement sets forth the subrecipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the subrecipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement and this Master Agreement.

Section 48. Special Provisions for the Alternative Transportation in Parks and Public Lands Program

The Recipient agrees that the following provisions apply to Alternative Transportation in Parks and Public Lands Program financial assistance authorized under 49 U.S.C. § 5320, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. General. The Recipient agrees to comply with 49 U.S.C. § 5320, and provisions of 49 U.S.C. § 5307 and with other Federal laws that may be applicable, and with Federal regulations and directives, when issued.

B. FTA Notices. The Recipient agrees to comply with the provisions of the most recent applicable FTA Notices pertaining to the Alternative Transportation in Parks and Public Lands Program, and any subsequent revision thereto. Specifically, the Recipient agrees that the provisions of foregoing documents and revisions thereto will supersede conflicting provisions of this Master Agreement.

Section 49. Special Provisions for Over-the-Road Bus Accessibility Projects.

The Recipient agrees that the following provisions apply to Federal assistance authorized under the Over-the-Road Accessibility Program Grants, and agrees to comply with the requirements thereof, except to the extent that FTA determines otherwise in writing:

A. General. The Recipient agrees to comply with any applicable Federal directives that may be issued to implement the Over-the-Road Bus Accessibility Program authorized by section 3038 of TEA-21, as amended by section 3039 of SAFETEA-LU, 49 U.S.C. § 5310 note.

B. Accessibility. The Recipient agrees to comply with the "Over-the-Road Buses," regulations within "U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37, Subpart H, and with joint U.S. ATBCB/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38.

C. FTA Notice. The Recipient agrees to comply with the provisions of the most recent applicable FTA Notice pertaining to Over-the-Road Bus Accessibility Program Grants, and any subsequent revision thereto, supersede conflicting provisions of this Master Agreement.

Section 50. Special Provisions for State Infrastructure Bank Projects.

The Recipient agrees that the following provisions apply to a Project financed with Federal assistance deposited in a State Infrastructure Bank, and agrees to comply with the requirements thereof:

A. General. The Recipient agrees to administer its Project in accordance with laws applicable to the SIB that provides Federal assistance for the Project. Federal requirements for the Project may be set forth in: (1) 23 U.S.C. § 610, (2) section 1511 of TEA-21, 23 U.S.C. § 181 note to the extent it has not been superseded by 23 U.S.C. § 610, (3) section 350 of the National Highway System Designation Act of 1995, as amended, (NHS Act), 23 U.S.C. § 101 note, to the extent it has not been superseded by 23 U.S.C. § 610 (4) any law amending any of the foregoing, and any subsequent law applicable to the Project, (5) any other applicable Federal directives that may be issued, except to the extent FTA determines otherwise in writing, (6) the terms and conditions of U.S. Department of Labor Certification(s) of Public Transportation Employee Protective Arrangements, (7) the Cooperative Agreement establishing the State Infrastructure Bank (SIB) program in the State (entered into by the Federal Highway Administrator, Federal Transit Administrator, and authorized State official), and (8) the FTA Grant Agreement providing Federal assistance for the SIB Project; except, however, any provision of this Master Agreement conflicting with applicable Federal law, applicable Federal SIB Guidelines, the Cooperative Agreement establishing the SIB program within the State, or this Grant Agreement will not apply to the Grant Agreement or the Project to the extent the SIB program is involved, except to the extent FTA determines otherwise in writing.

B. Limitations on Accessing Federal Assistance in the Transit Account. The Recipient understands that the total amount of Federal assistance awarded under the Grant Agreement for the SIB may not be available for immediate withdrawal. Thus, the State agrees to restrict the amount of Federal assistance it withdraws to an amount not exceeding the limitations specified in its Grant Agreement or the Approved Project Budget for that Grant Agreement.

Section 51. Special Provisions for TIFIA Projects.

To the extent applicable, the Recipient agrees to administer each Project financed with Federal assistance authorized under the Transportation Infrastructure Finance and Innovation Act, as amended, in accordance with: (1) 23 U.S.C. §§ 601 through 609, including any further amendments thereto that may be enacted; (2) 49 U.S.C. §§ 5307, 5309, and 5323(o); (3) joint U.S. DOT/FTA regulations, "Credit Assistance for Surface Transportation Projects," 49 C.F.R. Part 80 and 49 C.F.R. Part 640, to the extent those regulations have not been superseded by SAFETEA-LU, and any subsequent amendments to those regulations when promulgated. Any provision of this Master Agreement that conflicts with 23 U.S.C. §§ 601 through 609, 49 U.S.C. §§ 5307, 5309, 5323(o), or the foregoing joint U.S. DOT/FTA regulations, or amendments thereto will not apply to the TIFIA Loan or Loan Guarantee for the Project. The Recipient agrees that FTA may declare the Recipient in violation of the Master

Agreement if the Recipient has defaulted on a TIFIA Loan or a Loan guaranteed under TIFIA and such default has not been cured within 90 days.

Section 52. Disputes, Breaches, Defaults, or Other Litigation.

The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

A. Notification to FTA. The Recipient agrees to notify FTA in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform FTA in writing before doing so. Each notice to FTA under this Section shall be sent, at a minimum, to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.

B. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery, except that the Recipient may return any liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

C. Enforcement. The Recipient agrees to pursue all legal rights provided within any third party contract.

D. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.

E. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

Section 53. Amendments to the Project.

The Recipient agrees that a change in Project circumstances causing an inconsistency with the terms of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement will require an amendment to the Grant Agreement or Cooperative Agreement for the Project signed by the original signatories or their authorized designees or successors. The Recipient agrees that a change in the fundamental information submitted in its Application will also require an Amendment to its Application or the Grant Agreement or Cooperative Agreement for the Project.

Section 54. FTA's Electronic Management System.

A. Recipient Use. Unless FTA permits otherwise in writing, the Recipient agrees to use FTA's electronic management system to submit information and reports to FTA. FTA, however, reserves the right to determine the extent to which the Recipient may use FTA's electronic management system to execute legal documents pertaining to FTA Projects.

B. TEAM System Terminology. The Recipient and FTA agree that the terms used by FTA in its current Transportation Electronic Management (TEAM) system do not necessarily reflect, and are not intended to be treated as, the exclusive evidence of what such matters as Project, its scope, activities, etc. include, except to the extent FTA so states in writing. FTA reserves the right to treat information other than that reflected in the TEAM system as determinative of what constitutes the “Project,” “Scope of the Project,”

and “Project Activities.”

Section 55. Information Obtained Through Internet Links.

This Master Agreement may include electronic links to Federal laws, regulations, and directives. FTA does not guarantee the accuracy of information accessed through such links. Accordingly, the Recipient agrees that information obtained through any electronic link within this Master Agreement does not represent an official version of a Federal law, regulation, or directive, and might be inaccurate. Thus, information obtained through such links is neither incorporated by reference nor made part of this Master Agreement. The Federal Register and the Code of Federal Regulations are the official sources for regulatory information pertaining to the Federal Government.

Section 56. Severability.

If any provision of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement is determined invalid, the remainder of that Agreement shall not be affected if that remainder would continue to conform to the requirements of applicable Federal laws or regulations.

Exhibit D
Fiscal Year 2011 Certifications and Assurances for FTA Assistance Programs

These will be on file for review at Wichita Transit, 777 E. Waterman, when Wichita Transit applies for Section 5307 grant funds in 2011.

CITY OF WICHITA
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Grant of Temporary Easement at the Proposed Water Utilities Aquifer Storage Recharge Treatment Plant near Bentley for the Integrated Local Water Supply Plan (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 project 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. It is then transferred to and stored in the aquifer. The recovery and use of this water will meet future demands for the City of Wichita.

An Aquifer Storage Recharge (ASR) treatment plant is proposed at the southwest side of North 119th Street and West 117th Street near Bentley. On August 17, 2010, City Council granted the Kansas Gas and Electric Company (KGE) utility easement however; it has since been determined that a temporary construction easement is also required. KGE's poles will serve the new plant.

Analysis: A 0.29 acre easement is required during construction to facilitate the construction of KGE's utility poles that will serve the proposed Storage and Recharge Treatment Plant. The easement will revert back to the City upon completion of the work or December 31, 2011, whichever comes first.

Financial Considerations: A budget of $400 is requested for recording and administrative fees. Funding for this project is included in the Capital Improvement Plan (CIP) in W-549, Water Supply Plan Phase III, which has sufficient funding for this particular transaction.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure.

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

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

Attachments: Temporary easement and tract map.

WR#A11752

NE/4 S12-T25S-R2W
City of Wichita, Kansas

TEMPORARY CONSTRUCTION EASEMENT

For and in consideration of the sum of One Dollar ($1.00), and other valuable consideration, the receipt of which is hereby acknowledged, the undersigned Grantor(s), hereinafter referred to as Grantor, does hereby grant to **KANSAS GAS AND ELECTRIC COMPANY**, hereinafter referred to as Grantee, a temporary construction easement for the construction of Bentley West to Bentley East (Wichita Water Works) 138kV Transmission Line, over the following described property located in Sedgwick County, Kansas, to wit:

A strip of land being approximately fifty feet (50') by two hundred fifty and thirty-two hundredths feet (250.32) by fifty and four one hundredths feet (50.04') by two hundred forty eight and twenty-seven hundredths feet (248.27') within a tract of land located in the Northeast Quarter (NE/4) of Section 12, Township 25 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas more particularly described on Exhibit A; attached hereto and made a part hereof by reference;

Said Temporary Construction Easement shall be for the period from _____ to 12/31/2011, and shall cease and terminate thereafter.

Grantee shall repair any physical damage to property of Grantor, or pay any substantial damages on account of physical injury to property of Grantor by the construction of said 138kV Transmission Line; said damages, if not mutually agreed upon, shall be ascertained by three disinterested persons, one of whom shall be selected by each, Grantor and Grantee, their heirs, successors, or assigns, and the third by the two so selected. The damages determined by such persons, or a majority of them, shall be conclusive as to the facts.

This grant shall be binding upon the successors and assigns of the undersigned.

WITNESS the hand of the Grantor this ____ day of _____, 20 _____.

The City of Wichita, Kansas, a municipal corporation

_____

By: Carl Brewer, Mayor

ATTEST:

_____

By: Karen Sublett, City Clerk

APPROVED BY LAW:

_____

By: Gary E. Rebenstorf, Director of Law

02-TCE.lwp
10-017
WW SG-19

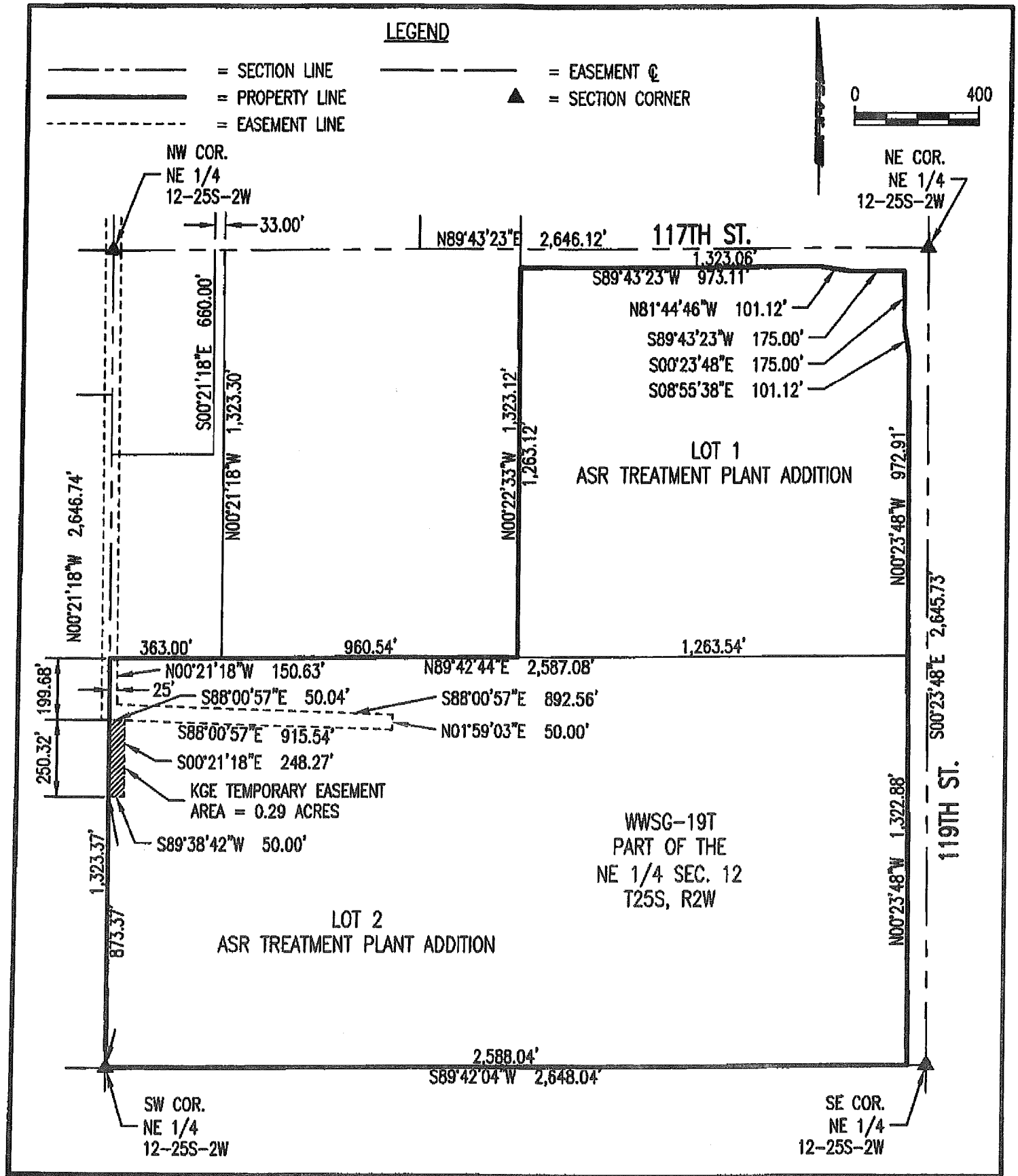
STATE OF KANSAS)
) **SS:**
COUNTY OF SEDGWICK)

This instrument was acknowledged before me on ____ day of _____, 2010 by Carl Brewer, Karen Sublett and Gary E Rebenstorf as Mayor, City Clerk and Director of Law of the City of Wichita, Kansas, a municipal corporation.

_____
Notary Public

SEAL

My Appointment Expires: _____



Professional Engineering Consultants, P.A.
303 S. TOPEKA • WICHITA, KANSAS 67202
316-262-2691 • FAX 316-262-3003
www.pec1.com

138.38 KV BENTLEY TRANSMISSION LINE

Westar Energy

COUNTY	OWNER	TRACT. NO.	PROJ. NO. 10017
SEDGWICK	CITY OF WICHITA	WWSG-19T	DATE: SEPT. 16, 2010

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: Woodlawn Improvement, between Harry and Lincoln (Districts II and III)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the budget revision.

Background: On September 14, 2010, the City Council approved a project to improve Woodlawn between Harry and Lincoln. The project is funded in part by American Recovery and Reconstruction Act (ARRA) funding. Kansas Department of Transportation officials have advised that additional leftover ARRA funding is available for the project.

Analysis: The work consists of an asphalt mill and overlay, and some concrete repair. The project is planned to begin March 2011, and be completed in late summer.

Financial Considerations: The approved project budget is $298,824, with $128,824 funded by ARRA and $170,000 by City contract street maintenance operating funds. The proposed revised budget is $298,824, with $248,400 paid by ARRA and $50,424 by street maintenance funds. It will be necessary to shift the budget authority from a contractual expense to a transfer expense, in order to appropriately record the City's cost on this project. The transfer will occur this year.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing needed street maintenance.

Legal Considerations: None.

Recommendation/Action: It is recommended that the City Council approve the budget revision, authorize the necessary budget adjustment and authorize the signing of State/Federal agreements as required.

Attachments: Map and CIP sheet.

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	9/29/2010	Woodlawn Improvement, Derry Lincoln

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
P-		2010	

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

12. Project Cost Estimate

ITEM	St. Maint.	SA	ARRA	TOTAL
Right of Way				
Paving, grading & const.	$91,[illegible]		$[illegible]	$[illegible]
Bridge & Culverts				
Drainage				
Sanitary Sewer				
Sidewalk				
Water				
Freeway				
Totals	$50,124		$248,400	$298,827
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

13. Recommendation:

Approve the budget revision and budget adjustment

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

LINCOLN STREET
HARRY STREET
WOODLAWN BLVD.
E MORRIS ST
E LINCOLN ST
E CASTLE DR
E BAYLEY ST
E GRAND AVE
BOSTON AVE
E OSIE ST
E OSIE CIR
E GILBERT ST
S SYLVAN LN
S BEVERLY DR
S MARCILENE TER
S EDGEMOOR DR
S LIGHTNER DR
S PRAIRIE PARK
S LEXINGTON RD
S WAVERLY DR
S FABRIQUE DR
S MISSION RD
S DRURY LN
S BARLOW ST
S APACHE DR
S GOVERNEOUR RD
S WHITTIER RD
S ARMOUR DR
S BROADMOOR AVE
S SAN PABLO LN
S CHRISTINE RD
S PINERIDGE RD
S SILVERDALE CT
S WAVERLY RD
S ROYAL RD
E HARRY CT
S OLD MANOR RD
S PARKWOOD LN
S ROANOKE
S FAULDERS
S GREEN ACRE
S DROLLINGER
S LEXINGTON
S WINDSOR RD
SEDGWICK COUNTY

City of Wichita
City Council Meeting
October 19, 2010

TO: Mayor and City Council

SUBJECT: 2009 Street Rehabilitation Program (District V)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the project revision.

Background: The Capital Improvement Program (CIP) adopted by the City Council includes ongoing funding to rehabilitate major streets. On April 28, 2009, the City Council approved the 2009 program with improvements to Hillside, between Bayley and Gilbert, and Kellogg, between 119th Street West and 111th Street West. Kansas Department of Transportation officials have advised that leftover American Recovery and Reconstruction Act (ARRA) funding is available for street improvements. To obtain the ARRA funding, it is proposed that the 2009 Street Rehabilitation Program be expanded to add improvements to 13th Street, between Maize and Tyler, and to provide the local funding match requirement.

Analysis: The 13th Street work will consist of an asphalt mill and overlay. Work will begin next spring and be completed in the summer.

Financial Considerations: The approved project budget is $600,000 with $400,000 paid by City General Obligation (GO) bonds and $200,000 by State transportation grants. The proposed revised budget is $1,088,190, with $500,000 paid by the City General Obligation bonds, $138,190 paid by City contract street maintenance operating funds, $200,000 paid by the State and $250,000 by ARRA. Funding for the increased GO share is included in the 2009-2018 CIP. 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 13th Street improvement is being initiated by a separate bonding ordinance to segregate the ARRA funds for accounting purposes. The Law Department has approved the authorizing ordinance as to legal form.

Recommendation/Action: It is recommended that the City Council approve the project revision, place the ordinance on first reading, authorize the necessary budget adjustment and authorize the signing of State/Federal agreements as required.

Attachments: Maps, CIP sheet, and 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	9/29/2010	11th, Maize Tyler (2009 Street Rehab Program)

5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date
P-		2010	

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

12. Project Cost Estimate

ITEM	GO	St. Maint	ARRA/KLINK	TOTAL
Right of Way				
Paving, grading & const.	$500,000	$138,190	$450,000	$1,088,190
Bridge & Culverts				
Drainage				
Sanitary Sewer				
Sidewalk				
Water				
Freeway				
Totals	$500,000	$138,190	$450,000	$1,088,190
Total CIP Amount Budgeted				
Total Prelim. Estimate				

12A.

	Yes	No
Platting Required		
Lot Split		
Petition		
Ordered by WCC	X	

Remarks:

Street Maintenance Funds

ARRA

[illegible]

13. Recommendation:

Approve the budget revision, budget adjustment and place the ordinance on 1st Reading

Division Head	Department Head	Budget Officer	City Manager
		Date	Date

132019

First Published in the Wichita Eagle October 29, 2010

ORDINANCE NO. 48-855

AN ORDINANCE DECLARING **13TH STREET BETWEEN MAIZE AND TYLER (472-84852)** TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA, KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF SAME.

WHEREAS, K.S.A. 12-685 provides that the governing body of any city shall have the power to designate and establish by ordinance any existing or proposed street, boulevard, avenue, or part thereof to be a main trafficway, the main function of which is the movement of through traffic between areas of concentrated activity within the city, and

WHEREAS, K.S.A. l2-687 provides that the governing body of any city shall have the power to improve or reimprove or cause to be improved or reimproved, any main trafficway or trafficway connection designated and established under the provisions of K.S.A. l2-685 et seq., and

WHEREAS, K.S.A. l2-689 provides that all costs of improvements or reimprovements authorized under the provisions of K.S.A. l2-687, including acquisition of right-of-way, engineering costs, and all other costs properly attributable to such projects, shall be paid by the city at large from the general improvement fund, general revenue fund, internal improvement fund, or any other fund or funds available for such purpose or by the issuance of general improvement bonds.

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

SECTION l. That **13th Street between Maize and Tyler (472-84852)** in the City of Wichita, Kansas is hereby designated and established as a main trafficway, the primary function of which is the movement of through traffic between areas of concentrated activity within the City, said designation made under the authority of K.S.A. l2-685.

SECTION 2. It is hereby deemed and declared to be necessary by the governing body of the City of Wichita, Kansas, to make improvements to **13th Street between Maize and Tyler (472-84852)** as a main trafficway in the following particulars:

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

SECTION 3. The cost of the construction of the above described improvements is estimated to be **Four Hundred Eighty-Eight Thousand One Hundred Ninety Dollars ($488,190)** 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 $488,190, exclusive of the cost of interest on borrowed money.

SECTION 4. The above described main trafficway improvements shall be made in accordance with the Plans and Specifications prepared under the direction of the City Engineer of the City of Wichita, Kansas and approved by the governing body of the City of Wichita, Kansas. Said plans and specifications are to be placed on file in the office of the City Engineer.

SECTION 5. Be it further ordained that the improvements described herein are hereby authorized under the provisions of K.S.A. l2-685 et seq.

SECTION 6. 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 26th day of October, 2010.

_____
CARL BREWER, MAYOR

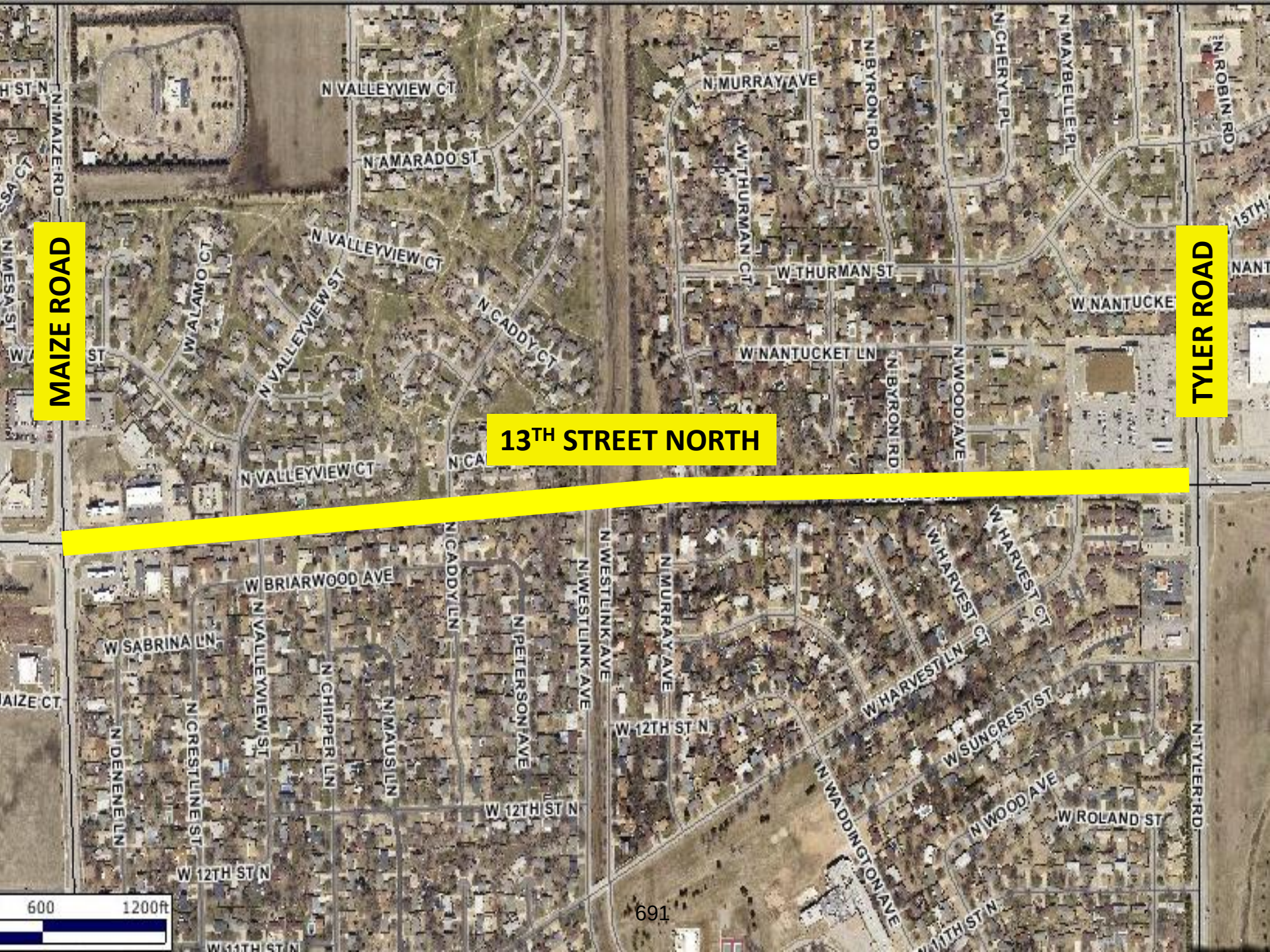
ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY REBENSTORF, DIRECTOR OF LAW


MAIZE ROAD
TYLER ROAD
13TH STREET NORTH
N VALLEYVIEW CT
N AMARADO ST
N MAIZE RD
N MESA ST
W ALAMO CT
N VALLEYVIEW ST
N CADDY CT
N MURRAY AVE
N BYRON RD
N CHERYL PL
N MAYBELLE PL
N ROBIN RD
W THURMAN CT
W THURMAN ST
W NANTUCKET LN
N WOOD AVE
W BRIARWOOD AVE
W SABRINA LN
N CADDY LN
N PETERSON AVE
N WESTLINK AVE
W HARVEST CT
W HARVEST LN
W SUNCREST ST
N DENENE LN
N CRESTLINE ST
N CHIPPER LN
N MAUS LN
W 12TH ST N
N WADDINGTON AVE
W ROLAND ST
N TYLER RD
600
1200ft

Second Reading Ordinances for October 19, 2010 (first read on October 5, 2010)

119th Street West Improvement, between Pawnee and Kellogg. (District IV)

ORDINANCE NO. 48-849

An Ordinance amending Ordinance No. 48-739 of the City of Wichita, Kansas declaring 119th Street West, between Pawnee and Kellogg (472-84694) to be a main trafficway within the City of Wichita, Kansas; declaring the necessity of and authorizing certain improvements to said main trafficway; and setting forth the nature of said improvements, the estimated costs thereof, and the manner of payment of same.

Amendment of Bond Documents, Buttonwood Tree Apartments. (District II)

ORDINANCE NO. 48-850

An ordinance authorizing the execution of a second supplemental indenture by the city of Wichita, Kansas, in connection with the city's outstanding multifamily housing revenue bonds, Series I, 2002 (Buttonwood Tree Apartments Project).

Amend City Code Chapter 7.56, Regulating Smoking.

ORDINANCE NO. 48-851

An ordinance of the city of Wichita, Kansas, amending section 7.56.040, of the code of the City of Wichita, Kansas, and repealing the prior version of such section, and also repealing sections 7.56.010, 7.56.020, 7.56.021, 7.56.022, 7.56.030, 7.56.050, 7.56.060 and 7.56.070 of such code.

Public Hearing on the Establishment of a Community Improvement District for Broadview Hotel Development. (District VI)

ORDINANCE NO. 48-853

An ordinance of the City of Wichita establishing the Broadview Hotel Community Improvement District.