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**PULLED-NEW BUSINESS ITEMS IV-3 &4**

# FINAL

CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. January 15, 2013

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 January 8, 2013

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## AWARDS AND PROCLAMATIONS

-- Awards

Honorary Citizen Certificates
(Citizens of Cancun, Mexico)

## 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. Janice Bradley - Excessive force by WPD.

2. Richard Stephenson - City Ordinance for oversight on the Police.

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## II. CONSENT AGENDAS ITEMS 1 THROUGH 11

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

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

**COUNCIL BUSINESS**

## III. UNFINISHED COUNCIL BUSINESS

1. Ballot Election to fill the interim vacancy in City Council District IV.
   (Swearing in by Judge Jennifer Jones to follow ballot election)

## IV. NEW COUNCIL BUSINESS

1. Public Hearing Considering the Adoption of a STAR Bond Project Plan for the K-96 Greenwich Star Bond Project District. (District II)

   RECOMMENDED ACTION: Close the public hearing and approve first reading of the ordinance providing for the adoption of the Phase 1 STAR Bond Project Plan.

2. Revision of City Council District Boundary Lines.

   RECOMMENDED ACTION: Declare an Emergency and approve the ordinance on first reading.

***3.*** **City of Wichita Bicycle Master Plan Endorsement**. ***(PULLED PER CITY MANAGER)***

   RECOMMENDED ACTION: Adopt a resolution endorsing the Wichita Bicycle Master Plan and authorizes the necessary signatures.

***4.*** **Creation of the Wichita Bicycle and Pedestrian Advisory Board**. ***(PULLED PER CITY MANAGER)***

   RECOMMENDED ACTION: Approve the ordinance and endorse the proposed initial application and review process.

(9:30 a.m. or soon thereafter)

5. Repair or Removal of Dangerous and Unsafe Structures. (Districts I, III and IV)

| Property Address | Council District |
|---|---|
| a. 2003 North Chautauqua | I |
| b. 2935 East Maplewood | I |
| c. 4628 East Gilbert | III |
| d. 735 West 59th Street South | IV |

   RECOMMENDED ACTION: Close the public hearing, adopt the resolutions declaring the buildings to be dangerous and unsafe structures, and accept the BCSA recommended actions to proceed with condemnation, allowing 10 days to start demolition and 10 days to complete removal of the structures. Any extensions of time granted to repair any structures would be contingent on the following: (1) All taxes have been paid to date as of January 15, 2013; (2) the structures have been secured as of January 15, 2013, and will continue to be kept secured; and (3) the premises are mowed and free of debris as of January 15, 2013, and will be so maintained during renovation.

(10:00 a.m. or soon thereafter)

6. General Obligation Bond and Note Sale.

RECOMMENDED ACTION: (1) Direct the opening and reading of the bids; (2) award the sale of the Bonds and Notes subject to approval of the final sizing terms of the Bonds and Notes by the City Manager, his designee or the Director of Finance; (3) adopt the Bond and Note Ordinances and Resolutions and authorize the publication of the Bond and Note Ordinances; and (4) find and declare, upon the request of the Mayor, that a public emergency exists, requiring the final passage of the Bond and Note Ordinances on the date of their introduction.

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## COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

## PLANNING AGENDA

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

### V. NON-CONSENT PLANNING AGENDA

None

## HOUSING AGENDA

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

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

### VI. NON-CONSENT HOUSING AGENDA

None

## AIRPORT AGENDA

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

### VII. NON-CONSENT AIRPORT AGENDA

None

**COUNCIL AGENDA**

## VIII. COUNCIL MEMBER AGENDA

1. Approval of travel for Mayor Carl Brewer to attend the USBC Bid Meeting with Go Wichita in Arlington, TX, January 16, 2013.

   RECOMMENDED ACTION: Approve the expenditures.

2. Approval of travel expenses for City Council Member Meitzner for a Kansas Legislative visit in Topeka, KS, January 16, 2013.

   RECOMMENDED ACTION: Approve the expenditures.

3. Approval of travel expenses for City Council Member Longwell to attend State Workforce Summit in Topeka, KS, January 23-24, 2013.

   RECOMMENDED ACTION: Approve the expenditures.

## IX. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

   RECOMMENDED ACTION: Approve the Appointments.

Adjournment

**(ATTACHMENT 1 – CONSENT AGENDA ITEMS I THROUGH 11)**

## II. CITY COUNCIL CONSENT AGENDA ITEMS

1. Report of Board of Bids and Contracts dated January 14, 2013
   a. Board of Bids.

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

2. Applications for Licenses to Retail Cereal Malt Beverages:

| Renewal | 2012 | (Consumption on Premises) |
|---|---|---|
| Edwin S Goyne | Arthur B Sim Municipal Golf Course** | 2020 West Murdock |
| J Larry Fugate | Pizza Hut** | 333 East 47 South |

   **General/Restaurant (need 50% or more gross revenue from sale of food.
   ***Retailer (Grocery stores, convenience stores, etc.)

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

3. Preliminary Estimates:
   a. Preliminary Estimates.

   RECOMMENDED ACTION: Receive and file.

4. Agreements/Contracts:
   a. Hold Harmless Agreement, Easement Encroachment. (District VI)
   b. Street Resurfacing Project on US-54 from 111th Street West to 119th Street West and K-42 from the Floodway Bridge to North of the I-235 On Ramp. (Districts IV and V)

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

5. Design Services Agreement:
   a. Supplemental Design Agreement No. 4 for Lincoln Street Bridge and Dam Improvements. (Districts III and IV)

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

6. Contracts and Agreements for December 2012.

   RECOMMENDED ACTION: Receive and file.

7. Sale of Remnant at Southeast Corner of Kellogg and Tyler. (District IV)

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

7a. ***Proposed Assessment Rolls***

Proposed Assessment Rolls have been for two (2) water, two (2) sewer, four (4) storm water and twelve (12) paving projects and it is necessary to set a public hearing date. Informal hearing with City personnel will be held February 4, 2013 at 11:00 a.m. Notification of both the informal and formal public hearings regarding the proposed special assessments will be mailed to affected property owners on January 18, 2013.

RECOMMENDED ACTION: Set the hearing on the Proposed Assessment Rolls for 9:30 a.m., Tuesday, March 5, 2013, and publish the notices of hearing at least once not less than 10 days prior to the date of the hearing.

8. Second Reading Ordinances: (First Read January 8, 2013)
   a. Second Reading Ordinances.

RECOMMENDED ACTION: Adopt the Ordinances.

## II. CONSENT PLANNING AGENDA ITEMS

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

9. *SUB2012-00030 -- Plat of Cottonwood Corner Addition located south of 29th Street North, west of Broadway. (District VI)

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

## II. CONSENT HOUSING AGENDA ITEMS

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

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

None

## II. CONSENT AIRPORT AGENDA ITEMS

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

10. *DAL Global Service, LLC - Commercial Operating Permit, Wichita Mid-Continent Airport.

    RECOMMENDED ACTION: Approve the commercial operating permit and authorize the necessary signatures.

11. *Republic Airlines - Non-Signatory Agreement - Wichita Mid-Continent Airport.

    RECOMMENDED ACTION: Approve the non-signatory agreement and authorize the necessary signatures.

**City of Wichita**
**City Council Meeting**
**January 15, 2013**

**TO:** Mayor and City Council

**SUBJECT:** Public Hearing Considering the Adoption of a STAR Bond Project Plan for the K-96 Greenwich Star Bond Project District (District II)

**INITIATED BY:** Urban Development Office

**AGENDA:** New Business

---

**Recommendation**: Close the public hearing and approve first reading of the ordinance adopting the Phase 1 STAR Bond Project Plan.

**Background:** On March 6, 2012, the City Council took the necessary legal steps to establish the K-96 Greenwich STAR Bond Project District, following a determination of eligibility by the Kansas Secretary of Commerce. The next step in establishing the legal authority to use Sales Tax and Revenue (STAR) Bond financing is the adoption by the City Council of a STAR bond project plan, which provides detailed information on the proposed project and how STAR bond financing will be used.

On December 11, 2012, the City Council adopted a resolution stating it is considering the adoption of the attached Phase 1 STAR Bond Project Plan and directed the City Clerk to give notice that a public hearing would be held on the matter on January 15, 2013. Proper notice was provided through mailing of notices to owners and occupants within the district and publishing a notice in the Wichita Eagle. Copies of the STAR Bond Project Plan were mailed to the Sedgwick County Board of County Commissioners and to the Boards of Education for USD 259 (Wichita) and USD 375 (Circle).

**Analysis:** The STAR bond authorization process is divided into two major components: the first is the establishment of the STAR bond district; the second is the approval of the STAR bond project plan. The District was established on March 6, 2012, following approval from the Secretary of Commerce and adoption of an ordinance.

The second step in the overall process is the adoption of a detailed STAR bond project plan and feasibility study, which is prepared in concert with the Developer and submitted to the MAPC for a finding that the plan is consistent with the regional Comprehensive Plan. After MAPC approval, which occurred on December 6, 2012, the City Council may set a public hearing and adopt the STAR bond project plan by ordinance, following the same process used to establish the STAR bond district. If adopted by the City Council, the STAR bond plan and ordinance is then submitted to the Secretary of Commerce for final approval of the STAR bond project. After the Secretary's approval is received, the project may commence and STAR bonds may be issued up to the amount specified by the Secretary of Commerce.

The Phase I STAR Bond Project Plan will be anchored by the GoodSports Fieldhouse and an adjacent 150-room hotel catering to young athletes and their families. The Fieldhouse is a 65,000 square foot multi-sport athletic facility, large enough to accommodate 12 full-sized basketball courts or 24 volleyball courts and flexible enough to house team sports competitions for basketball, volleyball, indoor soccer, wrestling, cheerleading and more. The Fieldhouse will be owned and operated by GoodSports Enterprises, LLC and will be programmed to host weekend regional and national youth sports team competitions throughout the year, along with clinics, training programs, conferences and other youth sports related activities. The Fieldhouse is projected to attract 300,000 visitors per year.

In addition to the Fieldhouse, the Phase 1 STAR Bond Project will include two new hotels, an aquatic attraction attached to one of the new hotels (the "Wavehouse"), a new 72,000 square foot national destination retail store, a new 70,000 square foot multi-tenant retail center and numerous pad sites for new commercial development. The existing 80,000 square foot Cabela's store opened in March 2012 within the boundaries of the STAR Bond District and its sales will contribute to the financing of the Phase 1 STAR Bond Project. All of the Phase 1 uses are projected to attract nearly 2,000,000 visitors per year and generate over $80,000,000 in annual sales when fully built-out. This will produce over $5,000,000 in state and local sales tax revenue available for STAR bond financing, based on a 5.7% state sales tax rate and the 50% of the City's share of the countywide sales tax that is not pledged to the payment of Kellogg bonds. This revenue source is estimated to support the issuance of over $30,000,000 in STAR bonds.

State law identifies project costs that are generally eligible for STAR bond financing, and the STAR bond district plan adopted by the City Council at the time the STAR bond district was established specified the types of eligible costs to be financed in this project. This includes the purchase of real estate, sitework including the demolition of structures and utility relocations, public infrastructure improvements, streets, public parking, utility extensions, landscaping, public plazas, and multi-sport athletic complex and any other items permitted to be financed by statute. Public infrastructure also includes the completion of the K-96 interchange at Greenwich Road to allow access to the project site from all directions.

The following is a summary of estimated Phase 1 project costs and those eligible to be funded by STAR bonds:

| | Phase 1 Project Costs | STAR Bond Eligible Costs |
|---|---|---|
| Land acquisition | $10,462,800 | $10,462,800 |
| Project sitework | 17,714,352 | 17,714,352 |
| K-96 interchange | 9,500,000 | 7,500,000 |
| Developer construction | 64,331,500 | 6,622,500 |
| Design fees | 5,808,260 | 5,684,008 |
| Contingency | 8,060,256 | 2,276,931 |
| Soft costs | 8,911,873 | 5,732,013 |
| Total | $124,789,041 | $55,992,604 |

STAR bond eligible costs that exceed the amount of actual STAR bond financing available will be funded by private debt and equity. Prior to the issuance of any STAR bonds, the City and Goodsport Enterprises, LLC will enter into a development agreement that stipulates the actual sources and uses of public and private funding of all project costs. Priority for the use of City STAR bond financing will be given to completion of the K-96 interchange, construction of the multi-sport athletic complex (Fieldhouse) and project sitework. The following is a summary of the sources of funding for the STAR bond project costs:

| | |
|---|---|
| STAR Bond Proceeds | $31,570,785 |
| City G.O./CID Bonds | 2,000,000 |
| Private Debt and Equity | 91,218,256 |
| Total Sources of Funds | $124,789,041 |

After closing the public hearing, the City Council may adopt the Project Plan by ordinance, by two-thirds majority vote. The Secretary of Commerce will consider approval of the Phase 1 Project Plan, and may include conditions and restrictions, following receipt of the adopted STAR Bond Project Plan, which by law must be submitted within one year of the establishment of the STAR Bond District (March 6, 2012).

**Financial Considerations:** Once the ordinance approving the STAR Bond Project Plan is adopted, and approval from the Secretary is received, the Phase 1 Project work may commence. However, any expenditure of public funds on any project costs will be governed by the amount approved by the Secretary and the terms of a development agreement to be approved by the City Council, and completion of all other proceedings governing the expenditure of public funds. Any STAR bonds issued for this project will be special obligation bonds of the City, payable solely from the incremental sales tax revenue remitted by the Kansas Department of Revenue for payment of the bonds. All eligible costs of the City relating to the project will be reimbursed with STAR bond proceeds.

Based on current bond market conditions, it is contemplated that the STAR bonds will be sold to one or more institutional investors as a private placement with higher interest rates and debt service coverage requirements, until the various retail businesses in the District can establish a history of sustainable sales and sales tax generation that permits a refinancing at lower rates and coverage, and possibly in a higher principal amount.

**Legal Considerations:** The attached ordinance adopting a STAR bond project plan for the Phase 1 STAR Bond Project for the K-96 Greenwich STAR Bond District has been approved as to form by the Law Department. State law requires that the ordinance be passed by a two-thirds vote of the members of the governing body.

**Recommendations/Actions:** It is recommended that the City Council close the public hearing and approve first reading of the ordinance providing for the adoption of the Phase 1 STAR Bond Project Plan.

**Attachments:** Phase 1 STAR Bond Project Plan
Ordinance

**K-96 and Greenwich STAR Bond District**

**PHASE I STAR BOND PROJECT PLAN**
**The Fieldhouse Major Multi-Sport Athletic Complex**

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Exhibit K – City Council Meeting Minutes

## I. INTRODUCTION

This K-96 Greenwich STAR Bond First Project Plan (this "Project Plan") envisions the development of a substantial destination commercial project (the "Project") consisting of 1,400,000 square feet of mixed-use commercial space on approximately 423 acres located at K-96 Highway and Greenwich Road within the City of Wichita, Kansas (the "City"). The Project is located within a STAR Bond District (the "District") approved pursuant to the STAR Bond Financing Act, K.S.A. 12-17,160 *et seq*. (the "Act"). Ordinance No. 49-280, pursuant to which the STAR Bond District was approved, is attached hereto as **Exhibit A**. The STAR Bond District Plan contained within said Ordinance was later amended by Ordinance No. 49-281, a copy of which is attached hereto as **Exhibit B**. By letter dated February 29, 2012, a copy of which is attached hereto as **Exhibit C**, the Kansas Secretary of Commerce determined the District to be an "eligible area" under the definition of that term in the STAR Bond Act.

Under this Project Plan, GoodSports Enterprises (the "Developer") proposes to construct a substantial destination tourism area containing a variety of commercial uses focused around the GoodSports Fieldhouse, a major multi-sport athletic complex. This Project Plan will be carried out in multiple phases on the substantial majority of the area within the District. Future STAR Bond project plans may be advanced for the remaining area of the District.

The anchor of the first phase of this Project Plan will be the Fieldhouse, a 65,000 square foot state-of-the-art indoor multi-sport athletic complex dedicated to the education and training of players and coaches, destination athletic competition, and entertainment for regional and national tourists. The Fieldhouse will have an associated 150-room hotel to accommodate its out-of-area visitors. Other amenities in the first phase of the Project will include the Wavehouse, a destination water-park with an associated 150-room hotel, the recently-opened 80,000 square foot Cabela's retail store, a similar national-level retail tenant occupying 72,000 square feet, and approximately 70,000 square feet of multiple super-regional level retailers. This first phase will also facilitate the build-out of critical infrastructure to serve the area, including a full-service interchange at K-96 Highway and Greenwich Road, and the completion and signalization of critical intersections in the K-96 and Greenwich corridor. The total capital investment associated with this first phase will be approximately $123,000,000, including site acquisition, infrastructure construction, and development of the destination and other commercial amenities. Annual sales at full build-out of the first phase are estimated to be over $83,000,000 growing annually thereafter.

Future phases of the Project will include the construction of an estimated 630,000 square feet of commercial space, as well as a medical campus and associated office buildings, and approximately 60,000 square feet of general office space. There will also be approximately 26 pad sites on 60 acres for additional development opportunities – estimated to comprise an additional 262,500 square feet of commercial development. Additional capital investment is estimated at $305,000,000 over that amount expended for the first phase, and at an assumed $150 per square foot, sales for the additional commercial square footage and pad sites is projected to add approximately $133,000,000 more in annual sales to the Project. A concept plan depicting the Developer's vision for the Project is attached hereto as **Exhibit D**. These remaining components will be constructed over time as dictated by market demand and procurement of suitable tenants. Accordingly, the square footages, locations, and types of uses may change from time to time. The development team has expended significant effort in recruiting potential retailers that are new and unique to the City and that effort will continue until completion of the Project.

As is more particularly explained below, a feasibility study conducted to evaluate this Project Plan indicates that the first phase of the Project will draw nearly 1,930,500 annual visitors. Approximately 591,413 (or 30.6%) of these visitors are projected to come from outside the State of Kansas. Market research conducted indicates that the amenities in the Project will appeal to a very broad and desirable visitor demographic, consisting largely of families looking for destination entertainment and retail opportunities. The Project is designed to provide the City and the State of Kansas with a new and unique destination attraction that will draw visitors on a statewide and regional basis, and, in turn, will create significant spin-off economic benefits to the City, region, and the State as a whole.

## II. STAR Bond Project Plan

Pursuant to the Act, municipalities are authorized to utilize STAR Bond Financing for specific development projects through (1) the creation of a STAR Bond Project District, subject to a finding by the Secretary that the STAR Bond Project District Plan is eligible for STAR Bond Financing, and (2) the adoption of a STAR Bond Project Plan that is subsequently approved by the Secretary. As previously indicated, the STAR Bond Project District for the Project has been created by the City and found to be eligible for STAR Bond Financing by the Secretary. Thus, the following information constituting the K-96 and Greenwich STAR Bond Project Plan is submitted for consideration by the City and Secretary:

- A description and map of the project area to be redeveloped;
- A reference to the STAR Bond Project District Plan that identifies the project area that is set forth in the project plan that is being considered;
- A detailed description of the buildings and facilities proposed to be constructed or improved;
- A copy of the feasibility study done as defined in the Act, and amendments thereto;
- The relocation assistance plan;
- Documentation indicating that the Project will result in a capital investment in excess of $50,000,000 and will generate gross annual sales revenue in excess of $50,000,000;
- A market impact study establishing that (i) the Project will not have a substantial negative impact on other businesses in the project market area and (ii) the Project will not cause a default in the payment of any outstanding special obligation bonds authorized pursuant to the Act; and
- Information establishing that the Project will sufficiently promote, stimulate and develop the general and economic welfare of the State, as determined by the Secretary.

### A. Subject Property

The property subject to this Project Plan consists of approximately 423 acres generally surrounding the intersection of K-96 Highway and Greenwich Road located within the City of Wichita,

Kansas. A legal description of the subject property is attached hereto as **Exhibit E**, and a general depiction of the property is included in the concept plan attached hereto as **Exhibit D**.

**B. Established STAR Bond Project District**

The proposed STAR Bond Project Area is within an established STAR Bond Project District approved by the City on February 14, 2012 by adoption of Ordinance No. 49-280 (as amended by Ordinance No. 281). The District Plan for the District (the "District Plan") is stated in Ordinance No. 281, a copy of which is attached hereto as **Exhibit B**. As noted above, the Secretary designated the STAR Bond Project District as an Eligible Area for STAR Bond Financing. This Project Plan is consistent with the District Plan.

**C. STAR Bond Project Description and Overview**

This Project Plan proposes the construction of a significant commercial development focused on a major multi-sport athletic complex as that term is defined under the Act. This Project Plan will be carried out in multiple phases on the substantial majority of the area within the District. Future STAR Bond project plans may be advanced for the remaining area of the District.

The anchor of the first phase of this Project Plan will be the Fieldhouse, a 65,000 square foot state-of-the-art indoor multi-sport athletic complex dedicated to the education and training of players and coaches, destination athletic competition, and entertainment for regional and national tourists. The Fieldhouse will have an associated 150-room hotel to accommodate its out-of-area visitors. Other amenities in the first phase of the Project will include the Wavehouse, a destination water-park with an associated 150-room hotel, the recently-opened 80,000 square foot Cabela's retail store, a similar national-level retail tenant occupying 72,000 square feet, and approximately 70,000 square feet of multiple super-regional level retailers. This first phase will also facilitate the build-out of a full-service interchange at K-96 Highway and Greenwich Road, and the completion and signalization of critical intersections in the K-96 and Greenwich corridor. These infrastructure improvements will allow traffic to flow cohesively throughout the Project and will enable visitors traveling on K-96 Highway to have unencumbered access to the Project and its surrounding areas.

The combination of these elements will create a major mixed-use lifestyle center with entertainment, hospitality and general commercial uses. The Developer is targeting destination specialty retailers, restaurants and entertainment venues that are new to the Wichita area and will complement the City's cultural, entertainment and sports venues as well as cater to area tourists, visitors and residents.

The central component of the Project will be the 65,000 square foot Goodsports Fieldhouse, an indoor sports and recreation facility intended to attract destination tourism. Renderings for the Fieldhouse (attached hereto as **Exhibit F**) reflect a contemporary, state-of-the art facility that will add excitement and synergy to the Project and community as a whole. It will incorporate indoor basketball courts, as well as multi-use outdoor athletic fields, and facilities for volleyball, wrestling, archery, cheerleading, and fencing, all designed with the intention of hosting national youth athletic competitions. The Fieldhouse will also function as a national and regional education and training center for athletes and coaches, and will be open for daily sports and recreation use by both local residents and area visitors. In addition, the ample open floor space available in the Fieldhouse can be used for athletic convention and trade shows. Annual visitation to the Fieldhouse is estimated at 300,000 visitors, including 20 sports tournaments, 10 ongoing leagues, 15 sports camps, and 15 sports conferences (i.e.,

instructional, coaching, referee expos, etc.). This mix of uses will provide the most consistent visitation and tourism for the Project.

The Project is designed to capture increased visitation and expenditures through events at the Fieldhouse and offering an exclusive shopping, dining and entertainment experience not currently available in the City or elsewhere in the central Kansas area. By virtue of differing content and market positioning, the Project will complement and have a synergistic effect on Wichita's tourism industry and the heightened out-of-town visitation is expected to translate to increased attendance at Wichita's existing entertainment, cultural, educational and historic attractions. As is evident by the 16.5 million annual visitors to the Kansas City area, the presence of a large cluster of art, cultural and entertainment attractions along with destination lifestyle centers and entertainment districts creates a synergistic effect that strengthens the regional draw, visitation counts, expenditures and visitor's length of stay.

During 2009, the Kansas Department of Commerce reported Sedgwick County garnered $1.5 billion in tourism expenditures, or 22.3 percent of the statewide total. Tourism expenditures for Sedgwick County included approximately $463.8 million on shopping, $368.9 million on food, $220.3 million on lodging and $169.7 million on entertainment. Where Sedgwick County tourism expenditures lagged was in entertainment with expenditures accounting for just a 16.2 percent statewide market share.

The Fieldhouse and the Project's other attractions are designed to attract out-of-town visitors and improve tourism expenditures on entertainment and other support industries, which would bolster this market share. Larger national and regional sports tournaments held at the Fieldhouse may require co-hosting with other Wichita area sports venues. Out-of-town visitors to youth and adult sporting events are potential customers for such family-oriented attractions as the Sedgwick County Zoo, Exploration Place, Botanica, Great Plains Nature Center, Music Theater of Wichita, Orpheum Performing Arts and Wichita Center for the Arts. Area restaurants, nightclubs, hotels and transportation companies will also benefit economically from development and operation of the Project.

In addition to the Fieldhouse, the first phase of the Project incorporates an associated 150-room hotel that will cater to athletes and spectators travelling for events at the Fieldhouse as well as additional visitors to the Project. Hotel amenities will include flat-screen TV, Wi-Fi, complimentary continental breakfast, walk-in showers and laundry service. The aesthetic will be designed to match the Fieldhouse as well as adjacent tenants to create a "branded" development. Lodging demand generated by out-of-town visitors to the Project is expected to exceed the hotel's room capacity. Therefore, existing lodging properties in northeast Wichita such as Hampton Inn & Suites, Homewood Suites by Hilton, Residence Inn by Marriott and SpringHill Suites by Marriott will benefit by capturing lodging demand generated by the Project.

Beyond the Fieldhouse and the associated first phase of the Project, future phases will include the construction of an estimated 630,000 square feet of commercial space, as well as a medical campus and associated office buildings, and approximately 60,000 square feet of general office space. There will also be approximately 26 pad sites on 60 acres for additional development opportunities – estimated to comprise an additional 262,500 square feet of commercial development. These remaining components will be constructed over time as dictated by market demand and procurement of suitable tenants. Accordingly, the square footages, locations, and types of uses may change from time to time. The development team has expended significant effort in recruiting potential retailers that are new and unique to the City and that effort will continue until completion of the Project.

## D. Summary of Feasibility Study

As stated in the Act, a feasibility study is required to be prepared setting forth the following information: (i) Whether a STAR bond project's revenue and tax increment revenues and other available revenues are expected to exceed or be sufficient to pay for the project costs; (ii) the effect, if any, a STAR bond project will have on any outstanding special obligation bonds payable from certain revenues as described in the Act; (iii) a statement of how the jobs and taxes obtained from the STAR bond project will contribute significantly to the economic development of the state and region; (iv) visitation expectation; (v) the unique quality of the project; (vi) economic impact study; (vii) market feasibility study; (viii) market impact study; (ix) integration and collaboration with other resources or businesses; (x) the quality of service and experience provided, as measured against national consumer standards for the specific target market; (xi) project accountability, measured according to best industry practices; (xii) the expected return on state and local investment that the project is anticipated to produce (xiii) a statement concerning whether a portion of the local sales and use taxes are pledged to other uses and are unavailable as revenue for the STAR bond project; and (xiv) an anticipated principal and interest payment schedule on the bond issue.

Canyon Research Southwest, a qualified third-party consultant, prepared a feasibility study dated October 2012 (the "Canyon Study"), a copy of which is attached hereto as **Exhibit G**. This study analyzed the Project with respect to the information required to be in the Feasibility Study as described above. This effort included utilization of consultants with the experience, expertise, and access to research data regarding the actual design, development, financing, management and leasing of projects of similar scope and nature.

In addition to the Canyon Study, the substantial experience and knowledge of the Developer and its consultants in developing similar projects was relied upon in preparing this Project Plan. The findings of the Canyon Study and the Developer's internal estimates are described below.

To briefly summarize, the Canyon Study found the following:

- The Project's revenue and tax increment revenues and other available revenues are expected to exceed or be sufficient to pay for the costs of the Project;

- The Project will have no impact on any outstanding special obligation bonds payable from revenues described in the Act;

- The Project will create 1,302 direct and indirect full-time equivalent jobs, generating $28,700,000 in annual payroll and approximately $1,500,000 in State employment taxes. Additionally, the Project will create 294 on-site and 484 off-site full-time equivalent construction jobs with an annual payroll of $27,700,000;

- The Project is anticipated to draw 1,930,500 annual visitors with 300,000 annual visitors generated by the Fieldhouse. Over 30% of these visitors (591,413 total) are expected to come from outside of the State of Kansas. The 300,000 visitors to the Fieldhouse will largely be comprised of an anticipated 20 sports tournaments, 10 ongoing leagues, 15 sports camps, and 15 sports conferences (i.e., instructional, coaching, referee expos, etc.);

- The Project will have a dramatic direct and spin-off economic impact on the City and State of Kansas; and

- The Project in all other manners complies with the requirements of the Act.

### 1. Sufficiency of the Project's Revenues Compared to the Project's Costs

The Act requires an analysis of whether a project's revenues are expected to exceed or be sufficient to pay for the project costs. This requires determining the Project Costs and Eligible Project Costs and comparing them to the STAR Bond Proceeds expected to be generated within the STAR Bond Project Area.

#### a. Total Project Costs

The total estimated cost to complete the Project, including site development, building construction, and all associated infrastructure, is $429,043,339, with the first phase comprising approximately $125,000,000 of that amount. As determined from contract prices, engineering estimates and estimates made by the Developer, a summary of estimated costs for both the entire Project and first phase follows below. A detailed budgets for the Project, which includes an analysis of Phase I costs, is attached hereto as **Exhibit H**.

**ESTIMATED COSTS (SUMMARY)**

| *Hard Costs* | *Whole Project* | *Phase I* |
|---|---|---|
| *Land Acquisition* | *$50,102,400* | *$10,462,800* |
| *Sitework, Streets, Parking (Less Interchange)* | *$42,711,303* | *$17,714,352* |
| *K-96 Interchange* | *$9,500,000* | *$9,500,000* |
| *Design Permits - Fees* | *$22,020,940* | *$5,808,260* |
| *Hard Construction Costs* | *$238,919,000* | *$64,331,500* |
| *Subtotal* | *$363,253,643* | *$107,816,912* |
| *Contingency (Excludes Sitework & Interchange - Contingency Included Above)* | *$31,104,234* | *$8,060,256* |
| *Hard Costs Total* | *$394,357,877* | *$115,877,168* |
| *Soft Costs* | | |
| *Legal & Accounting* | *$1,000,000* | *$500,000* |
| *Finance* | *$6,900,000* | *$1,439,807* |
| *Sales* | *$6,750,000* | *$1,408,506* |
| *Miscellaneous Soft Costs* | *$18,383,774* | *$5,139,185* |
| *Subtotal* | *$33,033,774* | *$8,487,498* |
| *Soft Cost Contingency* | *$1,651,689* | *$424,375* |
| *Soft Costs Total* | *$34,685,463* | *$8,911,873* |
| **TOTAL HARD COSTS** | **$394,357,877** | **$115,877,168** |
| **TOTAL SOFT COSTS** | **$34,685,463** | **$8,911,873** |
| **TOTAL PROJECT COSTS** | **$429,043,339** | **$124,789,041** |

### b. Costs Eligible for Reimbursement

Pursuant to the Act, only certain costs are eligible for STAR Bond financing and reimbursement. Of the total costs listed above, $133,688,501 qualify under the Act as "Eligible Project Costs" meaning that only those costs may be financed using STAR Bond Proceeds. Eligible Project Costs for Phase I are $57,992,604. These Eligible Project Costs are set forth by category and amount below, and a detailed breakdown of cost eligibility is included as **Exhibit I**:

**ESTIMATED ELIGIBLE COSTS**

| *Hard Costs* | *Whole Project* | *Phase I* |
|---|---|---|
| *Land Acquisition* | *$50,102,400* | *$10,462,800* |
| *Sitework, Streets, Parking (Less Interchange)* | *$42,711,303* | *$17,714,352* |
| *K-96 Interchange* | *$7,500,000* | *$9,500,000* |
| *Design Permits - Fees* | *$7,735,848* | *$5,684,008* |
| *Hard Construction Costs* | *$6,622,500* | *$6,622,500* |
| *Subtotal* | *$114,672,051* | *$49,983,660* |
| *Contingency (Excludes Sitework & Interchange - Contingency Included Above)* | *$6,446,075* | *$2,276,931* |
| *Hard Costs Total* | *$121,118,125* | *$52,260,591* |
| *Soft Costs* | | |
| *Legal & Accounting* | *$500,000* | *$500,000* |
| *Finance* | *$6,900,000* | *$1,439,807* |
| *Sales* | *$0* | *$0* |
| *Miscellaneous Soft Costs* | *$4,571,786* | *$3,519,253* |
| *Subtotal* | *$11,971,786* | *$5,459,060* |
| *Soft Cost Contingency* | *$598,589* | *$272,953* |
| *Soft Costs Total* | *$12,570,376* | *$5,732,013* |
| **TOTAL HARD COSTS** | **$121,118,125** | **$52,260,591** |
| **TOTAL SOFT COSTS** | **$12,570,376** | **$5,732,013** |
| **TOTAL PROJECT COSTS** | **$133,688,501** | **$57,992,604** |

### c. Tax Revenues Subject to Capture

Two streams of sales tax revenues are subject to being captured under the Act for a STAR Bond project. These add up to a net sales tax rate of 5.99%, and can be described as follows:

(1) State Sales Tax Revenues – the retail sales exceeding the "base sales" within the Project Area generated within the STAR Bond Project Area multiplied by State sales tax rate that is subject to capture, which is 5.7% (as of January 1, 2013[1]). Base sales were determined to be approximately $44,000,000 covering the 12-month period from February 2011 through January 2012.

[1] This Project Plan contemplates that in the event the State sales tax rate is at any time modified, the full amount of such rate shall be subject to be captured.

(2) County Sales Tax Revenue – the City has no local sales tax in effect, but receives approximately 58% of the Sedgwick County local sales tax. One-half of that sales tax is formally pledged to other City bonds. The undedicated half – or 0.29% - will be dedicated to the Project in conjunction with the State sales tax noted above.

**d. Estimated Tax Revenues**

Based on the Canyon Study, it is estimated the first phase of the Project will produce an annual increase in retail sales volume of approximately $83,600,000 at completion, which includes an increase in the base sales for existing retailers within the Project Area of approximately $900,000. The retail sales tax rate available for capture under the Act is 5.99%. Thus, the first phase of Project will create annual STAR Bond revenue of $5,012,954 at completion. Sales and corresponding STAR Bond revenues are projected to grow annually thereafter by 2%. A more particular analysis can be found in the Project STAR Bond Proforma, which depicts the revenue from the first phase in greater detail, a copy of which is attached hereto as **Exhibit J**. All sales assumptions are reflected therein.

**e. Plan of Finance**

In light of the current economic climate, bond issues secured by anything other than very well-established revenue streams are not possible. These market conditions underlie the Developer's decision to proceed under this Project Plan in multiple phases. Prior to construction of the first phase, the Developer intends to structure an up-front private placement sale of STAR Bonds issued pursuant hereto, which issuance is anticipated to have a 7.5% interest rate and 140% debt service coverage. Funds would be utilized first to finance the land acquisition and private development costs associated with the multi-sport athletic complex and the K-96 interchange improvements. The Developer anticipates that upon an approximately 6-month period of successful operation to verify the stability of the STAR Bond revenues, the STAR Bonds will be refinanced at a public sale using a 5% interest rate and 125% coverage, depending on market conditions, the revenues of which will be used to finance the eligible costs of later phases of the Project.

**f. Summary of the STAR Bond Revenues and Project Costs**

Based on the Project Plan's (1) Estimated Project Costs (2) Estimated Gross STAR Bond Proceeds, and (3) private debt/equity, the Gross STAR Bond Proceeds are expected to pay for the Project Costs, as contemplated under the Act, when supplemented by private debt and equity.

- Estimated STAR Bond Project Costs - $429,043,339+/-
- Estimated STAR Bond Eligible Project Costs - $133,688,501+/-
- Special Obligation STAR Bonds Supported by the first phase of the Project - $31,570,000+/-[2]
- Private debt/equity - $395,472,554+/-

[2] Revenues from later phases of the Project will be monetized once more fully identified and may be available to finance future bond issuances. Additional revenues may also be generated by refinancing of first phase bonds.

### 2. Significant Contribution to the Economic Development of the State and Region

The development of the Project will provide significant economic development, tourism, and new jobs for both the City and the State of Kansas. Economic analyses contained in the Canyon Study reflect that 1,302 direct and indirect full-time equivalent jobs will be created as a result of the operations of the entertainment, retail and lodging components of the Project, generating $28,700,000 in annual payroll and approximately $1,500,000 in annual state employment taxes. Of these jobs, 768 will come from within the Project, and an additional 534 will be created outside of the Project in new or existing firms that supply businesses located in and around the Project and new or existing local businesses, such as, grocery stores, banks, convenience stores and service companies and other organizations that supply goods and services to employees and their families. Additionally, as set forth in the Canyon Study, it is estimated that 294 on-site and 484 off-site full-time equivalent construction jobs will be created during the construction of the Project with an annual payroll of $27,700,000.

### 3. Projected Visitation

The Fieldhouse will function as the Project's principal draw for visitors, with families and youth sports and educational organizations accounting for the bulk of the visitors. The Fieldhouse will support a strong regional market area that includes Kansas, Missouri, Iowa, Nebraska, Texas, and Oklahoma, and it is expected to draw a total of 300,000 total annual visitors. Visitors to the Fieldhouse will largely be generated from an anticipated 20 sports tournaments, 10 ongoing leagues, 15 sports camps, and 15 sports conferences (i.e., instructional, coaching, referee expos, etc.). As set forth in the Canyon Study, the Project as a whole is forecast to attract visitors in the following amounts and categories:

- Total Annual Visitation - 1,930,500
- Visitors from within 100 miles – 1,246,125 (249,250, or 20% from out-of-State)
- Visitors from outside 100 miles – 684,375 (342,188, or 50% from out-of-State)
- Total Out-of-State Visitors – 591,413 (30.6% of total visitation)

### 4. Impact on Outstanding Special Obligation Bonds

As required by the Act, an evaluation was conducted as to the effect, if any, the Project would have on any outstanding STAR Bonds. The River District STAR Bond Project is also located within the City, but, as is noted in the Canyon Study, each project has a niche geographic and consumer market to which it caters, and the projects will not directly compete. Further, the River District STAR Bond Project is financed on a "pay-as-you-go" basis without the issuance of bonds. Thus, there is no affect on that project or any outstanding bonds.

### 5. Market Study/Market Impact Study

As is concluded by the Canyon Study, the Project's Fieldhouse major multi-sport athletic complex destination attraction, retail mix and volume, and location within an emerging area of the City make it uniquely positioned to create tourism, recreation, and retail opportunities not currently available within the City. The Project will serve as a major catalyst to sales and economic activity throughout the City and the adjacent area, and will create a number of new jobs both onsite and offsite. The Project is anticipated to interact well with other existing special obligation bond projects, as well as nearby retail centers across the City. Each of these concepts is further explored in the Canyon Study, which is attached hereto as **Exhibit G**.

### 6. City Meetings and Minutes

Upon approval of this Project Plan and prior to transmittal to the Secretary, the City will attach as **Exhibit K** the minutes of all City Council proceedings relating to the District and this Project Plan.

## E. Relocation Plan

The Developer, at this time, owns or is contract purchaser to all property within the first phase of the Project. The Developer acquired or will acquire these properties through negotiated arms-length transactions; thus, any funds required for relocation were included in the purchase price.

## F. Sources and Uses

The estimated total project cost for the Project is $429,043,339. Estimated project costs eligible for reimbursement pursuant to the Act total $133,688,501, and estimated STAR Bond revenues are $31,570,785, subject to the financing considerations noted above. Accordingly, the following table represents the sources and uses of revenue within the Project:

**K-96 STAR Bond Project - Projected Sources and Uses of Funds (Phase I)**

| | | | |
|---|---|---|---|
| STAR Bond Revenue: | $ 31,570,785 | Hard Costs | |
| City G.O./CID Funds | $ 2,000,000 | Land Acquisition | $ 10,462,800 |
| Private Debt & Equity: | $ 91,218,256 | Sitework, Streets, Parking (Less Interchange) | $ 17,714,352 |
| | | K-96 Interchange | $ 9,500,000 |
| | | Design Permits - Fees | $ 5,808,260 |
| | | Hard Construction Costs | $ 64,331,500 |
| | | Hard Cost Contingency | $ 8,060,256 |
| | | Soft Costs | |
| | | Legal & Accounting | $ 500,000 |
| | | Finance | $ 1,439,807 |
| | | Sales | $ 1,408,506 |
| | | Miscellaneous Soft Costs | $ 5,139,185 |
| | | Soft Cost Contingency | $ 424,375 |
| **Total Sources of Funds:** | **$ 124,789,041** | **Total Uses of Funds:** | **$ 124,789,041** |
| **Private %:** | **73.10%** | | |
| **STAR Bond %:** | **25.30%** | | |
| **City %:** | **1.60%** | | |

(continued on next page)

**K-96 STAR Bond Project - Projected Sources and Uses of Funds (Whole Project)**

| | | | |
|---|---|---|---|
| STAR Bond Revenue: | $ 31,570,785 | Hard Costs | |
| City G.O./CID Funds | $ 2,000,000 | Land Acquisition | $ 50,102,400 |
| Private Debt & Equity: | $ 395,472,554 | Sitework, Streets, Parking (Less Interchange) | $ 42,711,303 |
| | | K-96 Interchange | $ 9,500,000 |
| | | Design Permits - Fees | $ 22,020,940 |
| | | Hard Construction Costs | $ 238,919,000 |
| | | Hard Cost Contingency | $ 31,104,234 |
| | | Soft Costs | |
| | | Legal & Accounting | $ 1,000,000 |
| | | Finance | $ 6,900,000 |
| | | Sales | $ 6,750,000 |
| | | Miscellaneous Soft Costs | $ 18,383,774 |
| | | Soft Cost Contingency | $ 1,651,689 |
| **Total Sources of Funds:** | **$ 429,043,339** | **Total Uses of Funds:** | **$ 429,043,339** |
| **Private %:** | **92.18%** | | |
| **STAR Bond %*:** | **7.36%** | | |
| **City Financing:** | **0.47%** | | |

***Subject to later refinancing or additional bond issuances**

## III. CONCLUSION

As is described herein, this Project Plan proposes a substantial mixed-use development focused on the Fieldhouse, a major multi-sport athletic complex as defined in the Act. The multi-phase approach, beginning with a sustainable first phase that will kick-start development throughout the Project, will create significant commercial activity, tourism, employment, and new revenues for the City and State of Kansas. At completion, the Project will become a focal point of central Kansas and a long-term economic generator. Given its strong potential to generate revenue and tourism for the State, this Project is an ideal candidate for STAR Bond financing.

**Exhibit D – Concept Plan**

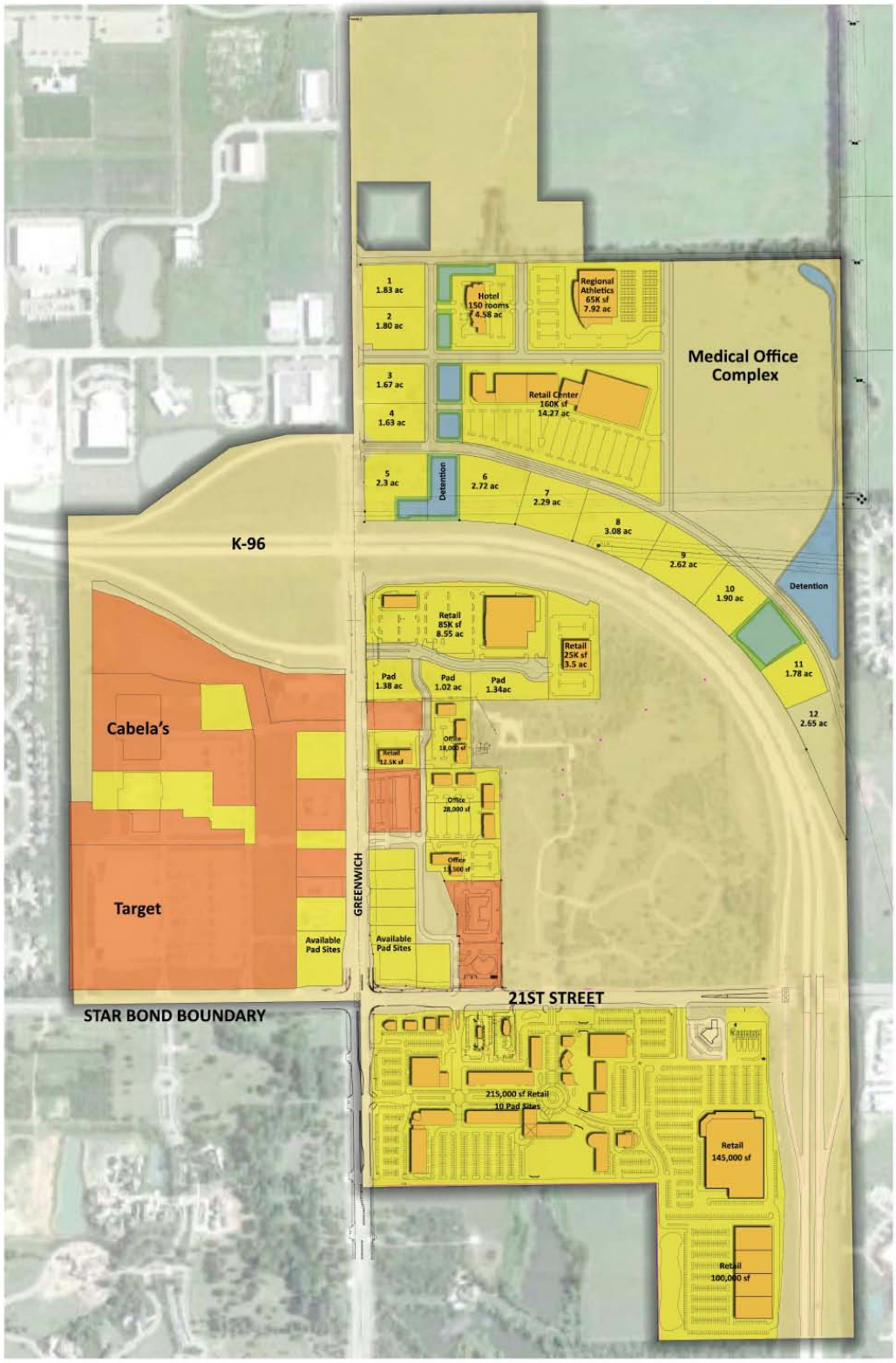

**Exhibit E – Legal Description of STAR Bond Project District**

A tract of land situated in the West One-half of Section 3, the East One-half of Section 4 and the Northwest Quarter of Section 10, all in Township 27 South, Range 2 East of the Sixth Principal Meridian in Sedgwick County, Kansas, being more particularly described as follows:

Note: The basis of the bearings in this description is N 89° 16' 46" E being the South line of the Southwest Quarter of Section 3 Township 26 South Range 2 East and as shown on Cross Pointe 2ND a recorded subdivision in the Sedgwick County Register of Deeds office.

Beginning at the Southeast corner of said Section 4, said corner being common with the Southwest corner of said Section 3 and the Northwest corner of said Section 10 and at the intersection of the centerlines for 21st Street North and Greenwich Road;

Thence South 89° 01' 03" West 1550.01 feet, on the south line of the Southeast Quarter of said Section 4 and generally West on the centerline of 21st Street North to a point 60.0 feet south of the south west corner of Lot 12 on Regency Lakes Commercial 2ND Addition a recorded subdivision in the Sedgwick County Register of Deeds office;

Thence North 00° 42' 44" West 2645.22 feet on the west line of said Regency Lakes Commercial 2ND Addition subdivision and a continuation of that line to a point on the East/West center line of said Section 4, the southern most line of Regency Park Addition a recorded subdivision in the Sedgwick County Register of Deeds office and the North right of way line of Highway K-96;

Thence North 89° 02' 53" East 381.86 feet, on said East/West center line of said Section 4, the southern most line of said Regency Park Addition, and the north right of way line of Highway K-96;

Thence North 54" 11' 18" East 614.48 feet on said southern most line of said Regency Park Addition and the north right of way line of Highway K-96;

Thence North 74° 45' 12" East 316.18 feet on said southern most line of said Regency Park Addition and the north right of way line of Highway K-96;

Thence South 89° 59' 33" East 360.23 feet on said southern most line of said Regency Park Addition and the north right of way line of Highway K-96 and extending to a point on the East line of said Section 4, said line being common with the West line of said Section 3 and the centerline of Greenwich Road;

Thence North 00° 32' 29" West 913.18 feet on said common line and said centerline of Greenwich Road to a point on the extended South right of way line of 27th Street;

Thence North 89° 14' 32" East 2646.39 feet, on the South right of way line of 27th Street to a point on the North/South center line of said Section 3, said point being 56.64 feet

south of the Northwest corner of Lot 13, Block 3, of said Greenwich Business Center Addition;

Thence South 00° 35’ 35” East 1330.80 feet, on said North/South center line, to a point being common to the Center Corner of said Section 3, the south west corner of Reserve G on said Greenwich Business Center Addition and the north west corner of The Fairmont a recorded subdivision in the Sedgwick County Register of Deeds office;

Thence South 00° 35’ 48” East 2651.74 feet, on said North/South center line to a point being the South Quarter Corner of said Section 3, the North Quarter Corner of said Section 10 and on the centerline of 21st Street North;

Thence South 01° 00’ 22” East 1862.90 feet, on the North/South center line of said Section 10 to a point 417.59 feet east of the south east corner of Reserve C on Cross Pointe 2ND a recorded subdivision in the Sedgwick County Register of Deeds office;

Thence South 89° 16’ 20” West 1061.05 feet on the south line of said Cross Pointe 2ND to the south west corner of Reserve C on said subdivision;

Thence North 00° 43’ 40” West 848.92 feet on the westerly line of said Reserve C and continuing on that line being a west line of Lot 7 on said Cross Pointe 2ND;

Thence South 89° 17’ 02” West 1589.13 feet, to a point being on the West line of said Section 10, the centerline of Greenwich Road and 60.0 feet west of the south west corner of Lo1 Block 1 on said Cross Pointe 2ND;

Thence North 00° 46’ 07” West 1014.01 feet, on said West line and the centerline of Greenwich Road, to the point of beginning.

Subject to survey and all easements and restriction of record.

**Exhibit F – Fieldhouse Renderings**

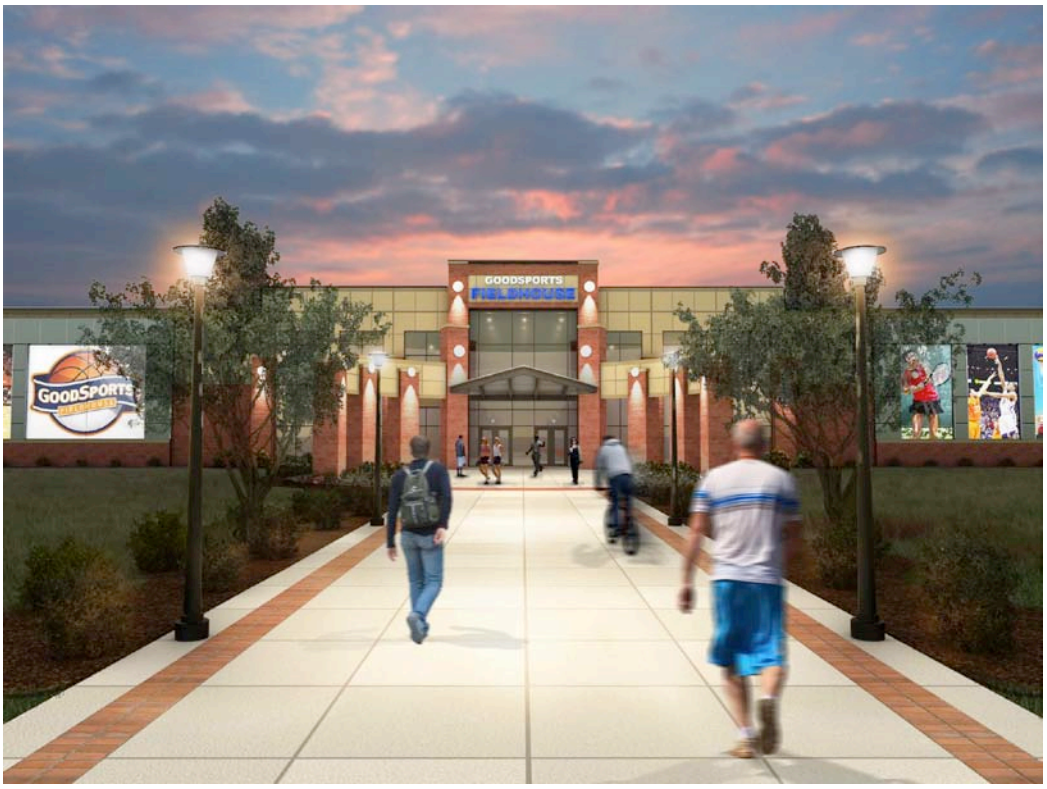

**Exhibit G – STAR Bond Project Plan Feasibility, Economic Impact and Market Study**

# Exhibit H – Project Budget

| Cost Category | Total | Phase I Costs | Phase I Cost % |
|---|---|---|---|
| Land Acquisition | $50,102,400 | $10,462,800 | *20.88%* |
| Sitework | | | |
| Sitework - Cut and Fill | $2,485,000 | $1,988,000 | *80.00%* |
| K-96 Interchange | $9,500,000 | $9,500,000 | *100.00%* |
| Infrastructure - Water | $655,000 | $327,500 | *50.00%* |
| Infrastructure - Sewer | $1,296,750 | $648,375 | *50.00%* |
| Parking Lot Paving | $4,440,000 | $926,484 | *20.87%* |
| Street Paving | $1,622,500 | $811,250 | *50.00%* |
| Sidewalks | $431,500 | $215,750 | *50.00%* |
| Intersection Improvements - Signals/Turn Lanes | $1,700,000 | $1,700,000 | *100.00%* |
| Street Lights | $1,000,000 | $1,000,000 | *100.00%* |
| Street Landscaping | $800,000 | $400,000 | *50.00%* |
| Pipeline Relocation | $416,667 | $416,667 | *100.00%* |
| Site Landscaping | $1,333,333 | $278,224 | *20.87%* |
| Signage - Pylons & Feature Signage | $2,500,000 | $2,500,000 | *100.00%* |
| Storm Water Sewer Lines | $810,000 | $810,000 | *100.00%* |
| Detention Ponds | $1,200,000 | $600,000 | *50.00%* |
| Control Structures | $350,000 | $350,000 | *100.00%* |
| Detention Pond Connections | $75,000 | $75,000 | *100.00%* |
| Stream Mitigation Actions | $500,000 | $500,000 | *100.00%* |
| Inlet Structures | $175,000 | $175,000 | *100.00%* |
| Existing West Site Infrastructure | $2,381,707 | $2,381,707 | *100.00%* |
| Other Sites Future Infrastructure | $14,656,000 | $0 | *0.00%* |
| Subtotal: | $48,328,457 | $25,603,956 | *52.98%* |
| Sitework Contingency (Interchange Excluded): | $3,882,846 | $1,610,396 | *41.47%* |
| Total: | $52,211,303 | $27,214,352 | *52.12%* |
| Design, Permits & Fees | | | |
| Architecture | $14,335,140 | $2,991,280 | *20.87%* |
| Engineering | $2,311,912 | $1,155,956 | *50.00%* |
| Inspections | $1,505,956 | $752,978 | *50.00%* |
| GeoTech | $374,136 | $187,068 | *50.00%* |
| Survey & Staking | $1,441,956 | $720,978 | *50.00%* |
| Other Sites Future Engineering, Inspections, Geo, Survey & Staking | $2,051,840 | $0 | *0.00%* |
| Phase I - Hard Construction Costs | | | |
| Subtotal: | $64,331,500 | $64,331,500 | *100.00%* |
| Phase II - Hard Construction Costs | | | |
| Subtotal: | $21,645,000 | | *0.00%* |

| | | | |
|---|---|---|---|
| Future Phase - Hard Construction Costs | | | |
| Subtotal: | $152,942,500 | $0 | *0.00%* |
| Legal & Accounting | $1,000,000 | $500,000 | *50.00%* |
| Finance | | | |
| Appraisals | $200,000 | $41,734 | *20.87%* |
| Property Insurance | $700,000 | $146,067 | *20.87%* |
| Closing Costs | $500,000 | $104,334 | *20.87%* |
| Financing - Interest Carry | $4,000,000 | $834,671 | *20.87%* |
| Financing Points | $1,000,000 | $208,668 | *20.87%* |
| Bond Fees | $500,000 | $104,334 | *20.87%* |
| Sales | | | |
| Marketing | $1,000,000 | $208,668 | *20.87%* |
| Retail Leasing | $5,500,000 | $1,147,672 | *20.87%* |
| Travel & Conventions | $250,000 | $52,167 | *20.87%* |
| Miscellaneous Soft Costs | | | |
| Property Taxes | $500,000 | $104,334 | *20.87%* |
| Special Assessments - Sanitary Sewer Lateral/Submain Lines | $646,000 | $134,799 | *20.87%* |
| Admin Overhead | $500,000 | $104,334 | *20.87%* |
| Development Fees (5% of all Hard Costs minus Interchange) | $16,737,774 | $4,795,718 | *28.65%* |
| *Hard Costs* | *Whole Project* | *Phase I* | |
| *Land Acquisition* | *$50,102,400* | *$10,462,800* | *20.88%* |
| *Sitework, Streets, Parking (Less Interchange)* | *$42,711,303* | *$17,714,352* | *41.47%* |
| *K-96 Interchange* | *$9,500,000* | *$9,500,000* | *100.00%* |
| *Design Permits - Fees* | *$22,020,940* | *$5,808,260* | *26.38%* |
| *Hard Construction Costs* | *$238,919,000* | *$64,331,500* | *26.93%* |
| *Subtotal* | *$363,253,643* | *$107,816,912* | *29.68%* |
| *Contingency (Excludes Sitework & Interchange - Contingency Included Above)* | *$31,104,234* | *$8,060,256* | *25.91%* |
| *Hard Costs Total* | *$394,357,877* | *$115,877,168* | *29.38%* |
| *Soft Costs* | | | |
| *Legal & Accounting* | *$1,000,000* | *$500,000* | *50.00%* |
| *Finance* | *$6,900,000* | *$1,439,807* | *20.87%* |
| *Sales* | *$6,750,000* | *$1,408,506* | *20.87%* |
| *Miscellaneous Soft Costs* | *$18,383,774* | *$5,139,185* | *27.96%* |
| *Subtotal* | *$33,033,774* | *$8,487,498* | *25.69%* |
| *Soft Cost Contingency* | *$1,651,689* | *$424,375* | *25.69%* |
| *Soft Costs Total* | *$34,685,463* | *$8,911,873* | *25.69%* |

| | | | |
|---|---|---|---|
| **TOTAL HARD COSTS** | **$394,357,877** | **$115,877,168** | *29.38%* |
| **TOTAL SOFT COSTS** | **$34,685,463** | **$8,911,873** | *25.69%* |
| **TOTAL PROJECT COSTS** | **$429,043,339** | **$124,789,041** | *29.09%* |

## Exhibit I – Eligible Costs

| Cost Category | STAR Bond Eligible | Eligible % of Total | STAR Bond Eligible - Phase I | Phase I Eligible % |
|---|---|---|---|---|
| Land Acquisition | $50,102,400 | *100.00%* | $10,462,800 | *100.00%* |
| Sitework | | | | |
| Sitework - Cut and Fill | $2,485,000 | *100.00%* | $1,988,000 | *100.00%* |
| K-96 Interchange | $7,500,000 | *78.95%* | $9,500,000 | *100.00%* |
| Infrastructure - Water | $655,000 | *100.00%* | $327,500 | *100.00%* |
| Infrastructure - Sewer | $1,296,750 | *100.00%* | $648,375 | *100.00%* |
| Parking Lot Paving | $4,440,000 | *100.00%* | $926,484 | *100.00%* |
| Street Paving | $1,622,500 | *100.00%* | $811,250 | *100.00%* |
| Sidewalks | $431,500 | *100.00%* | $215,750 | *100.00%* |
| Intersection Improvements - Signals/Turn Lanes | $1,700,000 | *100.00%* | $1,700,000 | *100.00%* |
| Street Lights | $1,000,000 | *100.00%* | $1,000,000 | *100.00%* |
| Street Landscaping | $800,000 | *100.00%* | $400,000 | *100.00%* |
| Pipeline Relocation | $416,667 | *100.00%* | $416,667 | *100.00%* |
| Site Landscaping | $1,333,333 | *100.00%* | $278,224 | *100.00%* |
| Signage - Pylons & Feature Signage | $2,500,000 | *100.00%* | $2,500,000 | *100.00%* |
| Storm Water Sewer Lines | $810,000 | *100.00%* | $810,000 | *100.00%* |
| Detention Ponds | $1,200,000 | *100.00%* | $600,000 | *100.00%* |
| Control Structures | $350,000 | *100.00%* | $350,000 | *100.00%* |
| Detention Pond Connections | $75,000 | *100.00%* | $75,000 | *100.00%* |
| Stream Mitigation Actions | $500,000 | *100.00%* | $500,000 | *100.00%* |
| Inlet Structures | $175,000 | *100.00%* | $175,000 | *100.00%* |
| Existing West Site Infrastructure | $2,381,707 | *100.00%* | $2,381,707 | *100.00%* |
| Other Sites Future Infrastructure | $14,656,000 | *100.00%* | $0 | *0.00%* |
| Subtotal: | $46,328,457 | *95.86%* | $25,603,956 | *100.00%* |
| Sitework Contingency (Interchange Excluded): | $3,882,846 | *100.00%* | $1,610,396 | *100.00%* |
| Total: | $50,211,303 | *96.17%* | $27,214,352 | *100.00%* |
| Design, Permits & Fees | | | | |
| Architecture | $2,867,028 | *20.00%* | $2,867,028 | *95.85%* |
| Engineering | $1,155,956 | *50.00%* | $1,155,956 | *100.00%* |
| Inspections | $752,978 | *50.00%* | $752,978 | *100.00%* |
| GeoTech | $187,068 | *50.00%* | $187,068 | *100.00%* |
| Survey & Staking | $720,978 | *50.00%* | $720,978 | *100.00%* |
| Other Sites Future Engineering, Inspections, Geo, Survey & Staking | $2,051,840 | *100.00%* | $0 | *0.00%* |
| Phase I - Hard Construction Costs | | | | |
| Subtotal: | $6,622,500 | *10.29%* | $6,622,500 | *10.29%* |
| Phase II - Hard Construction Costs | | | | |
| Subtotal: | $0 | *0.00%* | $0 | *0.00%* |

| | | | | |
|---|---|---|---|---|
| Future Phase - Hard Construction Costs | | | | |
| Subtotal: | $0 | *0.00%* | $0 | *0.00%* |
| Legal & Accounting | $500,000 | *50.00%* | $500,000 | *100.00%* |
| Finance | | | | |
| Appraisals | $200,000 | *100.00%* | $41,734 | *100.00%* |
| Property Insurance | $700,000 | *100.00%* | $146,067 | *100.00%* |
| Closing Costs | $500,000 | *100.00%* | $104,334 | *100.00%* |
| Financing - Interest Carry | $4,000,000 | *100.00%* | $834,671 | *100.00%* |
| Financing Points | $1,000,000 | *100.00%* | $208,668 | *100.00%* |
| Bond Fees | $500,000 | *100.00%* | $104,334 | *100.00%* |
| Sales | | | | |
| Marketing | $0 | *0.00%* | $0 | *0.00%* |
| Retail Leasing | $0 | *0.00%* | $0 | *0.00%* |
| Travel & Conventions | $0 | *0.00%* | $0 | *0.00%* |
| Miscellaneous Soft Costs | | | | |
| Property Taxes | $500,000 | *100.00%* | $104,334 | *100.00%* |
| Special Assessments - Sanitary Sewer Lateral/Submain Lines | $646,000 | *100.00%* | $134,799 | *100.00%* |
| Admin Overhead | $250,000 | *50.00%* | $104,334 | *100.00%* |
| Development Fees (5% of all Hard Costs minus Interchange) | $3,175,786 | *18.97%* | $3,175,786 | *66.22%* |
| *Hard Costs* | *STAR Bond Eligible* | | | |
| *Land Acquisition* | *$50,102,400* | *100.00%* | *$10,462,800* | *100.00%* |
| *Sitework, Streets, Parking (Less Interchange)* | *$42,711,303* | *100.00%* | *$17,714,352* | *100.00%* |
| *K-96 Interchange* | *$7,500,000* | *78.95%* | *$9,500,000* | *100.00%* |
| *Design Permits - Fees* | *$7,735,848* | *35.13%* | *$5,684,008* | *97.86%* |
| *Hard Construction Costs* | *$6,622,500* | *2.77%* | *$6,622,500* | *10.29%* |
| *Subtotal* | *$114,672,051* | *31.57%* | *$49,983,660* | *46.36%* |
| *Contingency (Excludes Sitework & Interchange - Contingency Included Above)* | *$6,446,075* | *20.72%* | *$2,276,931* | *28.25%* |
| *Hard Costs Total* | *$121,118,125* | *30.71%* | *$52,260,591* | *45.10%* |
| *Soft Costs* | | | | |
| *Legal & Accounting* | *$500,000* | *50.00%* | *$500,000* | *100.00%* |
| *Finance* | *$6,900,000* | *100.00%* | *$1,439,807* | *100.00%* |
| *Sales* | *$0* | *0.00%* | *$0* | *0.00%* |
| *Miscellaneous Soft Costs* | *$4,571,786* | *24.87%* | *$3,519,253* | *68.48%* |
| *Subtotal* | *$11,971,786* | *36.24%* | *$5,459,060* | *64.32%* |
| *Soft Cost Contingency* | *$598,589* | *36.24%* | *$272,953* | *64.32%* |
| *Soft Costs Total* | *$12,570,376* | *36.24%* | *$5,732,013* | *64.32%* |

| | | | | |
|---|---|---|---|---|
| **TOTAL HARD COSTS** | **$121,118,125** | *30.71%* | **$52,260,591** | *45.10%* |
| **TOTAL SOFT COSTS** | **$12,570,376** | *36.24%* | **$5,732,013** | *64.32%* |
| **TOTAL PROJECT COSTS** | **$133,688,501** | *31.16%* | **$57,992,604** | *46.47%* |

**Exhibit J – First Phase STAR Bond Financing Proforma**

## K-96 STAR Bond District Revenue Proforma

| Project Component | Room Revenues | Food and Beverage Revenues | Annual Sales | | Total Annual Sales |
|---|---|---|---|---|---|
| The Fieldhouse | $ - | $ - | $ 1,000,000 | | $ 1,000,000 |
| Goodsports Hotel | $ 2,550,000 | $ 500,000 | $ - | | $ 3,050,000 |
| Wavehouse | $ - | $ - | $ 3,000,000 | | $ 3,000,000 |
| KAJ Hotel | $ 2,750,000 | $ 500,000 | $ - | | $ 3,250,000 |
| Cabela's | $ - | $ - | $ 35,000,000 | | $ 35,000,000 |
| Major Retailer | $ - | $ - | $ 20,000,000 | | $ 20,000,000 |
| 13,000 South Inline Shoppes @ $250 PSF | | | $ 3,250,000 | | $ 3,250,000 |
| West Side Retail - 57,000 SF @ $250 PSF | | | $ 14,250,000 | | $ 14,250,000 |
| | | | Base Sales | Base Increase (2%) | |
| Existing Base Sales and Increases | $ - | $ - | $ 44,435,616 | $ 888,712 | |

| SALES ASSUMPTIONS | | |
|---|---|---|
| Base Sales Tax Collections By State | | $ 3,243,800 |
| State Sales Tax Rate for STAR Bonds | | 5.70% |
| County Sales Tax Reimbursed to City (fluctuates) | | 0.29% |
| Total Sales Tax Captured for STAR Bonds | | 5.99% |
| First Year Sales | | Increase and Cabela's Only |
| Second Year Sales | | 35.00% |
| Third Year Sales | | 70.00% |
| Fourth Year Sales | | 100.00% |
| Annual Growth | | 2.0% |

| ANNUAL TAX REVENUE | | | | |
|---|---|---|---|---|
| Year | Total Sales | Sales Tax Revenue | City Portion of County Sales Tax | Total STAR Bond Revenue |
| 1 | $ 35,888,712 | $ 2,045,657 | $ 104,077 | $ 2,149,734 |
| 2 | $ 52,618,712 | $ 2,999,267 | $ 152,594 | $ 3,151,861 |
| 3 | $ 69,348,712 | $ 3,952,877 | $ 201,111 | $ 4,153,988 |
| 4 | $ 83,688,712 | $ 4,770,257 | $ 242,697 | $ 5,012,954 |
| 5 | $ 85,362,487 | $ 4,865,662 | $ 247,551 | $ 5,113,213 |
| 6 | $ 87,069,736 | $ 4,962,975 | $ 252,502 | $ 5,215,477 |
| 7 | $ 88,811,131 | $ 5,062,234 | $ 257,552 | $ 5,319,787 |
| 8 | $ 90,587,354 | $ 5,163,479 | $ 262,703 | $ 5,426,182 |
| 9 | $ 92,399,101 | $ 5,266,749 | $ 267,957 | $ 5,534,706 |
| 10 | $ 94,247,083 | $ 5,372,084 | $ 273,317 | $ 5,645,400 |
| 11 | $ 96,132,024 | $ 5,479,525 | $ 278,783 | $ 5,758,308 |
| 12 | $ 98,054,665 | $ 5,589,116 | $ 284,359 | $ 5,873,474 |
| 13 | $ 100,015,758 | $ 5,700,898 | $ 290,046 | $ 5,990,944 |
| 14 | $ 102,016,073 | $ 5,814,916 | $ 295,847 | $ 6,110,763 |
| 15 | $ 104,056,395 | $ 5,931,215 | $ 301,764 | $ 6,232,978 |
| 16 | $ 106,137,523 | $ 6,049,839 | $ 307,799 | $ 6,357,638 |
| 17 | $ 108,260,273 | $ 6,170,836 | $ 313,955 | $ 6,484,790 |
| 18 | $ 110,425,479 | $ 6,294,252 | $ 320,234 | $ 6,614,486 |
| 19 | $ 112,633,988 | $ 6,420,137 | $ 326,639 | $ 6,746,776 |
| 20 | $ 114,886,668 | $ 6,548,540 | $ 333,171 | $ 6,881,711 |
| TOTAL | $ - | $ 104,460,513 | $ 5,210,580 | $ 109,775,171 |

| | | | | | |
|---|---|---|---|---|---|
| NPV | 7.50% | $ - | $ 48,906,096 | $ 2,488,205 | $ 51,394,301 |
| Coverage | 1.40 | $ - | $ 34,932,926 | $ 1,777,289 | $ 36,710,215 |
| DSRF/CI/COI | 14% | $ - | $ 30,042,316 | $ 1,528,469 | $ 31,570,785 |

**Exhibit K – City Council Meeting Minutes**

**(PUBLISHED IN *THE WICHITA EAGLE* ON** [February 8, 2013)

**ORDINANCE NO. 49-438**

**AN ORDINANCE ADOPTING A STAR BOND PROJECT PLAN FOR THE PHASE I STAR BOND PROJECT FOR THE K-96 GREENWICH STAR BOND DISTRICT.**

**WHEREAS**, by Ordinance No. 49-208,passedFebruary 28, 2012, and published on March 2, 2012, the City Council (the "Governing Body") of the City of Wichita, Kansas (the "City"), established a STAR bond district pursuant to K.S.A. 12-17,160*et seq*., as amended (the "Act"), known as the K-96 Greenwich STAR Bond District; and

**WHEREAS**, the Governing Body, by Resolution No. 12-006,adopted January 10, 2012, described a STAR bond district plan which identifies proposed STAR bond project areas and proposed bildings and facilities to be constructed or improved within the K-96 Greenwich STAR Bond District (the "District Plan"); and

**WHEREAS**, the Governing Body, by Resolution No. 12-088,adopted May 1, 2012, set a public hearing on a proposal to amend the District Plan to include the ability to fund the cost of developing a multi-sport athletic complex pursuant to the Act; and

**WHEREAS**,by Ordinance No.49-281 passed June 12, 2012, and published June 15, 2012, the Governing Body amended the District Plan to include the ability to fund the cost of developing a multi-sport athletic complex; and

**WHEREAS**, the Governing Body, by Resolution No. 12-259, adopted December 11, 2012, set a public hearing to consider adoption of a STAR bond project plan (the "Phase I STAR Bond Project Plan") on January 15, 2013, at 9:15 a.m. or thereafter, in the City Council Chambers, City Hall, 455 N. Main, Wichita, Kansas; and

**WHEREAS**, prior to the adoption of Resolution No. 12-259, the Wichita Sedgwick County Metropolitan Area Planning Commission has reviewed the proposed Phase I STAR Bond Project Plan and determined that the Phase I STAR Bond Project Plan is consistent with the intent of the comprehensive general plan for the development of the City; and

**WHEREAS**, the Phase I STAR Bond Project Plan and a map of the area to be developed were available for inspection during the regular office hours in the office of the City Clerk, City Hall, 13th Floor, 455 N. Main, Wichita, Kansas, prior to the public hearing held on January 15, 2013, which plan included the feasibility study, market impact study, maps and boundary descriptions, descriptions of the public improvement projects, relocation assistance plan and other information pertinent to the Phase I STAR Bond Project described therein; and

**WHEREAS**, the City proposes to undertake the Phase I STAR Bond Project within the K-96 Greenwich STAR Bond District pursuant to K.S.A. 12-17,160 *et seq*.; and

**WHEREAS**, a copy of the Phase I STAR Bond Project Plan has been delivered to Board of County Commissioners of Sedgwick County and the Boards of Education of Unified School District Nos. 259 and 375 in accordance with the provisions of the Act; and

**WHEREAS**, a public hearing was held on January 15, 2013, after duly published, delivered and mailed notice in accordance with the provisions of the Act; and

**WHEREAS**, upon considering the information and comments received at the public hearing, the Governing Body hereby deems it advisable to make certain findings and to adopt such Phase I STAR Bond Project Plan.

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

**1.** The Governing Body hereby adopts the Phase I STAR Bond Project Plan in the form on file with the City Clerk (the "Phase I Project Plan").

**2.** The Governing Body finds and determines that the relocation assistance plan contained in the Phase I Project Plan is hereby adopted for use in the K-96 Greenwich STAR Bond District.

**3.** The City expects to make capital expenditures on and after the date of passage of this Ordinance in connection with the Phase I Project Plan and intends to reimburse itself for such expenditures with the proceeds of one or more series of bonds and temporary notes of the City in the estimated maximum principal amount of $125,000,000, plus costs of issuance.

**4.** The Mayor, City Manager, City Clerk and other officials and employees of the City, including the City Attorney, and Gilmore & Bell, P.C., Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Ordinance.

**5.** This Ordinance shall be in force and effect from and after its passage, approval, and publication once in the official City newspaper. The City Clerk shall transmit copies of the adopted Ordinance, a description of the land within the K-96 Greenwich STAR Bond District, and map or plat indicating the boundaries of the K-96 Greenwich STAR Bond District to the Sedgwick County Clerk, Sedgwick County Treasurer and Sedgwick County Appraiser and to the Boards of Education of Unified School District Nos. 259 and 375 and to the Board of County Commissioners of Sedgwick County.

**PASSED** by a two-thirds vote of the Governing Body on January __, 2013.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

**APPROVED AS TO FORM**:

_____
Gary Rebenstorf, City Attorney

**City of Wichita**
**City Council Meeting**
**January 15, 2013**

**TO:** Mayor and City Council

**SUBJECT:** Revision of City Council District Boundary Lines

**INITIATED BY:** Law Department

**AGENDA:** New Business

---

**Recommendation:** Approve the amended City Council district boundaries, declare an emergency and adopt the ordinance on first reading.

**Background:** Charter Ordinance 173 provides for the revision of the City Council district boundaries every ten years based on the decennial census data or at other intervals if the district populations get out of balance. On November 20, 2012, Ordinance No. 49-398 was passed by the City Council re-establishing the Council District Boundaries. Staff utilized GIS and updated precinct data supplied by Sedgwick County in drafting the proposed boundaries. Recently, staff was notified by the Sedgwick County Election Commissioner that minor changes had been made in the GIS and precinct data after it had been provided to the City. The Election Commissioner requests that the ordinance be amended to reflect these minor precinct changes.

**Analysis:** Technical amendments are necessary to accurately reflect the assignment of precincts to each City Council District. None of the affected or added precincts currently have registered voters, so there is no change in the population of each district from the previous re-districting ordinance. Each District would have the following populations:

| | Population |
|---|---|
| District I | 63,531 |
| District II | 62,560 |
| District III | 64,330 |
| District IV | 62,335 |
| District V | 63,169 |
| District VI | 65,461 |

The amendments make the following precinct changes:

Dist. II: Precinct 228A no longer exists, so it is deleted.
Precinct 236A is added, as Precinct 236 has been subdivided
Precinct M106 is now part of Precinct 221

Dist. IV: Precinct 427 is added.

Dist. V: Precincts 529A, 529D and 529E have been deleted as they have been are merged into Precinct 529C.

The proposed ordinance meets the requirements set forth in Charter Ordinance 173 for population and boundary lines.

**Financial Considerations:** Any expenses necessary to implement the change in boundaries will be paid from the General Fund.

**Legal Considerations:** The Ordinance approving the new district boundaries has been reviewed and approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council, declare an Emergency and approve the ordinance on first reading.

**Attachment:** Declaration of Emergency and Proposed Ordinance.

**REQUEST FOR DECLARATION OF EMERGENCY**

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declare that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit*, January 15, 2013, of an ordinance entitled:

ORDINANCE NO. 49-439

"AN ORDINANCE CREATING AND ESTABLISHING DISTRICTS FOR THE ELECTION OF CITY COUNCIL MEMBERS TO THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS AS PROVIDED FOR BY CHARTER ORDINANCE NO. 173 OF THE CODE OF THE CITY OF WICHITA, KANSAS AND REPEALING ORDINANCE NO. 49-398 OF THE CITY OF WICHITA, KANSAS WHICH PREVIOUSLY CREATED SUCH DISTRICTS"

The general nature of such emergency is that the passage of the above-entitled ordinance is necessary to allow the City Council Districts to be amended timely for the April 2013 City Council Elections.

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

EXECUTED at Wichita, Kansas, on this 15th day of January 2013.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

_____
Gary E. Rebenstorf, Director of Law

First Published in The Wichita Eagle on January 18, 2013

ORDINANCE NO. 49-439

AN ORDINANCE CREATING AND ESTABLISHING DISTRICTS FOR THE ELECTION OF CITY COUNCIL MEMBERS TO THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS AS PROVIDED FOR BY CHARTER ORDINANCE NO. 173 OF THE CODE OF THE CITY OF WICHITA, KANSAS AND REPEALING ORDINANCE NO. 49-398 OF THE CITY OF WICHITA, KANSAS WHICH PREVIOUSLY CREATED SUCH DISTRICTS.

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

SECTON 1. The following districts identified by precinct number, as assigned by the Sedgwick County Election Commissioner are hereby established as City of Wichita Council Member Election Districts for the purposes set forth in City of Wichita Charter Ordinance No. 173.

District I: 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117,118, 119, 120, 121, 122, 123, 124, 125, 126, 126A, 127, 127C, 129, 130, 131, 132, 201, 202, 203, 204.

District II: 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 220A, 220B, 220C, 221, 222, 223, 224, 225, 226, 226A, 227, 227A, 227B, 227D, 228, 230, 230A, 230B, 230C, 231, 233, 234, 235, 236, 236A.

District III: 102, 128, 232, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 311B, 311C, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 323A, 324, 325, 326, 421.

District IV: 404, 405, 406, 407, 408, 409, 410, 411, 412, 412A, 412B, 413, 414, 414A, 415, 416, 416A, 416B, 416C, 417, 418, 419, 420, 422, 423, 424, 424A, 424B, 424C, 424D, 424E, 424G, 424H, 424I, 425, 425A, 426, 427, 428,

429, 505, 520, 521, 532, 533, 535, 537, 537A, 537B.

District V: 503, 504, 506, 507, 508, 509, 510, 511, 512, 513, 513C, 514, 515, 516, 517, 518, 519, 522, 523, 524, 525, 526, 527, 528, 529, , 529B, 529C, 529F, 530, 531, 534A, 538, 538A.

District VI: 401, 402, 403, 501, 502, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 616 S29, 617, 618, 619, 620, 620 S27, 621, 621A, 622, 622A, 622C, 623, 623A, 624, 625, 626, 627, 628.

SECTION 2: Ordinance No. 49-398 of the City of Wichita is hereby repealed.

SECTION 3: This Ordinance shall take effect on January 15, 2013, following its adoption and publication once in the official City newspaper.

PASSED by the governing body of the City of Wichita, Kansas, this 15th day of January, 2013.

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

Approved as to Form:

_____
Gary E. Rebenstorf
Director of Law

**City of Wichita**
**City Council Meeting**
January 15, 2013

**TO:** Mayor and City Council

**SUBJECT:** City of Wichita Bicycle Master Plan Endorsement

**INITIATED BY:** Wichita-Sedgwick County Metropolitan Area Planning Department

**AGENDA:** New Business

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**Recommendation:** Endorse the Wichita Bicycle Master Plan.

**Background**: On April 5, 2011, the Wichita City Council approved the use of Energy Efficiency Community Block Grant (EECBG) funds from the American Recovery and Renewal Act for the creation of the Wichita Bicycle Master Plan (Plan). On June 14, 2011, the City Council approved the selection of and contract with Toole Design Group to undertake the preparation of the Plan. A 19-member Steering Committee was appointed by the City Manager to oversee the project. The Steering Committee included representatives from the Wichita Board of Park Commissioners, Wichita City Council, USD 259, Oz Bicycle Club, Bike/Walk Alliance, Coasters Club, Run Wichita, Mayor's Youth Council, WAMPO, KDOT, Wichita Area Builders Association, Wichita Downtown Development Corporation, Young Professionals of Wichita, Visioneering Wichita, and other stakeholders.

Over the last year, the Steering Committee has worked closely with the Plan Technical Advisory Committee and the community at-large to create a plan that meets the needs of our community. There have been many different public input opportunities related to the Plan, including: 16 Steering Committee meetings; two open house events, four focus groups, five stakeholder meetings, a Better Block community event, an interactive online mapping tool, and a public online survey. The Plan was also presented to all of the District Advisory Boards, the Wichita-Sedgwick County Metropolitan Area Planning Commission, the Wichita Transit Advisory Board, and the Wichita Board of Park Commissioners. As indicated in the attachments, all of these organizations recommend that the City Council endorse the Plan.

In addition to recommending endorsement of the Plan by the City Council, DAB V and the Wichita Transit Advisory Board included additional recommendations and/or requests. The Wichita Transit Advisory Board recommended that the Planning Department staff work with Wichita Transit staff to ensure that all potential synergies between the Plan and the transit system be considered; and that the Planning Department consider all opportunities to educate the community about the synergies that result from improving bicycle access and transit usage. DAB V requested that the Steering Committee reconsider including the rails-to-trails former railroad route in west Wichita (located west of Hoover and south of Kellogg) on the Priority Network and/or as one of the top shared use path facilities.

In response to the request, the Steering Committee re-evaluated the Priority Network facilities and discussed the benefits of developing a shared-use path within the former railroad route in west Wichita. The facility is included within the Plan as part of the Bicycle Network for future development. The Steering Committee did not include the facility in the Priority Network for a number of reasons including the following: at the Second Open House event the facility was ranked as the sixth most important of eight shared-use path facilities according to the number of public votes received; if added to the Priority Network then the costs for the Priority Network would exceed the estimated $12.5 million in potential

funding for bicycle facilities; and there are short-term east-west bicycle facility alternatives located north of Kellogg.

**Analysis:** The DRAFT City of Wichita Bicycle Master (Plan) is a 10-year guide for the provision of bicycle infrastructure, policies, and programs in both the City of Wichita (City) and the Wichita 2030 Urban Growth Area. More than 4,000 individuals received information about the Plan, participated in creating it, and/or received information about the Plan. The Plan includes goals, objectives, actions, priorities, and performance measures along with a Priority Bikeway Network map of more than 140 miles of recommended new bicycle facilities for development over 10 years.

The Plan includes the following three goals.

- Goal 1: Increase the amount of bicycling in Wichita
- Goal 2: Improve the safety of bicyclists in Wichita
- Goal 3: Foster and promote a culture where bicycling is a viable and acceptable form of transportation

In order to accomplish the goals the Plan contains recommendations related to infrastructure, policies, and programs. A brief review of the recommendations by general category is provided below.

Bicycle Infrastructure

*General*

The bicycle facility recommendations contained within the Plan were developed from the Study Network, which included the bicycle facility recommendations from the public, staff, and previous plans. All of the bicycle facilities in the Study Network were evaluated using aerials and maps; followed-up by field visits for the on-street facilities. The resulting information was used to create the Bicycle Network, which retained only those facilities that made sense and are feasible. The Plan recommends specific design solutions for each roadway bicycle facility.

*Priorities*

The recommended Bicycle Network includes more than 766 miles of future bicycle facilities. The Steering Committee identified the priority facilities to accomplish in the next 10 years as the Priority Network (approximately 145 miles). In addition, the Plan identifies the following top 10 on-street and sidepath facilities; and the top off-street shared-use path facility.

Top Ten Recommended Priority On-street and Side Path Bicycle Facilities (arranged alphabetically, no rank order)

| Facility Name | Description |
|---|---|
| 1st and 2nd Street Bike Lanes | Extend existing bike lanes from I-135 to the Arkansas River (east/west) |
| 2nd Street Bike Lane and Shared Lane Markings | Install mix of bike lanes and shared lane markings from the Arkansas River to Hoover (east/west) |
| Armour Ave Bicycle Boulevard | Install bicycle boulevard from Huntington Ave to K-96 (north/south) |
| Douglas Avenue Shared Lane Markings | Install shared lane markings from St. Paul Ave to Edgemoor Ave (east/west) |
| I-235 East/West Crossing: Central Ave or Maple St | Pending further study, install a side path connection under I-235 and across the “Big Ditch” (east/west) |
| Market St & Topeka Ave Bike Lanes | Install bike lanes from 21st St to Mt Vernon Rd (north/south) |

| | |
|---|---|
| Mt Vernon Bike Lanes | Install bike lanes from Broadway Ave to Woodlawn Blvd (east/west) |
| Pedestrian Crossing Signal & Bicycle Boulevard | Install signal to cross Ridge Road and Westport Ave to provide access to Sedgwick County Park; install bicycle boulevard starting at Ridge and going west to Glenhurst Street; then south along Holland Ln/Country Acres Ave/Woodchuck to University Ave (north/south) |
| Perry Ave Bicycle Boulevard + 17th / 18th St Shared Lane Markings | Install bicycle boulevard starting at Perry Ave & 13th St., and going north to via Perry/Portier/20th/Coolidge to 21st Street (north/south) + Install shared lane markings on 17th, then 18th St from I-135 to Perry Ave (east/west) |
| Sycamore St Bicycle Boulevard | Install bicycle boulevard starting at Sycamore and Douglas and going south to Glenn St via Dayton, Osage, McCormick, Dodge and Orient. (north/south) |

Top Priority Off-Street (Shared Use Path) Bicycle Facility

| Name | Description |
|---|---|
| Redbud Path – Oliver to K-96 | Construct path on former railroad right-of-way between Oliver and K-96 |

Policies and Programs
The Plan recommends 30 strategies with related actions to achieve the goals, and ultimately the vision. A listing of the strategies is available in the attached Plan Executive Summary.

Funding
The Plan includes cost estimates for the Priority Network (approximately $11.6 million), and top 10 on-street and top off-street priority facilities (approximately $4.6 million). Two general methods for developing the bicycle facilities are recommended - stand alone projects and routine accommodation. Routine accommodation occurs when bicycle facilities are installed in conjunction with other projects (i.e. road resurfacing, road widening, etc.).

**Financial Considerations:** No funding is attached to the Plan, and endorsement by the City Council does not involve any commitment by the City for future funding. It is a future guide for bicycle related infrastructure, policies, and programs. Any funding to implement the Plan will need to be initiated through a separate process.

The Plan recommends utilizing existing funding to develop the recommended Priority Network over 10 years. The adopted City of Wichita 2011-2020 Capital Improvement Program (CIP) includes the Bicycle Enhancement line item, which could be utilized to fund the infrastructure improvements. This line item is contained within the Arterials section of the CIP and includes $500,000 every other year starting in 2013. In the past, the Bicycle Enhancements line item has been used to provide the local match for City of Wichita Transportation Enhancement funding applications to KDOT, and has been used to develop the majority of Wichita's existing path network. The Plan recommends that this local funding would continue every other year for the life of the Plan and that it be utilized to leverage federal grant funding (i.e. Transportation Enhancement, STP, CMAQ, Transportation Alternatives, etc.) which generally allow up to 80 percent federal match. If federal funds are leveraged, then there is the potential for a total of $12.5 million over 10 years to implement the Plan. The costs for implementation of the bicycle facilities may also be reduced if projects are undertaken through routine accommodation while other improvement projects are underway (i.e. adding bike lanes with a repaving project, etc.).

Based on the current CIP, the City of Wichita will utilize funding from a variety of sources (local, State, Federal, and others) to make approximately $910 million of improvements to roads, bridges, and freeways. If the level of investment continues at the same level for the 10 year life of the Plan 2013-2023, then an investment of $12.5 million ($2.5 million local and $10 million Federal) in bicycle infrastructure

would constitute a little more than one percent of the $910 million investments in roads, bridges, and freeways.

**Legal Considerations:** The resolution endorsing the Wichita Bicycle Master Plan has been reviewed and approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council adopt a resolution endorsing the Wichita Bicycle Master Plan and authorizes the necessary signatures.

**Attachments:**
*Resolution Endorsing the Wichita Bicycle Master Plan*
*Wichita Bicycle Master Plan*
*Wichita Bicycle Master Plan Executive Summary*
*District I Advisory Board Minutes 10/1/2012*
*District II Advisory Board Minutes 8/6/2012*
*District III Advisory Board Minutes 10/3/2012*
*District IV Advisory Board Minutes 10/1/2012*
*District V Advisory Board Minutes10/1/2012*
*District VI Advisory Board Minutes 9/19/2012*
*Wichita-Sedgwick County Metropolitan Area Planning Commission Minutes 10/4/2012*
*Board of Park Commissioners Minutes 11/19/2012*
*Wichita Transit Advisory Board DRAFT Minutes12/14/2012*

**RESOLUTION NO._____**

**A RESOLUTION ENDORSING THE WICHITA BICYCLE MASTER PLAN**

**WHEREAS**, the transportation system of Wichita is an extraordinary public asset integral to the City's economic health and community fabric; and

**WHEREAS**, the City of Wichita works to make the best use its public streets and paths to move people and goods; and

**WHEREAS**, the City of Wichita has an opportunity to improve health and to provide a variety of viable transportation options including bicycling; and

**WHEREAS**, multiple citizen surveys have shown a desire for improvements related to bicycling in Wichita, the most recent being the 2010 National Citizen Survey which reported that the satisfaction of Wichita residents with the ease of bicycle travel in the city is "much below" the satisfaction of residents in comparable cities; and

**WHEREAS**, the City Council of the City of Wichita recognizes the importance of creating a collaborative vision and long-term plan for improving the conditions for bicycling in Wichita; and

**WHEREAS**, the City of Wichita has hosted numerous events and meetings to gather input on the Wichita Bicycle Master Plan, including two open house events, an online survey, Better Block, and presentations to the district advisory boards, Wichita Board of Park Commissioners, Wichita-Sedgwick County Metropolitan Area Planning Commission, Wichita Transit Advisory Board, and neighborhood organizations; and

**WHEREAS**, the Wichita Bicycle Master Plan represents the culmination of that civic planning process; and

**WHEREAS**, the Wichita Bicycle Master Plan has established a strategy for tripling the amount of bicycling in Wichita, while reducing the rate of bicycling crashes by one-third; and

**WHEREAS**, the outcomes of implementing the Wichita Bicycle Master Plan over the next ten years include: development of more than 140 miles of new bicycle facilities; installation of more than 200 miles of a signed bicycle wayfinding system; and the designation of Wichita as a Bicycle Friendly Community.

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

**Section 1**. The City Council of the City of Wichita endorses the Wichita Bicycle

Master Plan.

**Section 2**. The City of Wichita shall use the recommended design concepts and street improvements contained in the Wichita Bicycle Master Plan as guidance in future planning and decision-making regarding public infrastructure investments, operations, and policies.

**ADOPTED** by the governing body of the City of Wichita, Kansas, this 15th day of January, 2012.

CITY OF WICHITA, KANSAS

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk
(SEAL)

Approved as to Form:

_____
Gary E. Rebenstorf, Director of Law

# WICHITA BICYCLE MASTER PLAN

CITY OF WICHITA
www.wichita.gov

The Wichita Bicycle Master Plan reflects the values and priorities of the City of Wichita. More than 4,000 people participated in creating the plan, through public meetings; focus groups; an on-line survey; and interactive map.

The Bicycle Master Plan Steering Committee (Steering Committee) provided guidance and support for the development of the Plan. The nineteen member Steering Committee consisted of citizens who volunteered to assist with the project; representatives of public and private agencies; and City of Wichita Council Members Janet Miller and Lavonta Williams.



## *BICYCLE MASTER PLAN VISION*

An interconnected network of on-and off-street bicycle facilities that accommodates bicycle riders of all skill levels; and links all areas of the City of Wichita- including employment centers, schools, parks, and other activity centers.

# GOALS FOR ACHIEVING VISION

**GOAL 1: Increase the amount of bicycling in Wichita.**

Benchmark: Triple the amount of bicycling in Wichita over the next ten years (2012 – 2022)

**GOAL 2: Improve the safety of bicyclists in Wichita**

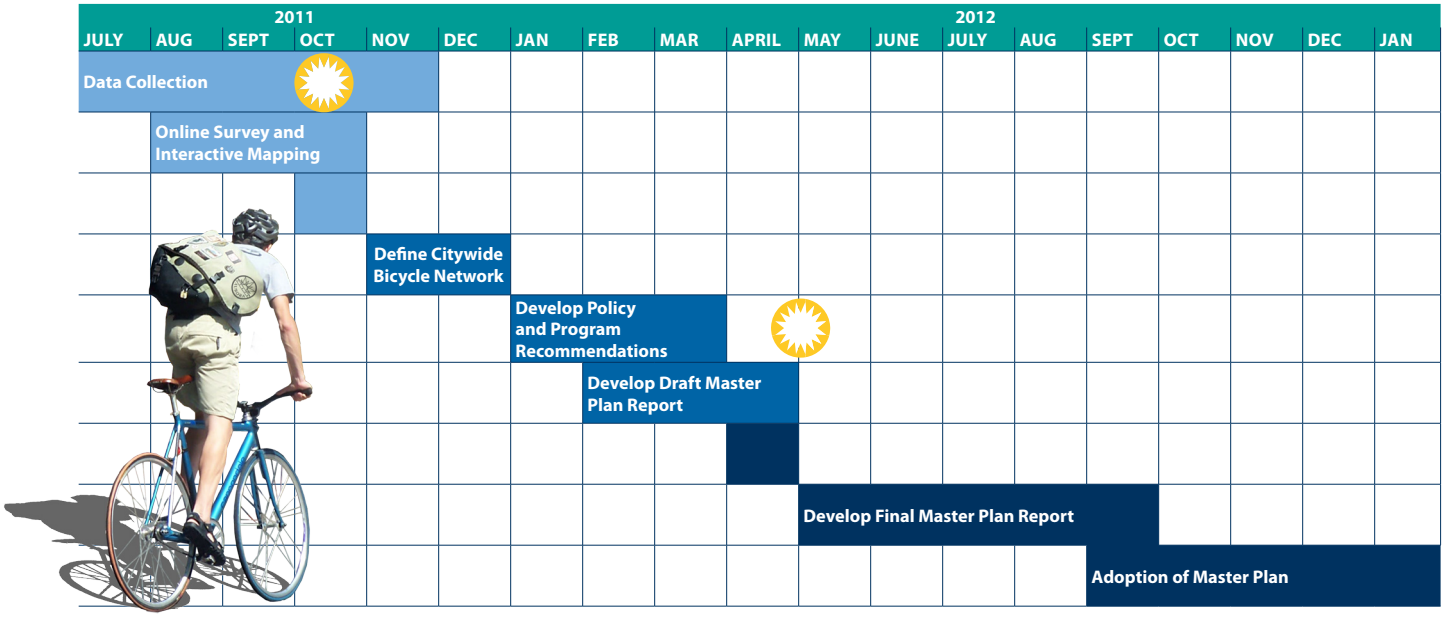
Benchmark: Reduce the rate of bicycle crashes by one third over the next ten years (2012 – 2022)

**GOAL 3: Foster and promote a culture where bicycling is a viable and acceptable form of transportation**

Benchmark: Increase by 50 percent the percent of survey respondents rating ease of bicycle travel in Wichita as "excellent" or "good".

Mural by Jonathan Clarke

# PROJECT DEVELOPMENT PROCESS




# PRIORITY BICYCLE NETWORK

The recommended Priority Bicycle Network provides a safe, connected, and attractive network of bicycle facilities throughout the City and can realistically be completed in ten years or less, given existing and potential resources. Completion of the Priority Bicycle Network will also result in bicycle safety and access improvements at roadway crossings.

| | Priority Network Miles | Priority Network Costs |
|---|---|---|
| Bike lanes | 30.0 | $435,000 |
| Buffered Bike Lanes | 2.3 | $54,648 |
| Shared lane markings | 41.0 | $270,600 |
| Shared use pathway | 4.5 | $2,340,900 |
| Bicycle boulevard | 57.2 | $6,211,920 |
| Paved shoulder | 1.7 | $359,200 |
| Sidepath | 7.6 | $1,925,840 |
| **TOTAL** | **144.3** | **$11,598,108** |

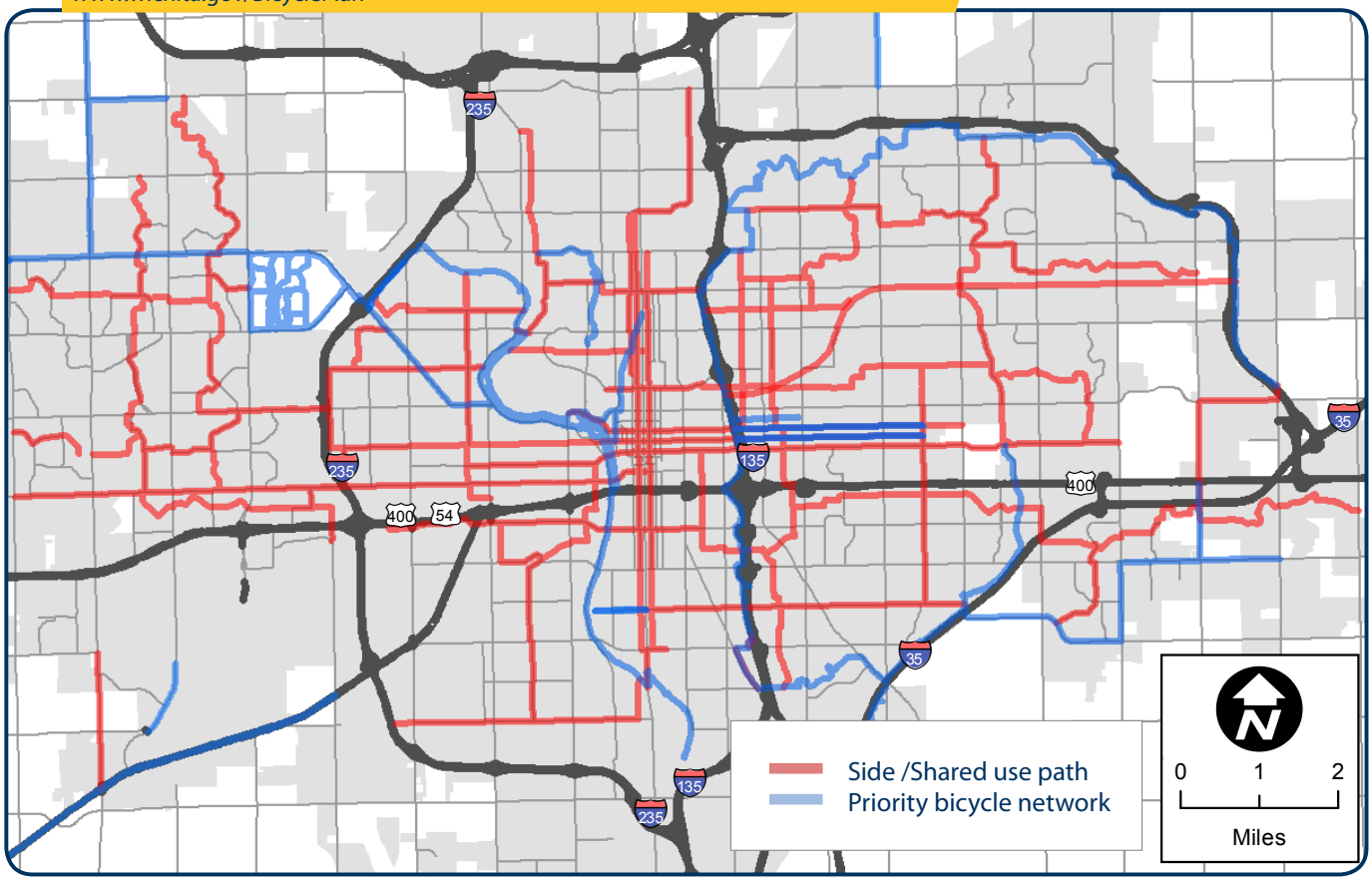
For facility definitions, go to www.wichita.gov/BicyclePlan

# FUNDING FOR IMPLEMENTING PRIORITY BICYCLE NETWORK

Funding for implementing the priority network will likely come from three sources:

- **Capital Improvement Program (C.I.P.):** install new bicycle facilities using the $500,000 that is currently allocated every other year in the current adopted City C.I.P.
- **Routine Accommodation:** install bicycle facilities as part of other projects (e.g. annual re-paving program provides opportunities to install bike lanes). While this approach saves money compared to independent bike projects, the development of the bicycle facilities may result in an increase in the other project costs (e.g. repaving, etc.).
- **Grants, Public/Private Partnerships, Other Sources**: apply for grants (e.g. STP, Transportation Alternatives, etc.) and look for creative ways to leverage funds and form partnerships to install bicycle facilities (e.g. install side path in conjunction with an underground sewer or water line).

Priority Bicycle Network Map. For a detailed map of the priority network, go to www.wichita.gov/BicyclePlan



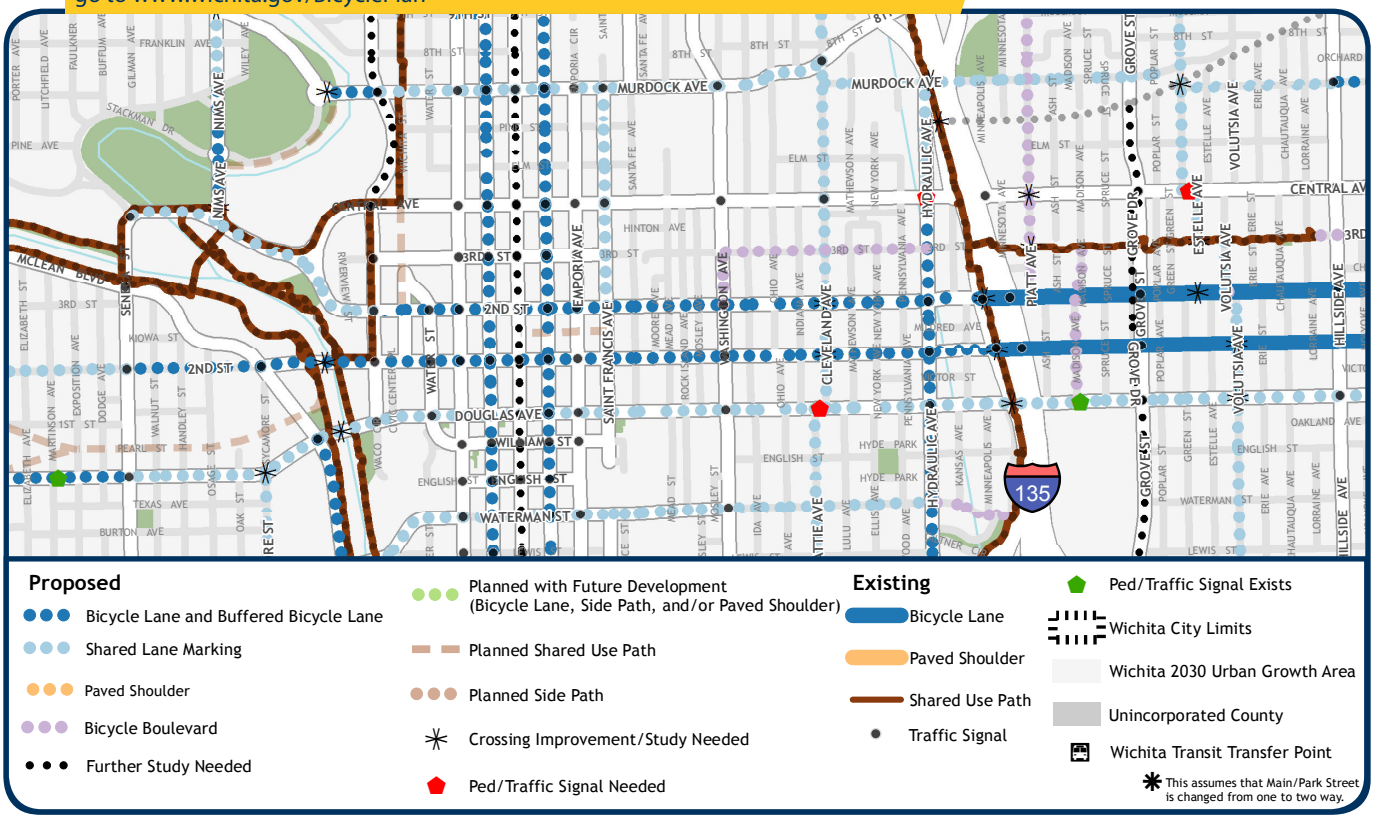
# STRATEGIES FOR ACHIEVING PLAN GOALS

Below are the strategies recommended to realize the Plan vision, goals, and objectives. The Plan provides a detailed set of actions for each strategy.

## The Bicycle Network

| | | |
|---|---|---|
| **Strategy 1**: Provide on- street and off-street bicycle facilities where recommended. | **Strategy 2:** Install a Signed Bicycle Route Wayfinding System. | **Strategy 3:** Improve bicycle safety and access at arterial roadway crossings. |
| **Strategy 4:** Improve bicycle access to transit stops and stations. | **Strategy 5:** Increase the availability of bicycle parking throughout Wichita. | **Strategy 6:** Determine if a bike share program would be good for Wichita. |
| **Strategy 7:** Prioritize and fund bicycle facility maintenance. | **Strategy 8:** Incorporate the facility recommendations from this plan into the WAMPO Metropolitan Transportation Plan and other related plans. | **Strategy 9:** Provide printed, online, and mobile device bicycling guides. |

Example of map wtih Plan recommendations. For a detailed map of the entire network, go to www.wichita.gov/BicyclePlan




www.wichita.gov/bicycleplan

## Education and Encouragement

**Strategy 10:** Educate Wichita transportation system professionals and users about new bicycle facility types, planning, design and bicycle-related issues that may arise.

**Strategy 11:** Promote bicycle education and encouragement in Wichita through partnerships with community organizations and businesses.

**Strategy 12:** Support efforts to obtain funding for bicycle education and enforcement programs.

**Strategy 13:** Increase enforcement of bicyclist and motorist behavior to reduce bicycle and motor vehicle crashes.

**Strategy 14:** Work with school districts to develop collaborative partnerships to encourage children to bike to school.

**Strategy 15:** Coordinate increased participation in bicycling events.

**Strategy 16:** First achieve the League of American Bicyclists' Bicycle Friendly Community bronze and then silver status designation.

**Strategy 17:** Work with area businesses and colleges to engage them in the League of American Bicyclists' recognition program.

**Strategy 18:** Enlist *opinion* leaders in promoting bicycling

**Strategy 19:** Engage area businesses in using bicycles in their advertising and other promotions.

## Policies, Funding and Staffing

**Strategy 20:** Adopt policies to ensure that the City's project planning and review processes account for bicycle facilities.

**Strategy 21:** Update the Unified Zoning Code to provide encouragement for both office and retail developments/ redevelopments to provide secure and conveniently located bicycle parking.

**Strategy 22:** Create a policy for installing bicycle facilities that are isolated segments.

**Strategy 23:** Create a policy for reserving space for future bicycle facilities (e.g. space for bike lane that is added later).

**Strategy 24:** Prioritize funding to complete gaps (missing links) in the bikeway network.

**Strategy 25:** Fund through Capital Improvement Program Projects, annual programs and grants.

**Strategy 26:** Allocate staffing to implement this plan.

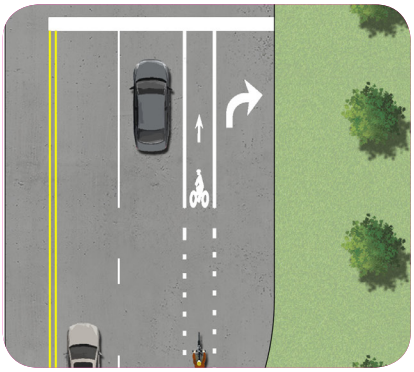
## Accountability and Performance Measures

**Strategy 27:** Create a bicycle and pedestrian advisory board.

**Strategy 28:** Update the bicycle master plan on a regular basis

**Strategy 29:** Publish an annual implementation work plan.

**Strategy 30:** Establish performance measures to monitor progress.



# MOVING THE PLAN FORWARD

**Routine Accommodation:** Adopting a routine 'accommodation' policy will ensure that as routine road projects such as resurfacing and striping are executed, bicycle facilities are incorporated according to the Plan's recommendations, where feasible. Routine accommodation of bicycle facilities is often the most cost effective implementation strategy.

**Funding:** There are segments within the planned bicycle network that serve as critical links between major destinations, and therefore are priorities in terms of developing a foundational network that will begin to build ridership. It will be important to fund these projects as stand-alone projects rather than depending on the routine accommodation of these facilities as part of larger roadway projects that may have longer implementation timeframes.

**Priorities:** In order to help ensure the maximum benefit from the development of new City of Wichita bicycle facilities as stand-alone projects, the Plan includes a prioritized list of recommended on-street and side path facilities; and off-street (shared use paths). The project team, in collaboration with Steering Committee and others, developed a list of ten priority on-street and side path facilities; and one, shared use path facility. In addition to the Plan goals and objectives, the prioritized rankings are based on safety, accessibility, connectivity and geographic balance.

**Bicycle and Pedestrian Advisory Board:** As one of the first steps the Plan recommends that the City of Wichita create a Bicycle Pedestrian Advisory Board (BPAB). The BPAB should include a diverse group of citizens, including experienced and novice bicyclists; representing clubs, bicycle friendly businesses, schools, neighborhood organizations and others concerned with bicycle safety. Among other things, the role of the BPAB should be to advise the City on implementing the Wichita Bicycle Master Plan; monitoring year to year progress on meeting the Plan's performance measures; and providing input on the application of design guidance for bicycle facilities.

**City of Wichita**
**City Council Meeting**
January 15, 2013

**TO:** Mayor and City Council

**SUBJECT:** Creation of the Wichita Bicycle and Pedestrian Advisory Board

**INITIATED BY:** Wichita-Sedgwick County Metropolitan Area Planning Department

**AGENDA:** New Business

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**Recommendation:** Approve the ordinance, and endorse the proposed initial application and review process.

**Background**: The City Council creates advisory boards as needed to assist the Council or City staff to review and make recommendations on specific areas of interest. The draft City of Wichita Bicycle Master Plan (Plan) includes a recommendation that the City of Wichita (City) create a Bicycle and Pedestrian Advisory Board to advise the Council and staff on issues related to bicycling and walking.

**Analysis:** Multiple citizen surveys have shown a desire to make it easier and safer to get around Wichita on a bicycle. The 2010 National Citizen Survey reports that the satisfaction of Wichita residents with the ease of bicycle travel in the city is "much below" the satisfaction of residents in comparable cities. Wichita ranked 21 out of 29 comparable cities for the ease of bicycle travel. It was one of the three least positive ratings by the citizens of Wichita.

In response to citizen desires for improvements related to bicycling, the City of Wichita worked with citizens to create the draft Plan. The Plan is a 10-year guide for the provision of bicycle infrastructure, policies, and programs in both the City and the Wichita 2030 Urban Growth Area. More than 4,000 people provided input for the Plan over more than two years. The Plan includes goals, objectives, actions, priorities, and performance measures along with a Priority Bikeway Network map of more than 145 miles of recommended new bicycle facilities.

The Plan Strategy 27 recommends the creation of a bicycle and pedestrian advisory board (bike-ped board) in order to provide on-going accountability for implementing the Plan, and to help identify opportunities for making improvements for bicycling and walking. The potential subjects the Board would likely address include the following items listed below.

- The creation, development, and revision of plans related to bicycling and/or walking, including the Wichita Bicycle Master Plan
- The implementation of plans related to bicycling and/or walking
- The routing, operation, and safety of bicyclists and/or pedestrians
- The establishment of priorities for new facilities or enhancement of existing facilities for bicycling and walking, including the City's Capital Improvement Plan
- The designs for new facilities or enhancement of existing bicycling and walking facilities
- The language of ordinances and regulations effect bicycling and/or walking
- The establishment of priorities for maintenance and cleaning of roads, paths, and other facilities
- The implementation of education and enforcement policies, projects, and programs related to bicycling and/or walking

The proposed ordinance (attached) creates the Wichita Bicycle and Pedestrian Advisory Board (Board). The Board would consist of 11 members: seven appointed by the City Council and four appointed by the

City Manager. The appointments (except for the initial appointments in 2013) would occur following an application and selection process by the Wichita Bicycle and Pedestrian Advisory Board. It is recommended that the initial appointments occur after an application and selection process by an applicant review panel made up of an odd number of Wichita Bicycle Master Plan Steering Committee members who themselves would not be applying for positions on the Board. The applicant review panel would review applications, interview applicants, and provide recommendations to the City Council members and City Manager.

**Financial Considerations:** The creation of the Bicycle and Pedestrian Advisory Board will not have a financial impact.

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

**Recommendations/Actions:** It is recommended that the City Council approve the ordinance, and endorse the proposed initial application and review process.

**Attachments:**
Attachment A: Draft Wichita Bicycle and Pedestrian Advisory Board Ordinance
Attachment B: Draft Wichita Bicycle and Pedestrian Advisory Board Appointment Process
Attachment C: Draft Wichita Bicycle and Pedestrian Advisory Board Initial Appointment Process

# Attachment A: Wichita Bicycle and Pedestrian Advisory Board Ordinance

# Attachment B: Draft Wichita Bicycle and Pedestrian Advisory Board Appointment Process

# Attachment C: Draft Wichita Bicycle and Pedestrian Advisory Board Initial Appointment Process

**Published in the Wichita Eagle on February 8, 2013**

**ORDINANCE NO.** 49-437

**AN ORDINANCE CREATING SECTIONS 2.12.1140 – 2.12.1144 OF THE CODE OF THE CITY OF WICHITA, KANSAS PRETAINING TO THE ESTABLISHMENT OF A BICYCLE AND PEDESTRIAN ADVISORY BOARD; PRESCRIBING THE FUNCTIONS, POWERS AND DUTIES OF SUCH BOARD.**

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

SECTION 1. Section 2.12.1140 of the Code of the City of Wichita Kansas shall read as follows:

**Wichita Bicycle and Pedestrian Advisory Board – Created.**

There is created a City of Wichita Bicycle and Pedestrian Advisory Board to consist of eleven (11) members.

SECTION 2. Section 2.12.1141 of the Code of the City of Wichita shall read as follows:

**Wichita Bicycle and Pedestrian Advisory Board – Members and Term**.

a) Seven members of the Wichita Bicycle and Pedestrian Advisory Board will be appointed by the City Council and four will be appointed by the City Manager. After the initial Wichita Bicycle and Pedestrian Advisory Board appointments in 2013, all appointments to the Wichita Bicycle and Pedestrian Advisory Board shall occur following an application and recommendation process coordinated by the Bicycle and Pedestrian Advisory Board.
b) The terms of office shall be set forth in Section 2.12.020(1), in addition, members of the Wichita Bicycle and Pedestrian Advisory Board should include a mix of the following.
    1. A diverse group of citizens interested in making Wichita a better place to bicycle and walk. This includes but is not limited to:
        - Experienced and inexperienced bicyclists; and
        - Bicyclists and/or pedestrians representing seniors, students, and/or persons with disabilities.
    2. Different groups including, but not limited to:
        - Bicycle and/or walking clubs (advocacy and/or riding clubs);
        - Representatives of business organizations, and bicycle and/or walk friendly businesses;
        - Schools and neighborhood organizations;
        - Organizations concerned with community health; and
        - Organizations concerned with bicycling and/or walking safety.
    3. Different geographical locations throughout the city.

SECTION 3. Section 2.12.1142 of the Code of the City of Wichita shall read as follows.

**Wichita Bicycle and Pedestrian Advisory Board – Purpose and Objectives**.

a) The purpose of the Wichita Bicycle and Pedestrian Advisory Board shall be to advise the Mayor; City Council; the City Manager; all departments; all offices of the City; City boards and committees; and other public agencies that provide services within the City, on matters related to bicycling and/or walking and the impact that their actions may have on the bicycling and/or walking environment. This includes, but is not limited to:
b) the creation, development, and revision of plans and policies related to bicycling and walking, including the Wichita Bicycle Master Plan;
c) the implementation of plans and policies related to bicycling and walking, including the Wichita Bicycle Master Plan;
d) the routing, operation, and safety of bicyclists and pedestrians;
e) the establishment of priorities for new bicycle and/or pedestrian facilities or enhancement of existing bicycle and/or pedestrian facilities;
f) funding for new bicycle and/or pedestrian facilities or enhancement of existing bicycle and/or pedestrian facilities, including the City Capital Improvement Program;
g) the designs for new bicycle and/or pedestrian facilities or enhancement of existing bicycle and/or pedestrian facilities;
h) the designs for improvements to roadways that impact plans and policies related to bicycling and walking;
i) the language of ordinances and regulations that effect bicycling and/or walking;
j) the establishment of priorities for maintenance and cleaning of roads, paths, sidewalks, and other facilities used by bicyclists and/or pedestrians; and
k) the implementation of education and enforcement policies, projects and programs related to bicycling and walking.

SECTION 4. Section 2.12.1143 of the Code of the City of Wichita shall read as follows.

**Wichita Bicycle and Pedestrian Advisory Board Officers, Meetings, Rules.**

a) The Wichita Bicycle and Pedestrian Advisory Board shall conduct meetings, elect officers, and adopt by-laws in accordance with Section 2.12.020(1).

SECTION 5. Section 2.12.1144 of the Code of the City of Wichita shall read as follows.

**Wichita Bicycle and Pedestrian Advisory Board – Staffing.**

a) The City Manager shall assign such staff support to the Wichita Bicycle and Pedestrian Advisory Board to ensure that it receives informational support and professional and technical assistance necessary to carry on its duties and conduct its meetings. The staff support shall include, but not be limited to representatives from the Police, Public Works, Planning, Transit, and Park and Recreation departments to attend the regularly scheduled meetings.

SECTION 6. This ordinance shall become effective and be in force from and after its adoption and publication once in the official City newspaper.

ADOPTED at Wichita, Kansas, this February 5, 2013.

_____
Carl Brewer, Mayor

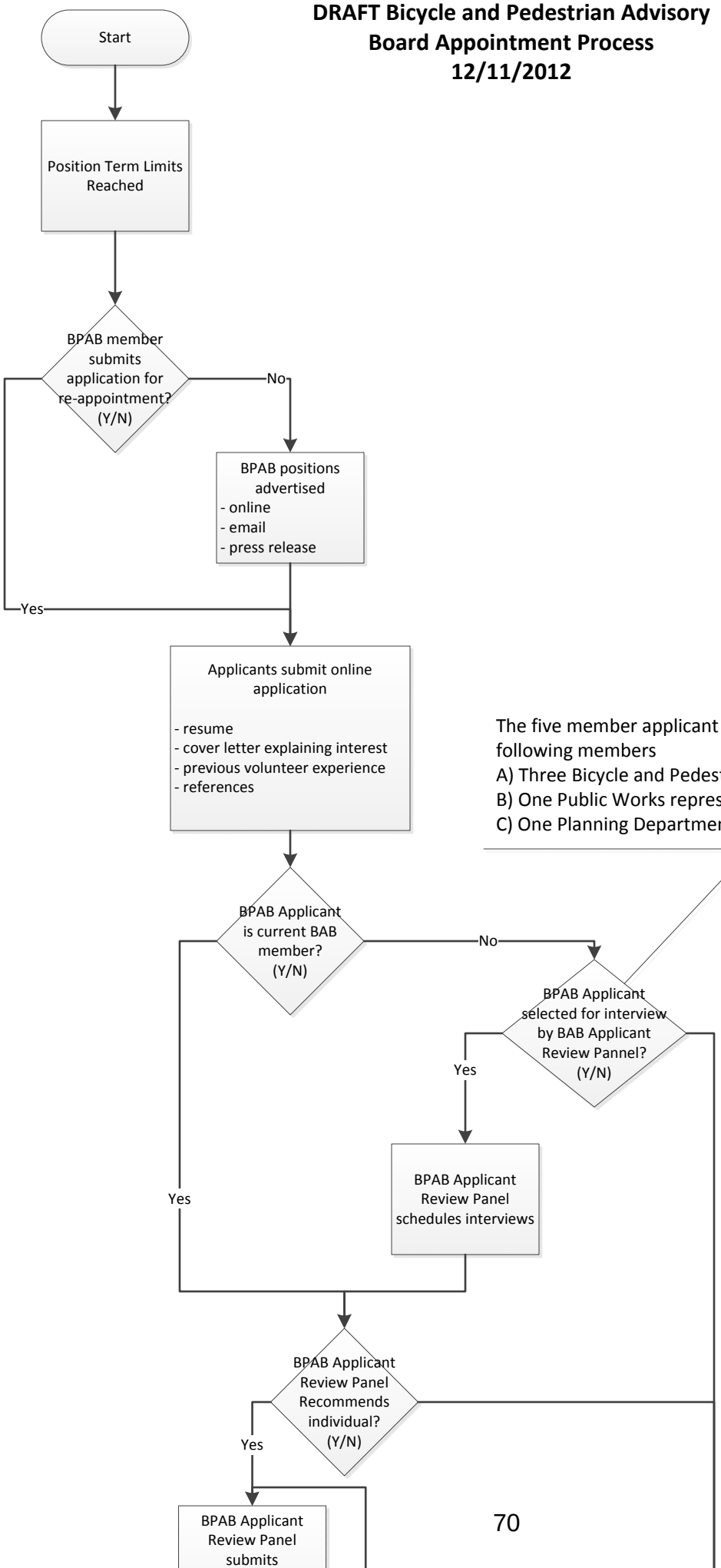
ATTEST:

_____
Karen Sublett, City Clerk

Approved as to form:

_____
Gary E. Rebenstorf, Director of Law

# DRAFT Bicycle and Pedestrian Advisory Board Appointment Process
## 12/11/2012

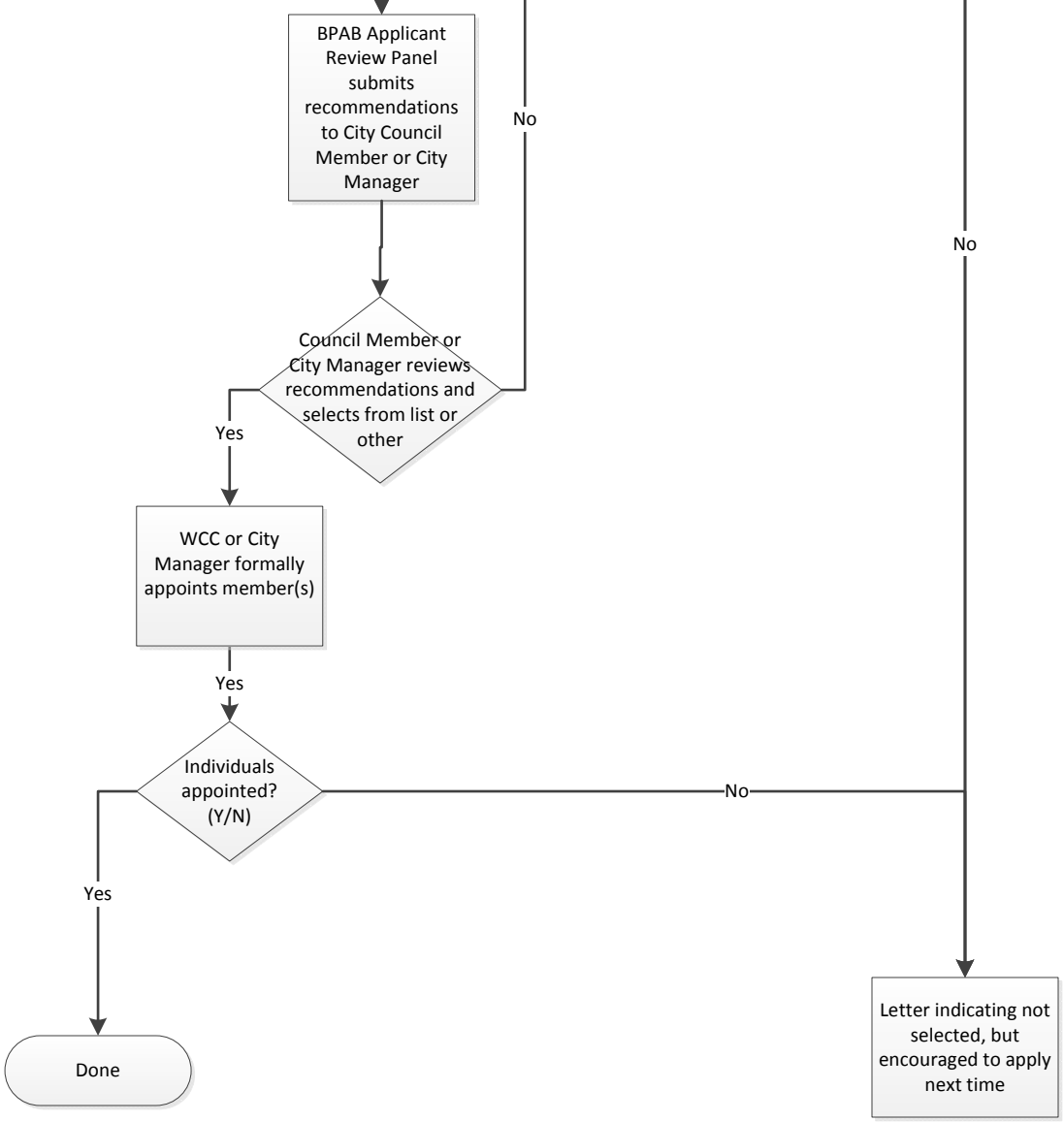



The five member applicant review pannel will consist of the following members

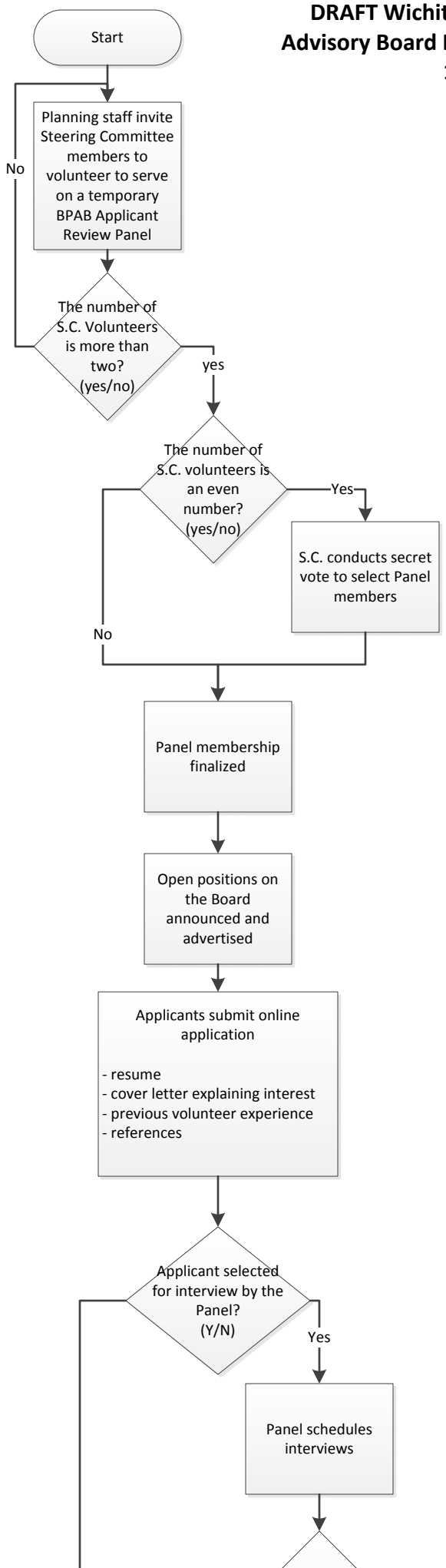
A) Three Bicycle and Pedestrian Advisory Board members

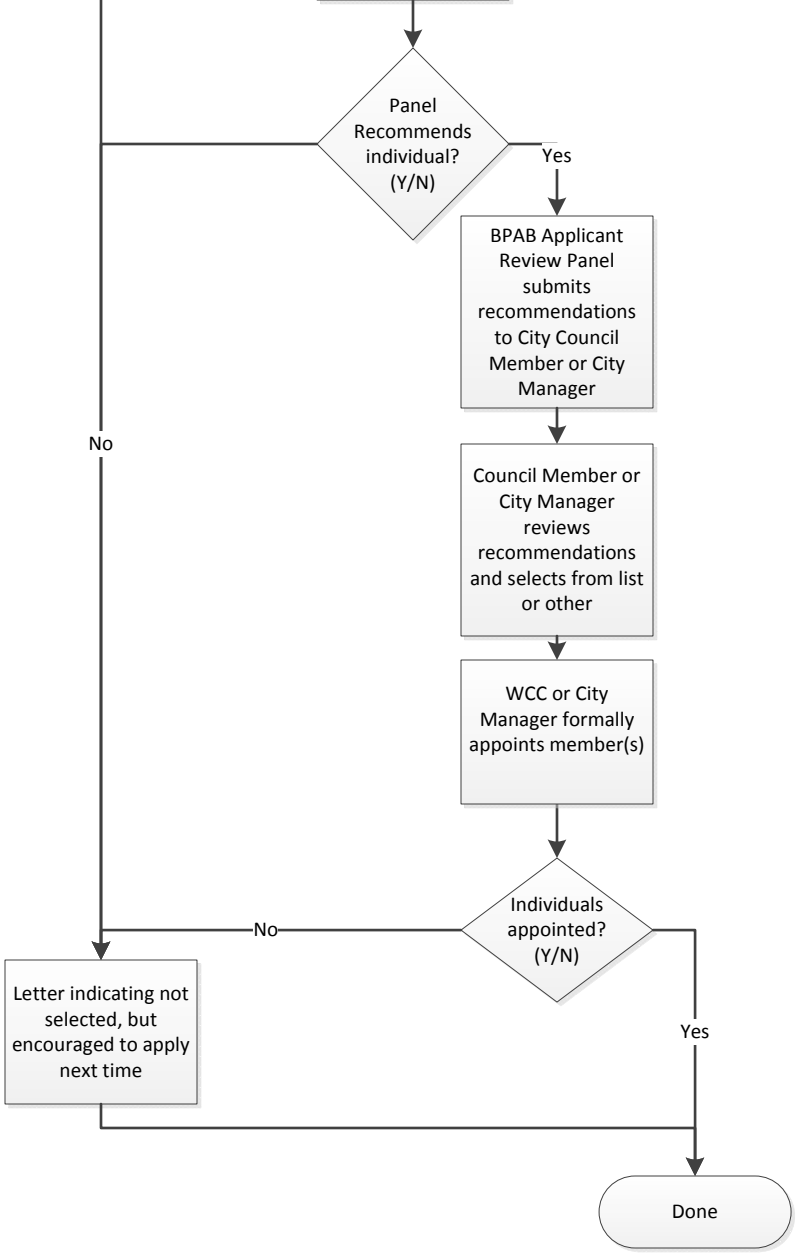
B) One Public Works representative

C) One Planning Department representative


BPAB Applicant Review Panel submits recommendations to City Council Member or City Manager
No
Council Member or City Manager reviews recommendations and selects from list or other
Yes
WCC or City Manager formally appoints member(s)
Yes
Individuals appointed? (Y/N)
No
Yes
Done
No
Letter indicating not selected, but encouraged to apply next time

# DRAFT Wichita Bicycle and Pedestrian Advisory Board Initial Appointment Process
## 12/18/2012




Panel Recommends individual? (Y/N)
Yes
No
BPAB Applicant Review Panel submits recommendations to City Council Member or City Manager
Council Member or City Manager reviews recommendations and selects from list or other
WCC or City Manager formally appoints member(s)
Individuals appointed? (Y/N)
No
Yes
Letter indicating not selected, but encouraged to apply next time
Done

**City of Wichita**
**City Council Meeting**
**January 15, 2013**

**TO:** Mayor and City Council

**SUBJECT:** Repair or Removal of Dangerous & Unsafe Structures (Districts I, III and IV)

**INITIATED BY:** Metropolitan Area Building and Construction Department

**AGENDA:** New Business

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**Recommendations:** Adopt the resolution.

**Background:** On December 4, 2012, a report was submitted with respect to the dangerous and unsafe conditions on the properties listed below. The City Council adopted a resolution providing for a public hearing to be held on the condemnation actions at 9:30 a.m. or soon thereafter, on January 15, 2013.

**Analysis:** On November 5, 2012, the Board of Code Standards and Appeals (BCSA) held hearings on the properties listed below

| Property Address | Council District |
|---|---|
| a. 2003 North Chautauqua | I |
| b. 2935 East Maplewood | I |
| c. 4628 East Gilbert | III |
| d. 735 West 59th Street South | IV |

Detailed information/analyses concerning these properties are included in the attachments.

**Financial Considerations:** Structures condemned as dangerous buildings are demolished with funds from the Metropolitan Area Building and Construction Department Special Revenue Fund contractual services budget, as approved annually by the City Council. This budget is supplemented by an annual allocation of federal Community Development Block Grant funds for demolition of structures located within the designated Neighborhood Reinvestment Area. Expenditures for dangerous building condemnation and demolition activities are tracked to ensure that City Council Resolution No. R-95-560, which limits OCI expenditures for non-revenue producing condemnation and housing code enforcement activities to 20% of OCI's total annual budgeted Special Revenue Fund expenditures, is followed. Owners of condemned structures demolished by the City are billed for the contractual costs of demolition, plus an additional $500 administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property, which may be collected upon subsequent sale or transfer of the property.

**Legal Considerations:** The resolutions and notices of hearing was reviewed and approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the City Council close the public hearing, adopt the resolutions declaring the buildings to be dangerous and unsafe structures, and accept the BCSA recommended actions to proceed with condemnation, allowing 10 days to start demolition and 10 days to complete removal of the structures. Any extensions of time granted to repair any structures would be contingent on the following: (1) All taxes have been paid to date as of January 15, 2013; (2) the structures have been secured as of January 15, 2013, and will continue to be kept secured; and (3) the premises are mowed and free of debris as of January 15, 2013, and will be so maintained during renovation.

If any of the above conditions are not met, the Metropolitan Area Building and Construction Department will proceed with demolition action and also instruct the City Clerk to have the resolutions published once in the official city paper and advise the owner of these findings.

**Attachments:** Memorandums to Council, case summaries, and resolutions.

**DATE: December 24, 2012**

**CDM SUMMARY**

**COUNCIL DISTRICT # I**

**ADDRESS: 2003 N CHAUTAUQUA**

**LEGAL DESCRIPTION: LOT 5, BLOCK 18, SHADYBROOK ADDITION TO THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS**

**DESCRIPTION OF STRUCTURE: A one-story frame dwelling about 37 x 40 feet in size. Vacant and open, this structure has been damaged by fire. It has a cracking block foundation; fire-damaged brick façade and vinyl siding; fire damaged, sagging composition roof with holes; fire-damaged structural members; and fire-damaged wood trim.**

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

**A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.**

**B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.**

**C. Those open to unauthorized persons or those permitted to be attractive to loiterers, vagrants, or children.**

**D. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.**

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

_____ _____

Director of Metropolitan Area Building and Construction Department Enforcing Officer — Date

**DATE: December 24, 2012**

**BCSA GROUP # 2**

**ADDRESS: 2003 N CHAUTAUQUA**

**ACTIVE FIELD FILE STARTED: June 30, 2005**

**NOTICE(S) ISSUED: Since June 30, 2005, two notice of improvements and numerous violation notices have been issued. In May 2010, a neighborhood nuisance enforcement case was initiated resulting owner compliance. In March 2011, a neighborhood nuisance enforcement case was initiated resulting City of Wichita contractor abatement. On May 17, 2012, Central Inspection staff completed an emergency board-up at a cost of $299.21. It should be noted that uniform criminal complaints have been issued regarding this property and it has been the subject of neighborhood court.**

**PRE-CONDEMNATION LETTER: April 6, 2012**

**TAX INFORMATION: The 2009, 2010, 2011 and 2012 taxes are delinquent in the amount of $1,872.07, which includes specials and interest.**

**COST ASSESSMENTS/DATES: There is a 2012 special assessment for board-up in the amount $311.85 which includes interest and a 2013 special assessment for lot clean-up in the amount of $776.80.**

**PREMISE CONDITIONS: Some debris and weeds**

**VACANT NEGLECTED BUILDING REPORT: Previous 2006 case is closed.**

**CENTRAL INSPECTION NUISANCE ABATEMENT REPORT: Emergency board-up on May 17, 2012, in the amount of $299.21 and lot clean-up on August 16, 2012, in the amount of $776.80.**

**POLICE REPORT: Within the past five years there has been one reported police incident of possession of paraphernalia.**

**FORMAL CONDEMNATION ACTION INITIATED: September 12, 2012**

**RECENT DEVELOPMENTS: No repairs have been made and the structure is unsecure with an open front door.**

**HISTORIC PRESERVATION REPORT: No impact**

**OWNER'S PAST CDM HISTORY: None**

**BOARD OF C.S.&A. RECOMMENDATION: At the November 5, 2012, BCSA hearing there was no one attending the meeting on behalf of this property.**

**The file on this property was initiated in June 2005. Numerous Notices of Violation have been issued. In March 2011 a Neighborhood Nusiance case was inititated, resulting the City's abatement. An emergency board-up was done by Central Inspection staff on May 17, 2012, at a cost of $299.21. Board Member Banuelos made a motion to refer the property to the City Council with a recommendation of condemnation, with ten days to begin demolition and ten days to**

**complete demolition. Board Member Willenberg seconded the motion. The motion passed.**

**STAFF RECOMMENDATION/REMARKS:** Adopt the recommendation of the Board of Code Standards and Appeals. However, any extensions to repairs would be providing that all provisions of City Council Policy 33 are complied with. If any of these conditions are not met, staff is directed to proceed to let for bids to demolish the structure.

**DATE: December 24, 2012**

**CDM SUMMARY**

**COUNCIL DISTRICT # I**

**ADDRESS: 2935 E MAPLEWOOD**

**LEGAL DESCRIPTION: LOT 8, BLOCK 13, SHADYBROOK ADDITION TO THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS**

**DESCRIPTION OF STRUCTURE: A one-story frame dwelling about 30 x 43 feet in size. Vacant and open, this structure has been damaged by fire. It has cracking and shifting block foundation; fire-damaged wood and aluminum siding ; fire-damaged and badly worn composition roof over wood shingle, with holes; deteriorated wood front porch; fire-damaged wood trim and framing members; and the interior has been damaged by fire.**

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

**A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.**

**B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.**

**C. Those open to unauthorized persons or those permitted to be attractive to loiterers, vagrants, or children.**

**D. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.**

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

_____ _____

Director of Metropolitan Area Building and Construction Department Enforcing Officer — Date

**DATE: December 24, 2012**

**BCSA GROUP # 2**

**ADDRESS: 2935 E MAPLEWOOD**

**ACTIVE FIELD FILE STARTED: April 10, 2012**

**NOTICE(S) ISSUED: Since April 10, 2012, there has been a violation notice issued. In April 2012, a neighborhood nuisance enforcement case was initiated resulting owner compliance.**

**PRE-CONDEMNATION LETTER: August 13, 2012**

**TAX INFORMATION: The 2011 and 2012 taxes are delinquent in the amount of $953.20, which includes interest.**

**COST ASSESSMENTS/DATES: None**

**PREMISE CONDITIONS: Some bulky waste and weeds**

**VACANT NEGLECTED BUILDING REPORT: None**

**CENTRAL INSPECTION NUISANCE ABATEMENT REPORT: None**

**POLICE REPORT: Within in the past five years there has been eleven reported police incidents including intimidation domestic violence, drink in public place, stalking, trespass, miscellaneous report (3), suspicious character sex suspected (2) and suspicious character (2).**

**FORMAL CONDEMNATION ACTION INITIATED: September 12, 2012**

**RECENT DEVELOPMENTS: No repairs have been made. The structure is unsecure with open front and rear doors.**

**HISTORIC PRESERVATION REPORT: No impact**

**OWNER'S PAST CDM HISTORY: None**

**BOARD OF C.S.&A. RECOMMENDATION: At the November 5, 2012, BCSA hearing there was no representative present on behalf of this property.**

**Board Member Banuelos made a motion to submit the property to the City Council, recommending condemnation, with ten days to begin razing the structure and ten days to finish removal of the structure. Board Member Willenberg seconded the motion. The motion carried.**

**STAFF RECOMMENDATION/REMARKS:** Adopt the recommendation of the Board of Code Standards and Appeals. However, any extensions to repairs would be providing that all provisions of City Council Policy 33 are complied with. If any of these conditions are not met, staff is directed to proceed to let for bids to demolish the structure.

**DATE: December 24, 2012**

**CDM SUMMARY**

**COUNCIL DISTRICT # III**

**ADDRESS: 4628 E GILBERT**

**LEGAL DESCRIPTION: THE EAST 75 FEET OF THE SOUTH 120 FEET OF LOT 15, BLOCK D, BROWN'S SUBDIVISION OF THE EAST ONE-HALF OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 27 SOUTH, RANGE 1 EAST OF THE SIXTH PRINCIPAL MERIDIAN, SEDGWICK COUNTY, KANSAS**

**DESCRIPTION OF STRUCTURE: A one and one half-story frame dwelling about 26 x 54 feet in size. Vacant and open, this structure has shifting and cracking block basement walls, with a collapsed north wall; cracked and sagging concrete front porch; rotted wood trim, soffits and fascia; and the 20 x 20 foot accessory structure is deteriorating.**

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

**A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.**

**B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.**

**C. Those open to unauthorized persons or those permitted to be attractive to loiterers, vagrants, or children.**

**D. The building has parts, which are so attached that they may fall and injure other property or the public.**

**E. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.**

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

_____ _____

Director of Metropolitan Area Building and Construction Department Enforcing Officer — Date

**DATE: December 24, 2012**

**BCSA GROUP # 2**

**ADDRESS: 4628 E GILBERT**

**ACTIVE FIELD FILE STARTED: July 1, 2012**

**NOTICE(S) ISSUED: Since July 1, 2012, a notice of improvement and two violation notices have been issued. In July 2012, a neighborhood nuisance case was initiated resulting in City of Wichita contractor abatement.**

**PRE-CONDEMNATION LETTER: August 13, 2012**

**TAX INFORMATION: The 2012 taxes are delinquent in the amount of $1,016.86, which includes interest.**

**COST ASSESSMENTS/DATES: There is a 2013 special assessment for lot clean-up in the amount of $1,211.88.**

**PREMISE CONDITIONS: Maintained**

**VACANT NEGLECTED BUILDING REPORT: None**

**CENTRAL INSPECTION NUISANCE ABATEMENT REPORT: Lot cleanup on September 17, 2012, in the amount of $1,211.88.**

**POLICE REPORT: There has been no reported police incident in the past five years.**

**FORMAL CONDEMNATION ACTION INITIATED: September 12, 2012**

**RECENT DEVELOPMENTS: No repairs have been made. The structure is unsecure with a collapsed rear wall.**

**HISTORIC PRESERVATION REPORT: No impact**

**OWNER'S PAST CDM HISTORY: None**

**BOARD OF C.S.&A. RECOMMENDATION: At the November 5, 2012, BCSA hearing no one attended the hearing as a representative of the property.**

**Board Member Redford made a motion to refer the property to the City Council with a recommendation of condemnation, with ten days to begin wrecking the structure and ten days to complete the removal of the structure. Board Member Willenberg seconded the motion. The motion carried.**

**STAFF RECOMMENDATION/REMARKS:** Adopt the recommendation of the Board of Code Standards and Appeals. However, any extensions to repairs would be providing that all provisions of City Council Policy 33 are complied with. If any of these conditions are not met, staff is directed to proceed to let for bids to demolish the structure.

**DATE: December 24, 2012**

**CDM SUMMARY**

**COUNCIL DISTRICT # IV**

**ADDRESS: 735 W 59TH S**

**LEGAL DESCRIPTION: THE WEST 100 FEET OF THE EAST 166 FEET OF LOT 39, THIRD CLARKDALE SUBDIVISION, SEDGWICK COUNTY, KANSAS**

**DESCRIPTION OF STRUCTURE: A mobile home about 14 x 68 feet in size. Vacant for at least 1 1/2 years; this structure has deteriorated siding; deteriorated and missing skirting; deteriorated doors; missing porches and steps; and the 8x9, 9x9 and 24x32 foot accessory structures are dilapidated.**

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

**A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.**

**B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.**

**C. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.**

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

_____ _____

Director of Metropolitan Area Building and Construction Department Enforcing Officer — Date

**DATE: December 24, 2012**

**BCSA GROUP # 2**

**ADDRESS: 735 W 59TH S**

**ACTIVE FIELD FILE STARTED: April 22, 2008**

**NOTICE(S) ISSUED: Since April 22, 2008, several notice of improvement and two violation notices have been issued. In March 2010, a neighborhood nuisance enforcement case was initiated resulting in City of Wichita contractor abatement.**

**PRE-CONDEMNATION LETTER: May 3, 2012**

**TAX INFORMATION: The 2009, 2010, 2011 and 2012 taxes are delinquent in the amount of $1,331.57, which includes interest.**

**COST ASSESSMENTS/DATES: There is a 2013 special assessment for lot clean-up in the amount of $2,046.41.**

**PREMISE CONDITIONS: Maintained**

**VACANT NEGLECTED BUILDING REPORT: None**

**CENTRAL INSPECTION NUISANCE ABATEMENT REPORT: Lot cleanup on August 16, 2012, in the amount of $2,046.41.**

**POLICE REPORT: Within in the past five years there has been one reported police incident of miscellaneous report.**

**FORMAL CONDEMNATION ACTION INITIATED: September 12, 2012**

**RECENT DEVELOPMENTS: No repairs have been made. The mobile home is unsecure with an open door and the three accessory structures are unsecure.**

**HISTORIC PRESERVATION REPORT: No impact**

**OWNER'S PAST CDM HISTORY: None**

**BOARD OF C.S.&A. RECOMMENDATION: At the November 5, 2012, BCSA hearing there was no interrested party in attendance to represent this property.**

**Board Member Banuelos made a motion to refer the property to the City Council for condemnation, with ten days to initiate the demolition and ten days to finish the removal of the structure. Board Member Willenberg seconded the motion. The motion was approved.**

**STAFF RECOMMENDATION/REMARKS:** Adopt the recommendation of the Board of Code Standards and Appeals. However, any extensions to repairs would be providing that all provisions of City Council Policy 33 are complied with. If any of these conditions are not met, staff is directed to proceed to let for bids to demolish the structure.

# January 15, 2013
# City Council Hearing
# Removal of Dangerous Structure Case Summary

| Address | Cncl. Dist. | Hsng. Case Age | Cndm. Init. Date | BCSA Hearing Date & Recommendation | Owner/ Rep. At BCSA ? | Open or Secure | Premise Cond. Status | Property Tax Status | Special Assessments | Pending Incurred Cost |
|---|---|---|---|---|---|---|---|---|---|---|
| 2003 N. Chautauqua | I | 7 yrs 6 mos | 09/12/12 | 11/05/12: 10/10 | No | The structure is unsecure with an open front door. | Some debris and weeds | The 2009, 2010, 2011 and 2012 taxes are delinquent in the amount of $1,872.07, which includes specials and interest. | There is a 2012 special assessment for board-up in the amount $311.85 which includes interest and a 2013 special assessment for lot clean-up in the amount of $776.80. | None |
| 2935 E. Maplewood | I | 9 mos | 09/12/12 | 11/05/12: 10/10 | No | The structure is unsecure with open front and rear doors. | Some bulky waste and weeds | The 2011 and 2012 taxes are delinquent in the amount of $953.20, which includes interest. | None | None |
| 4628 E. Gilbert | III | 6 mos | 09/12/12 | 11/05/12: 10/10 | No | The structure is unsecure with a collapsed rear wall. | Maintained | The 2012 taxes are delinquent in the amount of $1,016.86, which includes interest. | There is a 2013 special assessment for lot clean-up in the amount of $1,211.88. | None |

# January 15, 2013
# City Council Hearing
# Removal of Dangerous Structure Case Summary

| Address | Cncl. Dist. | Hsng. Case Age | Cndm. Init. Date | BCSA Hearing Date & Recommendation | Owner/ Rep. At BCSA ? | Open or Secure | Premise Cond. Status | Property Tax Status | Special Assessments | Pending Incurred Cost |
|---|---|---|---|---|---|---|---|---|---|---|
| 735 W. 59th S. | IV | 4 yrs 8 mos | 09/12/12 | 11/05/12: 10/10 | No | The mobile home is unsecure with an open door and the three accessory structures are unsecure. | Maintained | The 2009, 2010, 2011 and 2012 taxes are delinquent in the amount of $1,331.57, which includes interest. | There is a 2013 special assessment for lot clean-up in the amount of $2,046.41. | None |

**City of Wichita**
**City Council Meeting**
**January 15, 2013**

**TO**: Mayor and City Council

**SUBJECT:** General Obligation Bond and Note Sale

**INITIATED BY:** Finance Department

**AGENDA:** New Business

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**Recommendation:** Approve the bids.

**Background:** The City is offering for sale three series of general obligation temporary notes in a principal amount of approximately $82,730,000 (Series 247, 254 and 256) and two series of general obligation bonds (Series 807 and 812) in a principal amount of approximately $14,315,000 for the purpose of providing interim and permanent financing for capital improvement projects of the City.

**Analysis**: The proceeds from the sale of the Series 247, 254 and 256 Renewal and Improvement Notes will be used to provide interim financing for City-at-large projects, Airport projects, improvement district projects and improvements related to Tax Increment Financing (TIF) Districts. Due to the nature of the TIF and Airport improvements, the Series 247 Renewal and Improvement Notes are taxable under Federal law. Also, due to the nature of the Airport Improvements, Series 256 is subject to Alternative Minimum Tax.

With respect to the Airport improvements included in Temporary Note Series 256, the Internal Revenue Code permits tax-exempt financing for certain categories of "exempt facilities" including facilities for airports. Among the conditions required for these airport projects to qualify for tax-exempt facility financing is a requirement that a public hearing be held in a place, time and manner providing reasonable opportunity for persons affected by the bond issue and the project to be heard.

As required under Federal regulations, a public notice was published once in the Wichita Eagle at least 14 days prior to the public hearing held on January 8, 2013 allowing interested members of the public to attend the hearing and express their views with respect to the projects and the issuance of Bonds. Also as required, the public notice included a general description of the type and use of the projects to be financed, the maximum aggregate face amount of obligations to be issued to finance the projects and the locations of the projects.

The proceeds from the sale of the Series 807 Bonds will be used to permanently finance City-at-large and other public improvement projects. The proceeds from the sale of the Series 812 Bonds will be used to permanently finance neighborhood improvements located in special improvement districts.

Bids will be accepted electronically via ***PARITY*** Electronic Bid Submission System until 10:00 a.m. CT in the Finance Conference Room. No bids will be accepted after the 10:00 a.m. deadline. The bids will be verified, tabulated and presented to the City Council at its earliest convenience following the tabulation of the bids. By law, the City must award the sale of the bonds and notes to the bidder whose proposed interest rates result in the lowest overall cost to the City.

**Financial Considerations**: The Series 247 ($4,435,000), Series 254 ($63,230,000) and Series 256 ($15,065,000) Temporary Notes will mature on February 11, 2014 and will be retired using cash, the proceeds of permanent financing bonds and/or renewal notes issued at that time or from other sources. Each Series of Temporary Notes will be callable on August 13, 2013 at par. The Series 807 Bonds ($9,800,000) will mature serially over 10 years. Bonds maturing June 1, 2022, and thereafter, may be called for redemption prior to their respective maturities on and after June 1, 2021 at par. The Series 812 Bonds ($4,435,000) will mature serially over 15 and 20 years and will be paid from special assessments that are levied against benefited property. The Series 812 Bonds maturing June 1, 2023, and thereafter, may be called for redemption and payment prior to their respective maturities on and after June 1, 2022 at par.

**Legal Considerations:** The Law Department has approved the form of the ordinances and resolutions which have been prepared by Bond Counsel and, on the sale date, Bond Counsel reviews the bids for conformity to the bid conditions contained in the Official Notice of Sale and reports any irregularities in the bids to the Finance Department.

**Recommendations/Actions:** It is recommended that the City Council: (1) direct the opening and reading of the bids; (2) award the sale of the Bonds and Notes subject to approval of the final sizing terms of the Bonds and Notes by the City Manager, his designee or the Director of Finance; (3) adopt the Bond and Note Ordinances and Resolutions and authorize the publication of the Bond and Note Ordinances; and (4) find and declare, upon the request of the Mayor, that a public emergency exists, requiring the final passage of the Bond and Note Ordinances on the date of their introduction.

**Attachments:** For each Bond and Note series:

Request for Declaration of Emergency
Resolution Authorizing Issuance of Bonds/Notes
Ordinance Authorizing Issuance of Bonds/Notes

## REQUEST FOR DECLARATION OF EMERGENCY

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declares that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit*, January 15, 2013, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 807, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $9,800,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 807 Bonds occur on the same day bids are received and to enable the City to deliver the Series 807 Bonds authorized by said Ordinance on February 14, 2013.

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

EXECUTED at Wichita, Kansas, on January 15, 2013.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

## REQUEST FOR DECLARATION OF EMERGENCY

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declares that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit*, January 15, 2013, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 812, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $3,645,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 812 Bonds occur on the same day bids are received and to enable the City to deliver the Series 812 Bonds authorized by said Ordinance on February 14, 2013.

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

EXECUTED at Wichita, Kansas, on January 15, 2013.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

## REQUEST FOR DECLARATION OF EMERGENCY

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declares that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit*, January 15, 2013, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 247 (TAXABLE UNDER FEDERAL LAW), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $4,435,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 247 Notes occur on the same day bids are received and to enable the City to deliver the Series 247 Notes authorized by said Ordinance on February 14, 2013.

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

EXECUTED at Wichita, Kansas, on January 15, 2013.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

4836-2961-4098.1

## REQUEST FOR DECLARATION OF EMERGENCY

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declares that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit*, January 15, 2013, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 254, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $63,230,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 254 Notes occur on the same day bids are received and to enable the City to deliver the Series 254 Notes authorized by said Ordinance on February 14, 2013.

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

EXECUTED at Wichita, Kansas, on January 15, 2013.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

## REQUEST FOR DECLARATION OF EMERGENCY

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

I, CARL BREWER, Mayor of the City of Wichita, Kansas, hereby request that the City Council declares that a public emergency exists requiring the final adoption and passage on the date of its introduction, *to-wit*, January 15, 2013, of an ordinance entitled:

AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION IMPROVEMENT TEMPORARY NOTES, SERIES 256 (SUBJECT TO ALTERNATIVE MINIMUM TAX), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $15,065,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN MUNICIPAL AIRPORT CAPITAL IMPROVEMENTS; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.

The general nature of such emergency is due to bond market expectations that the authorization of the issuance of the Series 256 Notes occur on the same day bids are received and to enable the City to deliver the Series 256 Notes authorized by said Ordinance on February 14, 2013.

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

EXECUTED at Wichita, Kansas, on January 15, 2013.

_____
Carl Brewer, Mayor

_____
Karen Sublett, City Clerk

**ORDINANCE NO. 49-432**

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 247 (TAXABLE UNDER FEDERAL LAW), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $4,435,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.**

**WHEREAS**, the City of Wichita, Kansas (the "City"), is a city of the first class duly created, organized and existing under the laws of the State of Kansas; and

**WHEREAS**, K.S.A. 10-123, as amended and supplemented, provides that if a municipality has approved an improvement which is to be paid for in whole or in part by the issuance of general obligation bonds, the municipality may issue temporary notes for the purpose of financing the costs of the improvements until the issuance of such bonds; and provides further that any municipality may issue renewal temporary notes to pay the costs of redeeming any previously issued temporary notes as they mature when the improvement will not be completed at the maturity date of the notes or when the improvement has been completed but the issuance of such bonds is prevented, hindered or delayed; and

**WHEREAS**, pursuant to and under the authority of various laws of the State of Kansas, the Governing Body of the City has duly taken various actions, including the adoption, and publication where necessary, of resolutions, ordinances and other proceedings as required by said laws, and has authorized and caused to be commenced the construction of those certain capital improvements in the City (the "Improvements") and has provided that the costs thereof shall be paid, either in whole or in part, by the issuance of general obligation bonds of the City; and

**WHEREAS**, the Governing Body has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Renewal and Improvement Temporary Notes, Series 245, dated August 9, 2012 (the "Original Notes"), the proceeds of which were expended for interim financing for costs of the Original Improvements; and

**WHEREAS**, the Original Improvements have not been completed and/or are completed but the issuance of bonds for the permanent financing thereof is prevented, hindered or delayed, and the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, renewal temporary notes should be issued for the purpose of renewing and paying the portion of the principal amount of the Original Notes which was issued for costs of the Original Improvements as aforesaid; and

**WHEREAS**, the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, temporary notes should be issued at this time for

the purpose of providing interim financing for the costs of making the Improvements which are or will be newly commenced or for which additional interim financing is now required; and

**WHEREAS**, pursuant to Resolution No. 12-265 duly adopted December 18, 2012, the Governing Body advertised for bids at a public sale approximately $4,435,000 principal amount of the City's General Obligation Renewal and Improvement Temporary Notes, Series 247 (Taxable Under Federal Law), for the purpose of renewing interim financing for the Original Improvements and providing new interim financing for the Improvements and such public sale has been duly held and the Governing Body has awarded the Notes to the best bidder therefor; and

**WHEREAS**, the Governing Body, on September 13, 2011, adopted Ordinance No. 49-077 relating to a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation temporary notes in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-l2, and said Ordinance, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the Notes authorized hereby as though fully set forth herein; and

**WHEREAS**, the Governing Body hereby finds and determines that it is necessary to authorize the issuance and delivery of the Notes, to prescribe the terms and details thereof, to provide for the payment of the principal of and interest on the Notes, and to make certain other covenants and agreements with respect thereto;

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

**Section 1. Definitions.** All capitalized terms and phrases not otherwise defined herein shall have the meanings set forth in the Note Resolution herein referenced.

**Section 2. Authorization of and Security for the Notes.** It is hereby authorized, ordered and directed that in order to provide the necessary funds to renew the Original Notes and for the interim financing of the Improvement Costs all as further described on **Schedule I** to the Note Resolution, there shall be issued general obligation renewal and improvement temporary notes of the City (the "Notes"). In all matters relating to the issuance, registration and delivery of the Notes, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Notes shall be and constitute valid and legally binding general obligations of the City, and the full faith, credit and resources of the City are pledged by this Note Ordinance to the payment of the Notes and the interest thereon. The Notes are payable as to both principal and interest from the proceeds of general obligation bonds which will subsequently be issued by the City for such purpose and/or from current revenues of the City available for such purposes, or the Notes may be payable from the proceeds of renewal temporary notes which the City may in the future issue for such purpose.

**Section 3. Terms, Details and Conditions of the Notes.** The Notes shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution (the "Note Resolution") hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Notes, the City will comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.,* as amended and supplemented.

**Section 4. Levy and Collection of Annual Tax.** The Governing Body hereby covenants that it shall make provision for the payment of the principal of and interest on the Notes on the Maturity Date by the issuance of renewal temporary notes for that purpose or by the issuance of general obligation bonds of the City, as is warranted by the circumstances then existing; and further provided, that if the proceeds of such renewal temporary notes or general obligation bonds are insufficient to fully pay the maturing principal of and interest on the Notes on the Maturity Date, then said Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amounts available for the payment of the Notes. In lieu of issuing renewal temporary notes or general obligation bonds of the City to fund costs of the Original Improvements or the Improvements, the Governing Body may elect to pay said costs, or any portion thereof, from otherwise unencumbered funds or current revenues of the City which are lawfully available for such purpose.

**Section 5. Designation of Paying Agent and Note Registrar.** Pursuant to K.S.A. 10-620 *et seq.,* as amended and supplemented, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Notes. The Treasurer of the State of Kansas, Topeka, Kansas, is hereby designated as the initial Paying Agent and Note Registrar for the Notes; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Note Registrars with respect to the Notes upon fifteen (15) days' written notice to the then acting Paying Agent and Note Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Note Registrar and Paying Agent in connection with such designation.

**Section 6. Further Authority.** The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Notes and the Notes in accordance with the provisions of the Note Resolution. The Governing Body hereby further authorizes, orders, and directs the City Clerk of the City to countersign the Notes and the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Notes, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Notes, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall

approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

The execution and attestation of this Ordinance, the Official Statement and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Ordinance, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Ordinance and to carry out, give effect to and comply with and perform the duties of the City with respect to the Notes and the Official Statement.

**Section 7. Effective Date.** This Ordinance shall be in force and take effect from and after its passage and approval by the Governing Body of the City, and the publication hereof one time in the City's official newspaper.

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PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on January 15, 2013.

_____

(Seal) Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____

Gary E. Rebenstorf, Director of Law

**ORDINANCE NO. 49-433**

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 254, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $63,230,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.**

**WHEREAS**, the City of Wichita, Kansas (the "City"), is a city of the first class duly created, organized and existing under the laws of the State of Kansas; and

**WHEREAS**, K.S.A. 10-123, as amended and supplemented, provides that if a municipality has approved an improvement which is to be paid for in whole or in part by the issuance of general obligation bonds, the municipality may issue temporary notes for the purpose of financing the costs of the improvements until the issuance of such bonds; and provides further that any municipality may issue renewal temporary notes to pay the costs of redeeming any previously issued temporary notes as they mature when the improvement will not be completed at the maturity date of the notes or when the improvement has been completed but the issuance of such bonds is prevented, hindered or delayed; and

**WHEREAS**, pursuant to and under the authority of various laws of the State of Kansas, the Governing Body of the City has duly taken various actions, including the adoption, and publication where necessary, of resolutions, ordinances and other proceedings as required by said laws, and has authorized and caused to be commenced the construction of those certain capital improvements in the City (the "Improvements") and has provided that the costs thereof shall be paid, either in whole or in part, by the issuance of general obligation bonds of the City; and

**WHEREAS**, the Governing Body has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Renewal and Improvement Temporary Notes, Series 252, dated August 9, 2012 (the "Original Notes"), a portion of the proceeds of which were expended for interim financing for costs of the Original Improvements; and

**WHEREAS**, the Original Improvements have not been completed and/or are completed but the issuance of bonds for the permanent financing thereof is prevented, hindered or delayed, and the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, renewal temporary notes should be issued for the purpose of renewing and paying the portion of the principal amount of the Original Notes which was issued for costs of the Original Improvements as aforesaid; and

**WHEREAS**, the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, temporary notes should be issued at this time for the purpose of providing interim financing for the costs of making the Improvements which are or will be newly commenced or for which additional interim financing is now required; and

**WHEREAS**, pursuant to Resolution No. 12-265 duly adopted December 18, 2012, the Governing Body advertised for bids at a public sale approximately $63,230,000 principal amount of the City's General Obligation Renewal and Improvement Temporary Notes, Series 254, for the purpose of renewing interim financing for the Original Improvements and providing new interim financing for the Improvements and such public sale has been duly held and the Governing Body has awarded the Notes to the best bidder therefor; and

**WHEREAS**, the Governing Body, on September 13, 2011, adopted Ordinance No. 49-077 relating to a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation temporary notes in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-l2, and said Ordinance, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the Notes authorized hereby as though fully set forth herein; and

**WHEREAS**, the Governing Body hereby finds and determines that it is necessary to authorize the issuance and delivery of the Notes, to prescribe the terms and details thereof, to provide for the payment of the principal of and interest on the Notes, and to make certain other covenants and agreements with respect thereto;

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

**Section 1. Definitions.** All capitalized terms and phrases not otherwise defined herein shall have the meanings set forth in the Note Resolution herein referenced.

**Section 2. Authorization of and Security for the Notes.** It is hereby authorized, ordered and directed that in order to provide the necessary funds to renew a portion of the principal amount of the Original Notes and for the interim financing of the Improvement Costs all as further described on **Schedule I** to the Note Resolution, there shall be issued general obligation renewal and improvement temporary notes of the City (the "Notes"). In all matters relating to the issuance, registration and delivery of the Notes, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Notes shall be and constitute valid and legally binding general obligations of the City, and the full faith, credit and resources of the City are pledged by this Note Ordinance to the payment of the Notes and the interest thereon. The Notes are payable as to both principal and interest from the collection of special assessments taxes which will be levied against real properties in the City benefiting from certain of the Original Improvements and Improvements, and from the proceeds of general obligation bonds which will subsequently be issued by the City

for such purpose and/or from current revenues of the City available for such purposes, or the Notes may be payable from the proceeds of renewal temporary notes which the City may in the future issue for such purpose.

**Section 3. Terms, Details and Conditions of the Notes.** The Notes shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution (the "Note Resolution") hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Notes, the City will comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

**Section 4. Levy and Collection of Annual Tax.** The Governing Body hereby covenants that it shall make provision for the payment of the principal of and interest on the Notes on the Maturity Date by the levying and collecting the necessary special assessment taxes upon the real properties within the City liable therefor upon the completion of the Original Improvements and the Improvements, as provided by law; provided, that if the amounts collected from such special assessment taxes are insufficient to fully pay the principal of and interest on the Notes on the Maturity Date, or if any of the Original Improvements or the Improvements are not completed by the Maturity Date or the Governing Body is otherwise hindered from then levying and collecting such special assessment taxes, and for any of the costs of the Original Improvements or the Improvements which are to be paid by the City-at-large, then said Governing Body shall provide for the payment of all or any portion of the principal of and/or interest on the Notes on the Maturity Date by the issuance of renewal temporary notes for that purpose or by the issuance of general obligation bonds of the City, as is warranted by the circumstances then existing; and further provided, that if the amounts collected from such special assessment taxes and/or the proceeds of such renewal temporary notes or general obligation bonds are insufficient to fully pay the maturing principal of and interest on the Notes on the Maturity Date, then said Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amounts available for the payment of the Notes. Notwithstanding the foregoing, the Governing Body may permit the deferral of special assessments provided such deferrals do not adversely impact the tax-exempt status of the interest on the Notes and comply with applicable State law and provided further that the City-at-large provides for the payment of principal of and interest on the Notes in accordance with the further terms of this Ordinance. In lieu of issuing renewal temporary notes or general obligation bonds of the City to fund costs of the Original Improvements or the Improvements which are to be paid by the City-at-large, the Governing Body may elect to pay said costs, or any portion thereof, from otherwise unencumbered funds or current revenues of the City which are lawfully available for such purpose.

**Section 5. Tax Covenants.** The Governing Body hereby covenants and agrees that so long as any of the Notes remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the

interest on the Notes under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Notes.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Notes for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Notes or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Notes to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Notes for so long as any of the Notes remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Notes from time to time. This covenant shall survive payment in full or the defeasance of the Notes and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Ordinance and the Note Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

**Section 6. Designation of Paying Agent and Note Registrar.** Pursuant to K.S.A. 10-620 *et seq.,* as amended and supplemented, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Notes. The Treasurer of the State of Kansas, Topeka, Kansas, is hereby designated as the initial Paying Agent and Note Registrar for the Notes; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Note Registrars with respect to the Notes upon fifteen (15) days' written notice to the then acting Paying Agent and Note Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Note Registrar and Paying Agent in connection with such designation.

**Section 7. Further Authority.** The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Notes and the Notes in accordance with the provisions of the Note Resolution. The Governing Body hereby further authorizes, orders, and directs the City Clerk of the City to countersign the Notes and the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Notes, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Notes, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall

approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

The execution and attestation of this Ordinance, the Official Statement and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Ordinance, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Ordinance and to carry out, give effect to and comply with and perform the duties of the City with respect to the Notes and the Official Statement.

**Section 8. Effective Date.** This Ordinance shall be in force and take effect from and after its passage and approval by the Governing Body of the City, and the publication hereof one time in the City's official newspaper.

[Remainder of This Page Intentionally Left Blank]

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on January 15, 2013.

_____

(Seal) Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____

Gary E. Rebenstorf, Director of Law

**ORDINANCE NO. 49-434**

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION IMPROVEMENT TEMPORARY NOTES, SERIES 256 (SUBJECT TO ALTERNATIVE MINIMUM TAX), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $15,065,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN MUNICIPAL AIRPORT CAPITAL IMPROVEMENTS; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTES; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.**

**WHEREAS**, the City of Wichita, Kansas (the "City"), is a city of the first class duly created, organized and existing under the laws of the State of Kansas; and

**WHEREAS**, K.S.A. 10-123, as amended and supplemented, provides that if a municipality has approved an improvement which is to be paid for in whole or in part by the issuance of general obligation bonds, the municipality may issue temporary notes for the purpose of financing the costs of the improvements until the issuance of such bonds; and provides further that any municipality may issue renewal temporary notes to pay the costs of redeeming any previously issued temporary notes as they mature when the improvement will not be completed at the maturity date of the notes or when the improvement has been completed but the issuance of such bonds is prevented, hindered or delayed; and

**WHEREAS**, pursuant to and under the authority of various laws of the State of Kansas, the Governing Body of the City has duly taken various actions, including the adoption, and publication where necessary, of resolutions, ordinances and other proceedings as required by said laws, and has authorized and caused to be commenced the construction of those certain capital improvements in the City (the "Improvements") and has provided that the costs thereof shall be paid, either in whole or in part, by the issuance of general obligation bonds of the City; and

**WHEREAS**, the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, temporary notes should be issued at this time for the purpose of providing interim financing for the costs of making the Improvements which are or will be newly commenced or for which additional interim financing is now required; and

**WHEREAS**, pursuant to Resolution No. 12-265 duly adopted December 18, 2012, the Governing Body advertised for bids at a public sale approximately $15,065,000 principal amount of the City's General Obligation Improvement Temporary Notes, Series 256 (Subject to Alternative Minimum Tax), for the purpose of providing new interim financing for the Improvements and such public sale has been duly held and the Governing Body has awarded the Notes to the best bidder therefor; and

**WHEREAS**, the Governing Body, on September 13, 2011, adopted Ordinance No. 49-077 relating to a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation temporary notes in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-l2, and said Ordinance, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the Notes authorized hereby as though fully set forth herein; and

**WHEREAS**, the Governing Body hereby finds and determines that it is necessary to authorize the issuance and delivery of the Notes, to prescribe the terms and details thereof, to provide for the payment of the principal of and interest on the Notes, and to make certain other covenants and agreements with respect thereto;

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

**Section 1. Definitions.** All capitalized terms and phrases not otherwise defined herein shall have the meanings set forth in the Note Resolution herein referenced.

**Section 2. Authorization of and Security for the Notes.** It is hereby authorized, ordered and directed that in order to provide the necessary funds for the interim financing of the Improvement Costs all as further described on **Schedule I** to the Note Resolution, there shall be issued general obligation improvement temporary notes of the City (the "Notes"). In all matters relating to the issuance, registration and delivery of the Notes, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.,* as amended and supplemented.

The Notes shall be and constitute valid and legally binding general obligations of the City, and the full faith, credit and resources of the City are pledged by this Note Ordinance to the payment of the Notes and the interest thereon. The Notes are payable as to both principal and interest from the proceeds of general obligation bonds which will subsequently be issued by the City for such purpose and/or from current revenues of the City available for such purposes, or the Notes may be payable from the proceeds of renewal temporary notes which the City may in the future issue for such purpose.

**Section 3. Terms, Details and Conditions of the Notes.** The Notes shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution (the "Note Resolution") hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Notes, the City will comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.,* as amended and supplemented.

**Section 4. Levy and Collection of Annual Tax.** The Governing Body hereby covenants that it shall make provision for the payment of all or any portion of the principal of

and/or interest on the Notes on the Maturity Date by the issuance of renewal temporary notes for that purpose or by the issuance of general obligation bonds of the City, as is warranted by the circumstances then existing; and further provided, that if the proceeds of such renewal temporary notes or general obligation bonds are insufficient to fully pay the maturing principal of and interest on the Notes on the Maturity Date, then said Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amounts available for the payment of the Notes. In lieu of issuing renewal temporary notes or general obligation bonds of the City to fund costs of the Improvements, the Governing Body may elect to pay said costs, or any portion thereof, from otherwise unencumbered funds or current revenues of the City which are lawfully available for such purpose.

**Section 5. Tax Covenants.** The Governing Body hereby covenants and agrees that so long as any of the Notes remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Notes under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Notes.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Notes for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Notes or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Notes to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Notes for so long as any of the Notes remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Notes from time to time. This covenant shall survive payment in full or the defeasance of the Notes and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Ordinance and the Note Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

**Section 6. Designation of Paying Agent and Note Registrar.** Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Notes. The Treasurer of the State of Kansas, Topeka, Kansas, is hereby designated as the initial Paying Agent and Note Registrar for the Notes; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Note Registrars with respect to the Notes upon fifteen (15) days' written notice to the then acting Paying Agent and Note Registrar. The Mayor and City Clerk

are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Note Registrar and Paying Agent in connection with such designation.

**Section 7. Further Authority.** The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Notes and the Notes in accordance with the provisions of the Note Resolution. The Governing Body hereby further authorizes, orders, and directs the City Clerk of the City to countersign the Notes and the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Notes, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Notes, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

The execution and attestation of this Ordinance, the Official Statement and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Ordinance, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Ordinance and to carry out, give effect to and comply with and perform the duties of the City with respect to the Notes and the Official Statement.

**Section 8. Effective Date.** This Ordinance shall be in force and take effect from and after its passage and approval by the Governing Body of the City, and the publication hereof one time in the City's official newspaper.

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PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on January 15, 2013.

(Seal) _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

**ORDINANCE NO. 49-435**

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 807, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $9,800,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.**

**WHEREAS**, the City of Wichita, Kansas (the "City"), is a city of the first class duly created, organized and existing under the laws of the State of Kansas (the "State"); and

**WHEREAS**, the Governing Body has duly taken various actions, including the adoption, and publication, where necessary, of resolutions, ordinances and other proceedings as required by said laws, to authorize certain capital improvements in the City (the "Improvements" as further described in the herein referenced Bond Resolution), and has provided that the costs thereof shall be paid by the issuance of general obligation bonds of the City and other available funds of the City; and

**WHEREAS**, the Governing Body has found and determined that the combined total final costs and related expenses of the Improvements, less any available funds of the City as detailed on said **Schedule I** attached to the Resolution, leaves a balance for which funding is necessary of $9,800,000, all of which is payable by the issuance of general obligation bonds of the City, including all or any portion of any premium received on such bonds that is specified in the Resolution; and

**WHEREAS**, the Governing Body is authorized by the laws of the State, including K.S.A. 10-101 *et seq.,* as amended and supplemented, to issue the City's general obligation bonds to provide the necessary funds for the permanent financing of the costs and expenses of the Improvements and is required, by K.S.A. 10-106, as amended and supplemented, to sell such general obligation bonds at public sale if the principal amount thereof exceeds $2,000,000; and

**WHEREAS**, pursuant to Resolution No. 12-265 duly adopted December 18, 2012, the Governing Body advertised for bids at a public sale approximately $9,800,000 principal amount of the City's General Obligation Bonds, Series 807 (the "Bonds" as further described in the Bond Resolution herein referenced), for the aforesaid purpose; and such public sale has been duly held and the Governing Body has awarded the Bonds to the best bidder therefor; and

**WHEREAS**, the Governing Body, on September 13, 2011, adopted Ordinance No. 49-078 relating to a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation bonds in compliance with Section (b)(5)(i) of

Securities and Exchange Commission Rule 15c2-l2, and said Ordinance, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the Bonds authorized hereby as though fully set forth herein; and

**WHEREAS**, the Governing Body hereby finds and determines that it is necessary to authorize the issuance and delivery of the Bonds, to prescribe the terms and details thereof, to provide for the levy and collection of an annual tax in order to provide for the payment of the principal of and interest on the Bonds, and to make certain other covenants and agreements with respect thereto;

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

**Section 1. Definitions.** All capitalized terms and phrases not otherwise defined herein shall have the meanings set forth in the Bond Resolution.

**Section 2. Authorization of and Security for the Bonds.** It is hereby authorized, ordered and directed that in order to provide the necessary funds to pay the Improvement Costs, the Bonds shall be issued in an amount not to exceed $9,800,000. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and interest thereon from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City. The full faith, credit and resources of the City are hereby irrevocably pledged to secure the prompt payment of the principal of and interest on the Bonds as the same severally become due and payable.

**Section 3. Terms, Details and Conditions of the Bonds.** The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution (the "Bond Resolution") hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Bonds, the City will comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

**Section 4. Levy and Collection of Annual Tax.** The Governing Body hereby covenants that it shall annually make provision for the payment of the principal of and interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City.

**Section 5. Tax Covenants.** The Governing Body hereby covenants and agrees that so long as any of the Bonds remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Bonds under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Bonds or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Bonds for so long as any of the Bonds remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Bonds and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Ordinance and the Bond Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

**Section 6. Designation of Paying Agent and Bond Registrar.** Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State, Topeka, Kansas, is hereby designated as the initial Paying Agent and Bond Registrar for the Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds upon fifteen (15) days' written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

**Section 7. Further Authority.** The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Bonds and the Bonds in accordance with the provisions of the Bond Resolution. The Governing Body hereby further authorizes, orders, and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Bonds, including final certificates

required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

The execution and attestation of this Ordinance, the Official Statement and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Ordinance, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Ordinance and to carry out, give effect to and comply with and perform the duties of the City with respect to the Bonds and the Official Statement.

**Section 8. Effective Date.** This Ordinance shall be in force and take effect from and after its passage and approval by the Governing Body of the City, and the publication hereof one time in the City's official newspaper.

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**PASSED AND APPROVED** by the Governing Body of the City of Wichita, Kansas on January 15, 2013.

(Seal) _____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

**ORDINANCE NO. 49-436**

**AN ORDINANCE AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 812, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $3,645,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN THE CITY; PROVIDING FOR THE LEVY AND COLLECTION OF AN ANNUAL TAX FOR THE PURPOSE OF PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE BONDS AS IT BECOMES DUE AND PAYABLE; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.**

**WHEREAS,** the City of Wichita, Kansas (the "City"), is a city of the first class duly created, organized and existing under the laws of the State of Kansas (the "State"); and

**WHEREAS,** pursuant to and under the authority of K.S.A. 12-6a01 *et seq.*, as amended and supplemented, the Governing Body has duly taken various actions, including the adoption, and publication, where necessary, of resolutions, ordinances and other proceedings as required by said laws, to authorize certain capital improvements in the City (the "Improvements" as further described in the herein referenced Bond Resolution), and has provided that the costs thereof shall be paid from special assessments collected in cash and/or by the issuance of general obligation bonds of the City; and

**WHEREAS,** the Governing Body has found and determined that the combined total final costs and related expenses of the Improvements, less any cash paid by the owners of the real properties against which special assessments therefore were levied and less other available funds of the City as detailed on said **Schedule I** attached to the Resolution, leaves a balance for which funding is necessary of $3,645,000, all of which is chargeable to and has been specially assessed against various real properties in the City benefited by the respective Improvements and which special assessments were not paid within the time provided by law; and

**WHEREAS,** the Governing Body is authorized by the laws of the State, including K.S.A. 10-101 *et seq.*, as amended and supplemented, to issue the City's general obligation bonds to provide the necessary funds for the permanent financing of the costs and expenses of the Improvements specially assessed against benefited real property and not paid in cash within the time provided by law; and is required, by K.S.A. 10-106, as amended and supplemented, to sell such general obligation bonds at public sale if the principal amount thereof exceeds $2,000,000; and

**WHEREAS,** pursuant to Resolution No. 12-265 duly adopted December 18, 2012, the Governing Body advertised for bids at a public sale approximately $3,645,000 principal amount of the City's General Obligation Bonds, Series 812 (the "Bonds" as further described in the Bond Resolution herein referenced), for the aforesaid purpose; and such public sale has been duly held and the Governing Body has awarded the Bonds to the best bidder therefor; and

**WHEREAS,** the Governing Body, on September 13, 2011, adopted Ordinance No. 49-078 relating to a master undertaking to provide ongoing disclosure concerning the City for the benefit of owners of its general obligation bonds in compliance with Section (b)(5)(i) of Securities and Exchange Commission Rule 15c2-l2, and said Ordinance, the terms and provisions thereof, and actions required by the City as set forth therein are by reference incorporated in this Ordinance and made applicable to the Bonds authorized hereby as though fully set forth herein; and

**WHEREAS,** the Governing Body hereby finds and determines that it is necessary to authorize the issuance and delivery of the Bonds, to prescribe the terms and details thereof, to provide for the levy and collection of an annual tax in order to provide for the payment of the principal of and interest on the Bonds, and to make certain other covenants and agreements with respect thereto;

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

**Section 1. Definitions.** All capitalized terms and phrases not otherwise defined herein shall have the meanings set forth in the Bond Resolution.

**Section 2. Authorization of and Security for the Bonds.** It is hereby authorized, ordered and directed that in order to provide the necessary funds to pay the Improvement Costs, the Bonds shall be issued in an amount not to exceed $3,645,000. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and interest thereon from the collection of special assessment taxes which have been levied against real properties in the City which benefited from the Improvements, and if not so paid, then said principal and interest shall be paid from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City. The full faith, credit and resources of the City are hereby irrevocably pledged to secure the prompt payment of the principal of and interest on the Bonds as the same severally become due and payable.

**Section 3. Terms, Details and Conditions of the Bonds.** The Bonds shall be dated and bear interest, shall mature and be payable at such times, shall be in such forms, shall be subject to redemption and payment prior to the maturity thereof, and shall be issued and delivered in the manner prescribed and subject to the provisions, covenants and agreements set forth in a resolution (the "Bond Resolution") hereafter adopted by the Governing Body of the City. In all matters relating to the issuance, registration and delivery of the Bonds, the City will comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

**Section 4. Levy and Collection of Annual Tax.** The Governing Body hereby covenants that it shall annually make provision for the payment of the principal of, premium, if any, and interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary special assessment taxes upon the real properties within the City liable therefor as provided by law; provided, that if the amounts collected from such special assessment taxes are insufficient to fully pay the maturing principal and interest on the Bonds when due, then the Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amount of special assessment taxes collected. Notwithstanding the foregoing, the Governing Body may permit the deferral of special assessments provided such deferrals do not adversely impact the tax-exempt status of the interest on the Bonds and comply with applicable State law and provided further that the City-at-large provides for the payment of principal of and interest on the Bonds in accordance with the further terms of this Ordinance.

**Section 5. Tax Covenants.** The Governing Body hereby covenants and agrees that so long as any of the Bonds remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Bonds under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Bonds or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Bonds for so long as any of the Bonds remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Bonds and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Ordinance and the Bond Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

**Section 6. Designation of Paying Agent and Bond Registrar.** Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body elects to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State, Topeka, Kansas, is hereby designated as the initial Paying Agent and Bond Registrar for the

Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds upon fifteen (15) days' written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

**Section 7. Further Authority.** The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Ordinance, the Official Statement relating to the offering and sale of the Bonds and the Bonds in accordance with the provisions of the Bond Resolution. The Governing Body hereby further authorizes, orders, and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Ordinance and to give effect to the transactions contemplated hereby.

The execution and attestation of this Ordinance, the Official Statement and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Ordinance, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Ordinance and to carry out, give effect to and comply with and perform the duties of the City with respect to the Bonds and the Official Statement.

**Section 8. Effective Date.** This Ordinance shall be in force and take effect from and after its passage and approval by the Governing Body of the City, and the publication hereof one time in the City's official newspaper.

PASSED AND APPROVED by the Governing Body of the City of Wichita, Kansas on January 15, 2013.

_____

(Seal) Carl Brewer, Mayor

ATTEST:

_____

Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____

Gary E. Rebenstorf, Director of Law

**RESOLUTION NO. 13-009**

**OF THE**

**CITY OF WICHITA, KANSAS**

**AS ADOPTED JANUARY 15, 2013**

**AUTHORIZING THE ISSUANCE OF**

**NOT TO EXCEED $4,435,000**

**GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES SERIES 247 (TAXABLE UNDER FEDERAL LAW)**

**DATED FEBRUARY 14, 2013**

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**RESOLUTION NO. 13-009**

**A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 247 (TAXABLE UNDER FEDERAL LAW), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $4,435,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE NOTES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON THE NOTES, AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.**

**WHEREAS**, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Note Ordinance (as herein defined), has authorized the issuance of the Notes in the aggregate principal amount not to exceed $4,435,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Notes; and

**WHEREAS**, pursuant to and under the authority of various laws of the State of Kansas, the Governing Body of the City has duly taken various actions, including the adoption, and publication where necessary, of resolutions, ordinances and other proceedings as required by said laws, and has authorized and caused to be commenced the construction of those certain capital improvements in the City described in **Schedule I** which is attached to this Resolution and made a part hereof by reference as though fully set forth herein (which capital improvements identified as Original Improvements as listed on **Schedule I** are herein collectively referred to as the "Original Improvements"), and of those certain capital improvements in the City described in **Schedule I** which is attached to this Resolution and made a part hereof by reference as though fully set forth herein (which capital improvements identified as Improvements as listed on **Schedule I** are herein collectively referred to as the "Improvements") and has provided that the costs thereof shall be paid, either in whole or in part, by the issuance of general obligation bonds of the City; and

**WHEREAS**, the Governing Body has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Renewal and Improvement Temporary Notes, Series 245 (Taxable Under Federal Law), dated August 9, 2012 (the "Original Notes"), the proceeds of which were expended for interim financing for costs of the Original Improvements; and

**WHEREAS**, the Original Improvements have not been completed and/or are completed but the issuance of bonds for the permanent financing thereof is prevented, hindered or delayed, and the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, renewal temporary notes should be issued for the purpose of renewing and paying the principal amount of the Original Notes which was issued for costs of the Original Improvements as aforesaid; and

**WHEREAS**, the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, temporary notes should be issued at this time for the purpose of providing interim financing for the costs of making the Improvements which are or will be newly commenced or for which additional interim financing is now required; and

**WHEREAS**, in accordance with the provisions of the Note Ordinance, the Governing Body hereby finds and determines that it is necessary to prescribe the terms and details of the Notes pursuant to this Resolution, and to make certain other covenants and agreements with respect thereto;

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

## ARTICLE I
## DEFINITIONS

**Section 1.01 Definitions of Words and Terms.** In addition to words and terms elsewhere defined in this Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Act" shall mean the Constitution of the State of Kansas (including particularly Article 12, Section 5 thereof), Charter Ordinance Nos. 78 and 156 of the City, K.S.A. 10-123, K.S.A. 13-1024c, and K.S.A. 13-1348a, all as amended and supplemented, under the authority of which the Improvements were authorized, the Original Notes were issued and the Notes are issued.

"Authorized Investments" shall mean those investments authorized by K.S.A. 10-131, as amended and supplemented, and by other provisions of State law applicable to the City.

"Bond Counsel" shall mean Kutak Rock LLP, Kansas City, Missouri, or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

"City" shall mean the City of Wichita, Kansas.

"City Clerk" shall mean the duly appointed and acting City Clerk of the City, or in the City Clerk's absence (or in the event of a vacancy in such office) any Deputy City Clerk or Acting City Clerk of the City.

"Costs of Issuance" shall mean any and all expenses of whatever nature incurred in connection with the issuance and sale of the Notes, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent, fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the yield on the Notes or investment of the proceeds of the Notes, and in connection with receiving municipal bond insurance and/or ratings on the Notes. An amount for

Costs of Issuance has been factored into the total final cost of each capital improvement comprising the Improvements and the Original Improvements.

"Date of Issuance" shall mean the date on which the Notes are delivered to the Original Purchaser and the City receives from the Original Purchaser the full purchase price therefor.

"Dated Date" shall mean the dated date of the Notes, which is February 14, 2013.

"Direct Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Director of Finance" shall mean the duly appointed and acting Director of Finance of the City, or in the Director of Finance's absence, the duly appointed Assistant Director of Finance or Acting Director of Finance of the City.

"DTC" shall mean The Depository Trust Company and its successors or assigns.

"Fiscal Agent" shall mean the Note Registrar and/or the Paying Agent.

"Fiscal Year" shall mean the fiscal year of the City, currently being the 12-months ending each December 31.

"Governing Body" shall mean the duly elected and/or appointed and acting persons comprising the City Council of the City.

"Government Obligations" shall mean (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following phrase (ii)), or (ii) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

"Improvement Account" shall mean the Improvement Account created by **Article IV** hereof.

"Improvement Costs" shall mean the amount of capital expenditures for an Original Improvement and/or an Improvement, including interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding notes issued to pay for such improvement and Costs of Issuance of the Notes, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such Improvement Costs and (b) any Improvement Costs which have been previously paid by the City or by any eligible source of funds unless such amounts are entitled to be reimbursed under State and Federal law.

"Improvements" shall mean the newly commenced capital improvements constructed in the City as described on **Schedule I** hereto or any Substitute Improvements.

"Indirect Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Interest Payment Date" shall be February 11, 2014.

"Letter of Representation" shall mean that certain Letter of Representation between the City and DTC with respect to the Notes.

"Maturity Date" shall mean February 11, 2014.

"Mayor" shall mean the duly elected and acting Mayor of the City or in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

"Municipal Bond Insurance Policy" shall mean, if applicable, the municipal bond insurance policy issued by Note Insurer insuring the payment when due of the principal of and interest on the Notes as described on **Exhibit A** to this Resolution.

"Note Insurer" shall mean any issuer of a Municipal Bond Insurance Policy described on **Exhibit A** to this Resolution.

"Note Ordinance" shall mean the ordinance of the City authorizing the issuance of the Notes as further described on **Exhibit A** to this Resolution.

"Note Registrar" shall mean the Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

"Noteowner(s)" shall mean the Owner(s) of the Notes.

"Notes" shall mean General Obligation Renewal and Improvement Temporary Notes, Series 247 (Taxable Under Federal Law), dated February 14, 2013, of the City of Wichita, Kansas, in the principal amount set forth on **Exhibit A** which are authorized by and will be issued pursuant to the authority of the Note Ordinance and this Resolution.

"Original Notes" shall mean the notes previously issued by the City described in the preamble to this Resolution.

"Original Proceeds" shall mean all of the proceeds, including accrued interest, derived from the sale of the Notes to the Original Purchaser.

"Original Purchaser" shall mean the original purchaser of the Notes described on **Exhibit A** to this Resolution.

"Outstanding," when used with reference to the Notes, shall mean, as of a particular date, all Notes theretofore authenticated and delivered under this Resolution, except (i) Notes theretofore canceled by the Fiscal Agent or delivered to the Fiscal Agent for cancellation, (ii) Notes for which moneys for payment or Government Obligations (the principal of and the interest on which Government Obligations, if any, when due, provide sufficient moneys to pay, with such other moneys so deposited with the Fiscal Agent, the principal of and interest on the Notes being paid), or both, in the necessary amount have theretofore been deposited with the Fiscal Agent, or other depository as provided in this Resolution, in trust for the Owners thereof

(whether upon or prior to the Maturity Date of the Notes), and (iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Resolution.

"Owner(s)" or "Registered Owner(s)" shall mean, when used with respect to any Note, the person or entity in whose name the Note is registered as shown on the Registration Books maintained by the Fiscal Agent.

"Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Paying Agent" shall mean the Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

"Principal and Interest Account" shall mean the Principal and Interest Account created within the City's Capital Project Fund pursuant to **Article IV** hereof, which is created and shall be held and administered solely for the purpose of receiving and disbursing funds for the payment of the Notes.

"Principal Payment Date" shall mean the Maturity Date.

"Purchase Price" shall mean the original purchase price of the Notes described on **Exhibit A** to this Resolution.

"Record Date" shall mean fifteen days prior to the Maturity Date.

"Registration Books" shall mean the books maintained on behalf of the City by the Fiscal Agent for the registration and transfer from time to time of the ownership of the Notes.

"Resolution" or "Note Resolution" shall mean this Resolution adopted by the Governing Body of the City on January 15, 2013, prescribing the terms and details of the Notes.

"State" shall mean the State of Kansas.

"Substitute Improvements" shall mean the substitute or additional improvements authorized pursuant to **Section 5.08** of this Resolution.

"Value" shall mean the value of the Authorized Investments (which Value shall be determined as of the end of each month) and shall be the amortized cost of an obligation or the market cost thereof, whichever is lower.

## ARTICLE II
## AUTHORIZATION, ISSUANCE AND DELIVERY OF NOTES

**Section 2.01 Authorization of and Security for Notes.** Pursuant to the Note Ordinance, the Governing Body has authorized, ordered and directed that in order to provide the necessary funds to provide interim financing for the Original Improvements and the Improvements, there shall be issued the Notes. In all matters relating to the issuance, registration

and delivery of the Notes, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Notes shall be and constitute valid and legally binding general obligations of the City, and the full faith, credit and resources of the City are pledged by the Note Ordinance and this Note Resolution to the payment of the Notes and the interest thereon. The Notes are payable as to both principal and interest from the proceeds of general obligation bonds which will subsequently be issued by the City for such purpose and/or from current revenues of the City available for such purposes, or the Notes may be payable from the proceeds of renewal temporary notes which the City may in the future issue for such purpose.

**Section 2.02 Description and Details of Notes.** The Notes shall be designated "City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 247 (Taxable Under Federal Law)." The Notes shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount of the Notes. The Notes shall be dated the Dated Date, shall mature on the Maturity Date, and shall bear interest at the rate set forth on **Exhibit A** to this Resolution. The Notes shall bear interest from their Dated Date (computed on the basis of a 360-day year of 12 30-day months) and such interest shall become due and payable on the Interest Payment Date. The City Manager, the Finance Director, or the City Manager's designee is hereby authorized to approve the final principal amount and Purchase Price for the Bonds as to be set forth on **Exhibit A** to this Resolution provided the final principal amount shall not exceed $4,435,000 which shall be the par value of the Notes unless otherwise indicated on **Exhibit A**, the principal shall mature on the date and at the interest rate shown on **Exhibit A** to this Resolution and such amounts are consistent with the other terms and provisions of this Resolution.

The Notes will initially be distributed in book-entry-only form through DTC, by depositing with DTC (or the Fiscal Agent as agent for DTC) one certificate, registered in the name of DTC's nominee, Cede & Co., in an amount equal to the total principal amount of the Notes. The manner of payment of the principal of and the interest on the Notes to DTC, and other matters relating to the distribution of the Notes in book-entry-only form through DTC, shall be governed by the Letter of Representation, which the Director of Finance is hereby authorized to execute and deliver on behalf of the City.

Subject to the operational arrangements of DTC, in the event (i) DTC determines not to continue to act as securities depository for the Notes, or (ii) the City determines that continuation of the book-entry-only system of evidence and transfer of ownership of the Notes would adversely affect the interests of the beneficial owners of the Notes, the City will discontinue the book-entry-only system with DTC. If the City fails to identify another qualified securities depository to replace DTC, the City will cause replacement Notes in the form of fully registered certificates to be authenticated and delivered to the beneficial owners (to the extent such beneficial owners can be identified by the City). If issued in certificated form, the certificates representing the Notes shall be numbered in such manner as the Note Registrar shall determine.

**Section 2.03 Designation of Paying Agent and Note Registrar.** Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body has elected to have the provisions of the Kansas Bond Registration Law apply to the Notes.

So long as the Notes remain in book-entry-only form, the Treasurer of the State of Kansas, Topeka, Kansas, has been designated as the initial Paying Agent and Note Registrar for the Notes; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Note Registrars with respect to the Notes upon fifteen (15) days' written notice to the then acting Paying Agent and Note Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Note Registrar and Paying Agent in connection with such designation.

The Paying Agent shall make payment directly to DTC, as the Owner, for the principal of and the interest on the Notes and DTC will remit such principal and interest to its Direct Participants for distribution to the beneficial owners in the manner set forth in the following **Section 2.04(A)** and as governed by the terms of the Letter of Representation.

In the event that the Notes should be issued and delivered in certificated form at any time after the initial delivery of the Notes, the Fiscal Agent shall maintain Registration Books for the ownership of the Notes on behalf of the City and the Paying Agent will make payment for the Notes directly to the Owners as shown by said Registration Books in the manner set forth in the following **Section 2.04(B).**

**Section 2.04 Method and Place of Payment of Principal and Interest on Notes.**

(A) Notes Issued and Delivered in Book-Entry-Only Form. One certificate registered in the name of DTC's nominee, Cede & Co., for the total principal amount of the Notes will be issued to DTC in New York, New York (or to the Fiscal Agent as agent for DTC) and such certificate will be immobilized in its custody. Purchases of the Notes in denominations permitted by **Section 2.02** hereof must be made by or through Direct Participants of DTC, which will receive a credit for the Notes on DTC's records. The ownership interest of each actual purchaser of each Note (the "beneficial owner") is in turn to be recorded on the Direct and Indirect Participants' records. Transfers of ownership will be effected on the records of DTC and its Participants pursuant to the rules and procedures established by DTC and its Participants. Payment of principal and interest on the Notes will be made in same day funds directly to DTC. The transfer of principal and interest to Participants of DTC will be the responsibility of DTC; the transfer of principal and interest to beneficial owners by Participants of DTC will be the responsibility of such Participants. Neither the City nor the Paying Agent and Note Registrar will be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its Participants or persons acting through such Participants.

(B) In the Event Certificated Notes are Subsequently Issued. The principal of, premium, if any, and the interest on the Notes shall be payable in lawful money of the United States of America by check or draft of the Paying Agent. The principal of and premium, if any, on the Notes shall be paid to the Owner of each Note upon presentation and surrender of the Note to the Paying Agent for payment and cancellation on the maturity date or redemption date, as the case may be, of the Note. The interest on the Notes shall be mailed by the Paying Agent to the Owner of each Note at the Owner's address as it appears on the Registration Books on the Record Dates, or at such other address as is provided in writing by such Owner to the Note Registrar.

**Section 2.05** **Method of Execution and Authentication of Notes.** The Notes shall be executed for and on behalf of the City by the manual or facsimile signatures of its Mayor and City Clerk, and shall have impressed or imprinted thereon a true impression or a printed facsimile of the City's official seal. The Notes shall be registered in the Office of the City Clerk, which registration shall be evidenced by the manual or facsimile signature of the City Clerk, on a Certificate of Registration printed on the Notes, with the City's official seal or a facsimile thereof, impressed or imprinted opposite said signature. The Notes shall be registered by the State Treasurer in the municipal bond register in the State Treasurer's office, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer and/or the Assistant State Treasurer on a Certificate of State Treasurer printed on the Notes, attested by a true impression or a printed facsimile of the State Treasurer's official seal opposite such signature. Additionally, the Notes shall be countersigned by the manual or facsimile signature of the City Clerk, which countersignature shall be attested by the City's official seal affixed or imprinted opposite said countersignature.

In case any officer of the City or of the State whose manual or facsimile signature shall appear on the Notes shall cease to be such officer before the actual delivery of the Notes, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery.

No Note shall be valid or obligatory for any purpose unless and until the Certificate of Authentication thereon shall have been duly executed by the Fiscal Agent, and such duly executed Certificate of Authentication shall be conclusive evidence that it has been authenticated and delivered under this Resolution. The Certificate of Authentication shall be deemed to have been duly executed by the Fiscal Agent when manually signed by an authorized officer or signatory thereof, and it shall not be necessary that the same officer or signatory of the Fiscal Agent manually sign the Certificate of Authentication on all Notes issued under the Note Ordinance and this Resolution.

**Section 2.06** **Payment of Costs of Notes.** The City shall pay all fees and expenses incurred in connection with the printing, issuance, transfer, exchange, registration and payment of the Notes, including the fees and expenses of the Fiscal Agent, except (i) reasonable fees and expenses in connection with the replacement of a Note or Notes mutilated, stolen, lost or destroyed, or (ii) any tax or other governmental charge imposed in relation to the transfer, exchange, registration or payment of the Notes, or (iii) any additional costs or fees that might be incurred in the secondary market.

**Section 2.07** **Form of Notes.** The definitive typewritten or printed form of the certificates representing the Notes issued under this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of the State of Kansas, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act and for the interim financing of portions of the Improvements and the Original Improvements. The Governing Body hereby approves the form and text of the certificates to be prepared for the Notes, and hereby authorizes, orders, and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Notes and hereby further authorizes, orders, and directs Bond Counsel, in the event the Notes in

certificated form are issued at any time after the initial issuance and delivery of the Notes, to prepare the form of and cause such certificated Notes to be printed.

**Section 2.08 Registration, Transfer and Exchange of Notes.** In the event the Notes are subsequently issued in certificated form, the City shall cause books evidencing the registration and transfer of the ownership of the Notes as provided in this Resolution to be kept by the Note Registrar (the "Registration Books"), and the Notes may be transferred only upon the Registration Books and upon the surrender thereof to the Note Registrar duly endorsed for transfer or accompanied by an assignment duly executed by the Owner thereof, or his agent, in such form as shall be satisfactory to the Note Registrar. Upon the surrender for transfer of any certificated Note at its office, the Note Registrar shall authenticate and deliver in the name of the transferee or transferees a new certificated Note or Notes of authorized denominations in the aggregate principal amount of the surrendered certificated Note. The Note Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to such transfer or exchange.

Upon the presentation of the necessary documents as hereinbefore described at the principal office of the Note Registrar, the Note Registrar shall transfer or exchange any Note(s) for new Note(s) in an authorized denomination of the same maturity and for the same aggregate principal amount as the Note(s) presented for transfer or exchange. All Notes presented for transfer or exchange shall be surrendered to the Note Registrar for cancellation. Prior to delivery of any new Note(s) to the transferee, the Note Registrar shall register the same in the Registration Books and shall authenticate each such new Note.

The City and the Note Registrar shall not be required to issue, register, transfer or exchange any Notes during a period beginning on the day following the Record Date preceding any Interest Payment Date and ending at the close of business on the Interest Payment Date.

Notes delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Notes surrendered, shall be secured by the Note Ordinance and this Resolution and shall be entitled to all of the security and benefits hereof and pledges made herein to the same extent as the Notes surrendered. The person(s) in whose name any Note is registered as shown on the Registration Books shall be deemed and regarded as the absolute Owner thereof for all purposes. Payment of, or on account of the principal of and the interest on any Note shall be made only to or upon the order of the Owner or his duly authorized agent; except that, so long as the Notes remain issued in book-entry-only form, DTC shall be considered to be the Owner of the Notes, and such payments shall be made only to DTC in accordance with **Section 2.04(A)** of this Resolution. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon such Note, including the interest thereon, to the extent of the sum or sums so paid.

**Section 2.09 Mutilated, Lost, Stolen or Destroyed Notes.** In the event any certificate representing a Note is mutilated, lost, stolen or destroyed, the City shall execute, and the Fiscal Agent shall authenticate and deliver, a new certificate of like date, maturity, denomination and interest rate as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated Note, such mutilated Note shall first be surrendered to the Fiscal Agent, and, in the case of any lost, stolen or destroyed Note there shall first be furnished to the Fiscal Agent and the City,

evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Fiscal Agent. In the event any such Note shall have matured, instead of issuing a duplicate note the City may pay the same without the surrender thereof. The City and the Fiscal Agent may charge to the Owner of such Note their reasonable fees and expenses in connection with the replacement of such Note or Notes.

**Section 2.10 Surrender and Cancellation of Notes.** Whenever any Outstanding Note shall be delivered to the Fiscal Agent after full payment thereof or for replacement pursuant to this Resolution, such Note shall be canceled and destroyed by the Fiscal Agent and counterparts of a Certificate of Destruction describing Notes so destroyed and evidencing such destruction shall be furnished by the Fiscal Agent to the City, or such Note shall be canceled and the canceled Note shall be returned to the City.

**Section 2.11 Execution and Delivery of Notes.** The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Notes without unnecessary delay in the form and manner hereinbefore specified, including a reasonable quantity of replacement note certificates for use in exchanges, transfers and replacements in accordance with the provisions of this Resolution and when executed the Notes shall be registered in the Office of the City Clerk and in the Office of the State Treasurer, as required by law and as hereinbefore provided, and shall thereupon be deposited with the Fiscal Agent for authentication. When the Notes shall have been so executed, registered and authenticated, they shall be delivered at one time to or upon the order of the Original Purchaser, but only upon receipt by the City of the Purchase Price therefor and the proceeds of the Notes shall immediately be applied by the City as hereinafter in this Resolution provided.

**Section 2.12 Official Statement.** The Governing Body hereby approves the form and content of the "deemed final" Preliminary Official Statement prepared for use in the initial offering and sale of the Notes, and the form and content of any addenda, supplement, or amendment thereto necessary to conform the offering document to the terms of this Resolution, to include information newly available due to assignment of ratings by one or more rating agencies, or incorporate such other minor corrections or additions as may be approved by the City's Debt Coordinator, including specifically the insertion of interest rates and yields for the Notes. The lawful use of the final Official Statement in the reoffering of the Notes by the Original Purchaser is hereby approved and authorized.

## ARTICLE III
## REDEMPTION OF NOTES

**Section 3.01 Optional Redemption**. At the option of the City, the Notes may be called for redemption and payment prior to their stated maturity, in whole or in part, on and after August 13, 2013 (the date being so set for redemption and payment being referred to as the "Redemption Date"). Notes called for redemption and payment as aforesaid shall be redeemed at a price (expressed as a percentage of the principal amount), of 100% of the principal amount, plus accrued interest to the Redemption Date.

**Section 3.02 Selection of Notes to be Redeemed**. The Notes shall be redeemed only in face amounts of $5,000 or integral multiples thereof and if the City elects to call for redemption

less than all of the Notes at the time Outstanding, the Notes shall be redeemed in such equitable manner as the City shall determine, with Notes of less than a full maturity to be selected by lot in units of $5,000.

In the case of a partial redemption of Notes by lot when Notes of denominations greater than $5,000 are then Outstanding, then, for all purposes in connection with such redemption, each $5,000 of face value of a Note shall be treated as though it were a separate Note in the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Note has been selected for redemption, then upon receipt of notice of such redemption, the Owner shall forthwith present and surrender such Note to the Fiscal Agent (i) for payment of the redemption price and accrued interest to the Redemption Date of the $5,000 unit or units of face value of the Note called for redemption, and (ii) for exchange, without charge to the Owner, for a new Note or Notes of the aggregate principal amount of the unredeemed portion of the principal amount of such Note. If the Owner of any Note of a denomination greater than $5,000 of which one or more, but not all, of the $5,000 units of face value thereof has been selected for redemption shall fail to present such Note as aforesaid, the $5,000 units of the face value of such Note which have been selected for redemption shall, nevertheless, become due and payable on the Redemption Date, and no further interest shall accrue on such redeemed but unpresented $5,000 units of face value from and after the Redemption Date.

**Section 3.03** **Notice of Redemption**. Unless waived by the Fiscal Agent, the City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than forty-five (45) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Notes so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice.

All notices of redemption given under the provisions of this Article shall state (i) the Redemption Date, (ii) the redemption price, (iii) if less than all Outstanding Notes are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Notes to be redeemed, (iv) that on the Redemption Date the principal amount, and premium, if any, will become due and payable upon each such Note or portion thereof which has been selected for redemption, and that the interest thereon shall cease to accrue from and after the Redemption Date, and (v) that the Notes so selected for redemption are to be surrendered to or at the principal office of the Fiscal Agent for payment.

**Section 3.04** **Deposit of Moneys for and Payment of Redemption Price**. On or prior to the Redemption Date, the City shall cause to be deposited with the Fiscal Agent sufficient funds to pay the redemption price, together with all unpaid and accrued interest thereon to the Redemption Date, of all Notes or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Notes selected for redemption, the Fiscal Agent shall pay the redemption price therefor to the Owners. If one or more, but not all, of the $5,000 units of face value represented by any Note is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Note or Notes in the

amount of the unredeemed portion of such Note as provided by **Section 3.02** above. All Notes selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

**Section 3.05** **Effect of Call for Redemption**. Whenever any Note, or one or more of the $5,000 units of face value represented by any Note, has been selected for redemption and payment as provided in this Article, all interest on such Note, or such one or more of the $5,000 units of face value represented by any such Note, shall cease from and after the Redemption Date, provided funds are then available for its payment at the price hereinbefore specified.

## ARTICLE IV
## FUNDS AND ACCOUNTS

**Section 4.01** **Creation of Funds and Accounts.** Simultaneously with the issuance and delivery of the Notes, there shall be created within the Treasury of the City, the following designated funds and accounts:

(A) Improvement Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 247 (Taxable Under Federal Law); and

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 247 (Taxable Under Federal Law), to be created within the City's Capital Project Fund.

**Section 4.02** **Administration of Funds and Accounts.** The funds and accounts established and created by this Article shall be administered in accordance with the provisions of this Resolution for so long as any of the Notes remain Outstanding.

## ARTICLE V
## APPLICATION OF NOTE PROCEEDS; DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

**Section 5.01** **Application of Note Proceeds.** Upon the issuance and delivery of the Notes, the proceeds thereof shall be deposited into the Treasury of the City and credited to the various funds and accounts created by **Article IV** of this Resolution, as follows:

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Notes and the amount of purchase price premium, if any, shown on **Exhibit A** to be deposited in the Principal and Interest Account; and

(B) The balance of the proceeds to the Improvement Account.

**Section 5.02** **Disposition of Principal and Interest Account.** Moneys deposited in the Principal and Interest Account from the proceeds of the Notes as provided by clause (A) of the preceding Section, shall be used exclusively for the payment of interest on the Notes on the first Interest Payment Date. Moneys deposited in the Principal and Interest Account from other

sources, as provided by the succeeding Sections or elsewhere in this Resolution, shall be used exclusively for the payment of the principal of and the interest on the Notes, and for payment of the usual and customary fees and expenses of the Fiscal Agent.

Upon the issuance of the City's general obligation bonds and/or future renewal temporary notes, as the case may be, for the purpose of paying the Notes, or any portion thereof, the proceeds from such general obligation bonds and/or renewal temporary notes shall be deposited into the Principal and Interest Account. Any other sums of moneys which are designated for payment of the costs of the Notes, if any, shall likewise be deposited into the Principal and Interest Account.

**Section 5.03 Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent.** The Director of Finance is hereby authorized and directed to cause to be withdrawn from the Principal and Interest Account and forwarded to the Fiscal Agent, a sum sufficient in amount to pay the principal of and the interest on the Notes on the Maturity Date, together with such sum as may be required to pay the fees and charges of the Fiscal Agent, if any, for acting in such capacity, and the sum for charges of the Fiscal Agent shall be forwarded to the Fiscal Agent over and above the amount required to pay the Notes as aforesaid. If, through the lapse of time or otherwise, the Owner of any Note shall no longer be entitled to enforce payment of such Note, it shall be the duty of the Fiscal Agent to forthwith return such unexpended funds to the City. All moneys transferred to the Fiscal Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution, and shall be deemed to be deposited with the Fiscal Agent in trust for and on behalf of the Owners of the Notes.

**Section 5.04 Surplus in Principal and Interest Account.** Any moneys remaining in the Principal and Interest Account, from whatever source, from and after the retirement of all general obligation note issues of the City shall be transferred and paid into the General Fund of the City.

**Section 5.05 Disposition of Improvement Account.** Moneys in the Improvement Account shall be used solely for the purpose of paying the Improvement Costs including paying a portion of the cost of refunding the Original Notes issued for the Original Improvements. The City covenants that in the making of the Improvements, it will perform all duties and obligations relative to such Improvements as are now or may be hereafter imposed by the Act and the provisions of this Resolution.

**Section 5.06 Withdrawals from Improvement Account.** Withdrawals from the Improvement Account shall be made only for a purpose within the scope of the Improvements, and as payment for Improvement Costs and the amount of such payments shall represent only the contract price or reasonable value of the property, labor, materials, service or obligations being paid for, or if such payment is not being made pursuant to an express contract, such payments shall not be in excess of the reasonable value thereof.

**Section 5.07 Surplus in Improvement Account.** All moneys remaining in the Improvement Account after the completion of the Original Improvements and the Improvements and the payment of all Improvement Costs, including paying of the cost of refunding the Original

Notes issued for the Original Improvements, shall be immediately transferred to the Principal and Interest Account.

**Section 5.08 Substitution of Improvements.** The City may elect to substitute or add other improvements paid for with the proceeds of the Notes pursuant to this Section provided the following conditions are met: (a) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the Substitute Improvement has been authorized by the Governing Body of the City in accordance with the laws of the State, (b) a resolution or ordinance authorizing the use of the proceeds of the Notes to pay the Improvement Costs of the Substitute Improvement has been adopted by the Governing Body of the City, (c) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Bonds to include the Substitute Improvement and (d) the City has received an opinion of Bond Counsel to the effect that the Substitute Improvement has been authorized pursuant to this Section and the laws of the State.

## ARTICLE VI
## DEPOSITS AND INVESTMENT OF MONEYS

**Section 6.01 Deposits.** Cash moneys in each of the funds and accounts created and established by this Resolution shall be deposited in accordance with the laws of the State.

**Section 6.02 Investments.** Moneys held in the funds and accounts created and established by this Resolution may be invested by the City in Authorized Investments, or in other investments allowed by the laws of the State, in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in said funds and accounts; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys so invested may be needed in the fund or account for the purpose for which it was created and established. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall accrue to and become a part of such originating fund or account. The Value of the investments held in the funds and accounts under the provisions of this Resolution, shall be determined as of the end of each calendar month.

## ARTICLE VII
## PROVISION FOR PAYMENT OF NOTES

**Section 7.01 Levy and Collection of Annual Taxes.** Pursuant to the Note Ordinance, the Governing Body covenants that it shall make provision for the payment of the principal of and the interest on the Notes on the Maturity Date by the issuance of renewal temporary notes for that purpose or by the issuance of general obligation bonds of the City, as is warranted by the circumstances then existing; and further provided, that if the proceeds of such renewal temporary notes or general obligation bonds are insufficient to fully pay the maturing principal of and interest on the Notes on the Maturity Date, then said Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amounts available for the payment of the Notes. In lieu of issuing renewal temporary notes or general obligation bonds of the City to fund costs of the Original Improvements and Improvements which are to be paid by the

City-at-large, the Governing Body may elect to pay said costs, or any portion thereof, from otherwise unencumbered funds or current revenues of the City which are lawfully available for such purpose.

**Section 7.02 Disposition of Taxes; Untimely Receipt.** The proceeds derived from the various sources identified in the preceding Section shall be deposited into the Principal and Interest Account when received; and shall be used to pay the principal of and the interest on the Notes on the Maturity Date; provided, if on the Maturity Date the amount in the Principal and Interest Account shall be insufficient to make the payments of the principal of and the interest on the Notes because of an untimely collection and/or receipt of moneys from said sources, the Director of Finance is authorized to cause to be transferred to the Principal and Interest Account from the City's general funds, the amount required for such payments and to then reimburse the City's general funds for such expended amounts immediately upon the collection and receipt of said moneys.

## ARTICLE VIII
## DEFAULT AND REMEDIES

**Section 8.01 Resolution Constitutes Contract; Remedies of Owners.** The provisions of the Note Ordinance and this Resolution, and all of the covenants and agreements therein and herein contained, shall constitute a contract between the City and the Owners, and the Owner or Owners of any of the Notes at the time Outstanding shall have the right, for the equal benefit and protection of all Owners similarly situated:

(A) By mandamus or other suit, action or proceedings at law or in equity to enforce his or their rights against the City and its officers, agents and employees, and to require and compel the City and its officers, agents and employees to perform all duties and obligations required by the provisions of the Note Ordinance and this Resolution or by the constitution and laws of the State;

(B) By suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(C) By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners.

**Section 8.02 Rights of Owners; Limitations.** The covenants and agreements of the City contained herein, in the Note Ordinance and in the Notes shall be for the equal benefit, protection and security of the Owners of any or all of the Notes, all of which Notes shall be of equal rank and without preference or priority of any one Note over any other Note in the application of the moneys herein pledged to the payment of the principal of and the interest on the Notes, or otherwise, except as provided in this Resolution.

No one or more of the Owners secured hereby shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all

Owners of the Outstanding Notes. Nothing in this Resolution, in the Note Ordinance or in the Notes shall affect or impair the obligations of the City to pay on the respective dates of maturity thereof, the principal of and the interest on the Notes to the respective Owners thereof or affect or impair the right of action of any Owner to enforce payment of the Notes held by him, or to reduce to judgment his claim against the City for payment of the principal of and interest on the Notes without reference to or consent of any other Owner.

**Section 8.03 Remedies Cumulative; Delay or Omission Not Waiver.** No remedy herein conferred upon the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and may be exercised without exhausting and without regard to any other remedy however given. No waiver by the Owner of any Note of any default or breach of duty or contract by the City shall extend to or affect any subsequent default or breach of duty or contract by the City or shall impair any rights or remedies therefor available to the Owners. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or as an acquiescence therein. Every substantive right, power and remedy given by this Resolution to the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient. In case any suit, action or other proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Owner, then in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as though no such suit, action or other proceedings had been brought or taken.

## ARTICLE IX
## AMENDMENTS

**Section 9.01 Amendments.** The City may, without the consent of or notice to the Owners, amend or supplement the provisions of this Resolution (i) to cure any ambiguity herein or to correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct errors, provided such action shall not materially adversely affect the interest of the Owners, or (ii) to grant or confer upon the Owners any additional rights, remedies, powers or security that may lawfully be granted or conferred upon the Owners, or (iii) to more precisely identify improvements, or (iv) to provide for the issuance of coupon Notes and the exchange of the fully registered Notes for coupon Notes upon such terms and conditions as the City shall determine; provided, however, that any amendment as provided in this clause (v) shall not become effective unless and until the City shall have received an opinion of Bond Counsel, in form and substance satisfactory to the City, to the effect that the issuance of such coupon notes or the exchange of the fully registered Notes for such coupon notes, is not prohibited under the provisions of the applicable Federal law.

The rights and duties of the City and the Owners and the terms and provisions of this Resolution may be modified or altered in any respect by a resolution of the City with the consent of the Owners of not less than seventy-five percent (75%) in principal amount of the Notes then Outstanding, such consent to be evidenced by an instrument or instruments executed by the

Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk; provided that, no such modification or alteration shall, except with the written consent of one hundred percent (100%) of the Owners of the Notes then Outstanding:

(A) Extend the Maturity Date of any Note;

(B) Effect a reduction in the amount which the City is required to pay by way of the principal of or the interest on any Note;

(C) Permit a preference or priority of any Note or Notes over any other Note or Notes; or

(D) Reduce the percentage of the principal amount of the then Outstanding Notes for which the written consent of the Owners is required for any modification or alteration of the provisions of this Resolution.

**Section 9.02 Written Evidence of Amendments.** Any and all modifications or amendments to this Resolution or of the Notes shall be made in the manner hereinabove provided, and shall not become effective until there has been filed with the City Clerk a copy of the resolution of the City authorizing said modifications or amendments, as hereinabove provided for, duly certified, as well as proof of consent to such modifications or amendments by the Owners of not less than the percentage of the principal amount of Notes then Outstanding as hereinabove required. It shall not be necessary to note on any Outstanding Note any reference to such amendment or modification.

A certified copy of every such amendatory or supplemental ordinance or resolution, if any, and a certified copy of the Note Ordinance and this Resolution, shall always be kept on file in the Office of the City Clerk and shall be made available for inspection by the Owner of any Note or the prospective purchaser or owner of any Note, and upon payment of the reasonable cost of preparing same, a certified copy of any such amendatory or supplemental ordinance or resolution of the Note Ordinance or this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

## ARTICLE X
## DEFEASANCE

**Section 10.01 Defeasance.** When all or any part of the principal of and the interest on the Notes shall have been paid and discharged, then the requirements contained herein and all other rights granted by the Note Ordinance and this Resolution shall cease and determine with respect to that principal and interest so paid. The Notes shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Fiscal Agent or with a bank located in the State of Kansas and having full trust power; at or prior to the Maturity Date of the Notes, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations the payment of the principal of and the interest on which are guaranteed by, the United States of America, or other investments allowed by the laws of the State, which together with the interest to be earned on such Government Obligations or other investments, will be sufficient for the payment of the

principal of the Notes and the interest thereon to the Maturity Date; or if default in such payment shall have occurred on such date, then to the date of the tender of such payments. Any moneys and Government Obligations which at any time shall be deposited with the Fiscal Agent or a Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Notes or interest thereon, shall be and are hereby assigned, transferred and set over to the Fiscal Agent or such Kansas bank in trust for the respective Owners of the Notes, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Government Obligations so deposited with the Fiscal Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

## ARTICLE XI
## MISCELLANEOUS PROVISIONS

**Section 11.01 Severability.** In case any one or more of the provisions of the Note Ordinance, this Resolution or of the Notes issued thereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of the Note Ordinance, this Resolution or the Notes appertaining thereto, but the Note Ordinance, this Resolution and the Notes shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Notes or in the Note Ordinance or this Resolution shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

**Section 11.02 Further Authority.** The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Resolution. The Governing Body hereby further authorizes, orders, and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Notes, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Notes, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Resolution and to give effect to the transactions contemplated hereby.

The execution and attestation of this Resolution and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Resolution, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby a uthorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Resolution and to carry out, give effect to and comply with and perform the duties of the City with respect to the Notes and the Official Statement.

**Section 11.03 Governing Law.** This Resolution, the Note Ordinance and the Notes shall be governed exclusively by and shall be construed in accordance with the applicable laws of the State.

**Section 11.04 Effective Date.** This Resolution shall be in force and take effect from and after its adoption and approval by the Governing Body of the City.

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ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on January 15, 2013.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

4847-8049-1282.2

## SCHEDULE I

## THE ORIGINAL IMPROVEMENTS AND THE IMPROVEMENTS

## EXHIBIT A

## ADDITIONAL TERMS OF THE SERIES 247 NOTES

**Definitions.** The following terms defined in the Resolution shall have the meanings ascribed below:

"Note Ordinance" shall mean Ordinance No. _____ of the City, passed by the Governing Body on January 15, 2013, and authorizing and providing for the issuance of the Notes.

"Original Purchaser" means _____, _____, _____, the original purchaser of the Notes.

"Purchase Price" for the Notes shall be the par value of the Notes plus accrued interest to the date of delivery, plus a premium of $_____.

**Interest Rate.** The Notes shall bear interest at the rate of _____% per annum.

The final principal amount of the Notes is $_____.

Amount of purchase price premium to be deposited in the Principal and Interest Account is $_____.

Approved by:

_____
Title: _____
City of Wichita, Kansas

**RESOLUTION NO. 13-010**

**OF THE**

**CITY OF WICHITA, KANSAS**

**AS ADOPTED JANUARY 15, 2013**

**AUTHORIZING THE ISSUANCE OF**

**NOT TO EXCEED $63,230,000**

**GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES SERIES 254**

**DATED FEBRUARY 14, 2013**

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**RESOLUTION NO. 13-010**

**A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION RENEWAL AND IMPROVEMENT TEMPORARY NOTES, SERIES 254, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $63,230,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN CAPITAL IMPROVEMENTS IN THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE NOTES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON THE NOTES, AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.**

**WHEREAS**, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Note Ordinance (as herein defined), has authorized the issuance of the Notes in the aggregate principal amount not to exceed $63,230,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Notes; and

**WHEREAS**, pursuant to and under the authority of various laws of the State of Kansas, the Governing Body of the City has duly taken various actions, including the adoption, and publication where necessary, of resolutions, ordinances and other proceedings as required by said laws, and has authorized and caused to be commenced the construction of those certain capital improvements in the City described in **Schedule I** which is attached to this Resolution and made a part hereof by reference as though fully set forth herein (which capital improvements identified as Original Improvements as listed on **Schedule I** are herein collectively referred to as the "Original Improvements"), and of those certain capital improvements in the City described in **Schedule I** which is attached to this Resolution and made a part hereof by reference as though fully set forth herein (which capital improvements identified as Improvements as listed on **Schedule I** are herein collectively referred to as the "Improvements") and has provided that the costs thereof shall be paid, either in whole or in part, by the issuance of general obligation bonds of the City; and

**WHEREAS**, the Governing Body has further heretofore by the taking of the required proceedings therefor, authorized and issued its General Obligation Renewal and Improvement Temporary Notes, Series 252, dated August 9, 2012 (the "Original Notes"), a portion of the proceeds of which were expended for interim financing for costs of the Original Improvements; and

**WHEREAS**, the Original Improvements have not been completed and/or are completed but the issuance of bonds for the permanent financing thereof is prevented, hindered or delayed, and the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, renewal temporary notes should be issued for the purpose of renewing and paying a portion of the principal amount of the Original Notes which was issued for costs of the Original Improvements as aforesaid; and

**WHEREAS**, the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, temporary notes should be issued at this time for the purpose of providing interim financing for the costs of making the Improvements which are or will be newly commenced or for which additional interim financing is now required; and

**WHEREAS**, in accordance with the provisions of the Note Ordinance, the Governing Body hereby finds and determines that it is necessary to prescribe the terms and details of the Notes pursuant to this Resolution, and to make certain other covenants and agreements with respect thereto;

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

## ARTICLE I
## DEFINITIONS

**Section 1.01 Definitions of Words and Terms.** In addition to words and terms elsewhere defined in this Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Act" shall mean the Constitution of the State of Kansas (including particularly Article 12, Section 5 thereof), Charter Ordinance Nos. 78 and 156 of the City, K.S.A. 10-123, K.S.A. 12-6a01 *et seq.*, K.S.A. 12-685 *et seq.*, K.S.A. 13-1024c, and K.S.A. 13-1348a, all as amended and supplemented, under the authority of which the Improvements were authorized, the Original Notes were issued and the Notes are issued.

"Authorized Investments" shall mean those investments authorized by K.S.A. 10-131, as amended and supplemented, and by other provisions of State law applicable to the City.

"Bond Counsel" shall mean Kutak Rock LLP, Kansas City, Missouri, or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

"Certificate as to Arbitrage and Related Tax Matters" shall mean the Certificate as to Arbitrage and Related Tax Matters, dated as of and delivered on the Date of Issuance, executed by the City, relating to certain matters within the scope of Section 148 of the Code, as the same may be amended or supplemented in accordance with its terms.

"City" shall mean the City of Wichita, Kansas.

"City Clerk" shall mean the duly appointed and acting City Clerk of the City, or in the City Clerk's absence (or in the event of a vacancy in such office) any Deputy City Clerk or Acting City Clerk of the City.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or such other general Federal tax code as shall be adopted by the United States Congress in substitution therefor,

together with regulations promulgated thereunder by the United States Department of the Treasury.

"Costs of Issuance" shall mean any and all expenses of whatever nature incurred in connection with the issuance and sale of the Notes, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent, fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the yield on the Notes or investment of the proceeds of the Notes, and in connection with receiving municipal bond insurance and/or ratings on the Notes. An amount for Costs of Issuance has been factored into the total final cost of each capital improvement comprising the Improvements and the Original Improvements.

"Date of Issuance" shall mean the date on which the Notes are delivered to the Original Purchaser and the City receives from the Original Purchaser the full purchase price therefor.

"Dated Date" shall mean the dated date of the Notes, which is February 14, 2013.

"Debt Service" shall mean the scheduled amount of interest and maturing principal payable on the Notes for a single Bond Year, as described in the Code.

"Direct Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Director of Finance" shall mean the duly appointed and acting Director of Finance of the City, or in the Director of Finance's absence, the duly appointed Assistant Director of Finance or Acting Director of Finance of the City.

"DTC" shall mean The Depository Trust Company and its successors or assigns.

"Excess Earnings Account" shall mean the Excess Earnings Account created pursuant to **Article IV** hereof.

"Fiscal Agent" shall mean the Note Registrar and/or the Paying Agent.

"Fiscal Year" shall mean the fiscal year of the City, currently being the 12-months ending each December 31.

"Governing Body" shall mean the duly elected and/or appointed and acting persons comprising the City Council of the City.

"Government Obligations" means (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following phrase (ii)), or (ii) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

"Improvement Account" shall mean the Improvement Account created by **Article IV** hereof.

"Improvement Costs" shall mean the amount of capital expenditures for an Original Improvement and/or an Improvement, including interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding notes issued to pay for such improvement and Costs of Issuance of the Notes, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such Improvement Costs and (b) any Improvement Costs which have been previously paid by the City or by any eligible source of funds unless such amounts are entitled to be reimbursed under State and Federal law.

"Improvements" shall mean the newly commenced capital improvements constructed in the City as described on **Schedule I** hereto or any Substitute Improvements.

"Indirect Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Interest Payment Date" shall be February 11, 2014.

"Letter of Representation" shall mean that certain Letter of Representation between the City and DTC with respect to the Notes.

"Maturity Date" shall mean February 11, 2014.

"Mayor" shall mean the duly elected and acting Mayor of the City or in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

"Municipal Bond Insurance Policy" shall mean, if applicable, the municipal bond insurance policy issued by Note Insurer insuring the payment when due of the principal of and interest on the Notes as described on **Exhibit A** to this Resolution.

"Note Insurer" shall mean any issuer of a Municipal Bond Insurance Policy described on **Exhibit A** to this Resolution.

"Note Ordinance" shall mean the ordinance of the City authorizing the issuance of the Notes as further described on **Exhibit A** to this Resolution.

"Note Registrar" shall mean the Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

"Noteowner(s)" shall mean the Owner(s) of the Notes.

"Notes" shall mean the General Obligation Renewal and Improvement Temporary Notes, Series 254, dated February 14, 2013, of the City of Wichita, Kansas, in the principal amount set forth on **Exhibit A** which are authorized by and will be issued pursuant to the authority of the Note Ordinance and this Resolution.

"Original Notes" shall mean the notes previously issued by the City described in the preamble to this Resolution.

"Original Proceeds" shall mean all of the proceeds, including accrued interest, derived from the sale of the Notes to the Original Purchaser.

"Original Purchaser" shall mean the original purchaser of the Notes described on **Exhibit A** to this Resolution.

"Outstanding," when used with reference to the Notes, shall mean, as of a particular date, all Notes theretofore authenticated and delivered under this Resolution, except (i) Notes theretofore canceled by the Fiscal Agent or delivered to the Fiscal Agent for cancellation, (ii) Notes for which moneys for payment or Government Obligations (the principal of and the interest on which Government Obligations, if any, when due, provide sufficient moneys to pay, with such other moneys so deposited with the Fiscal Agent, the principal of and interest on the Notes being paid), or both, in the necessary amount have theretofore been deposited with the Fiscal Agent, or other depository as provided in this Resolution, in trust for the Owners thereof (whether upon or prior to the Maturity Date of the Notes), and (iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Resolution.

"Owner(s)" or "Registered Owner(s)" shall mean, when used with respect to any Note, the person or entity in whose name the Note is registered as shown on the Registration Books maintained by the Fiscal Agent.

"Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Paying Agent" shall mean the Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

"Principal and Interest Account" shall mean the Principal and Interest Account created within the City's Capital Project Fund pursuant to **Article IV** hereof, which is created and shall be held and administered solely for the purpose of receiving and disbursing funds for the payment of the Notes.

"Principal Payment Date" shall mean the Maturity Date.

"Purchase Price" shall mean the original purchase price of the Notes described on **Exhibit A** to this Resolution.

"Record Date" shall mean fifteen days prior to the Maturity Date.

"Registration Books" shall mean the books maintained on behalf of the City by the Fiscal Agent for the registration and transfer from time to time of the ownership of the Notes.

"Resolution" or "Note Resolution" shall mean this Resolution adopted by the Governing Body of the City on January 15, 2013, prescribing the terms and details of the Notes.

"State" shall mean the State of Kansas.

"Substitute Improvements" means the substitute or additional improvements authorized pursuant to **Section 5.08** of this Resolution.

"Value" shall mean the value of the Authorized Investments (which Value shall be determined as of the end of each month) and shall be the amortized cost of an obligation or the market cost thereof, whichever is lower.

## ARTICLE II
## AUTHORIZATION, ISSUANCE AND DELIVERY OF NOTES

**Section 2.01 Authorization of and Security for Notes.** Pursuant to the Note Ordinance, the Governing Body has authorized, ordered and directed that in order to provide the necessary funds to provide interim financing for a portion of the Original Improvements and the Improvements, there shall be issued the Notes. In all matters relating to the issuance, registration and delivery of the Notes, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Notes shall be and constitute valid and legally binding general obligations of the City, and the full faith, credit and resources of the City are pledged by the Note Ordinance and this Note Resolution to the payment of the Notes and the interest thereon. The Notes are payable as to both principal and interest from the collection of special assessment taxes which will be levied against real properties in the City benefiting from certain of the Original Improvements and the Improvements, and from the proceeds of general obligation bonds which will subsequently be issued by the City for such purpose and/or from current revenues of the City available for such purposes, or the Notes may be payable from the proceeds of renewal temporary notes which the City may in the future issue for such purpose.

**Section 2.02 Description and Details of Notes.** The Notes shall be designated "City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 254." The Notes shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount of the Notes. The Notes shall be dated the Dated Date, shall mature on the Maturity Date, and shall bear interest at the rate set forth on **Exhibit A** to this Resolution. The Notes shall bear interest from their Dated Date (computed on the basis of a 360-day year of 12 30-day months) and such interest shall become due and payable on the Interest Payment Date. The City Manager, the Finance Director, or the City Manager's designee is hereby authorized to approve the final principal amount and Purchase Price for the Bonds as to be set forth on **Exhibit A** to this Resolution provided the final principal amount shall not exceed $63,230,000 which shall be the par value of the Notes unless otherwise indicated on **Exhibit A**, the principal shall mature on the date and at the interest rate shown on **Exhibit A** to this Resolution and such amounts are consistent with the other terms and provisions of this Resolution.

The Notes will initially be distributed in book-entry-only form through DTC, by depositing with DTC (or the Fiscal Agent as agent for DTC) one certificate, registered in the name of DTC's nominee, Cede & Co., in an amount equal to the total principal amount of the Notes. The manner of payment of the principal of and the interest on the Notes to DTC, and other matters relating to the distribution of the Notes in book-entry-only form through DTC,

shall be governed by the Letter of Representation, which the Director of Finance is hereby authorized to execute and deliver on behalf of the City.

Subject to the operational arrangements of DTC, in the event (i) DTC determines not to continue to act as securities depository for the Notes, or (ii) the City determines that continuation of the book-entry-only system of evidence and transfer of ownership of the Notes would adversely affect the interests of the beneficial owners of the Notes, the City will discontinue the book-entry-only system with DTC. If the City fails to identify another qualified securities depository to replace DTC, the City will cause replacement Notes in the form of fully registered certificates to be authenticated and delivered to the beneficial owners (to the extent such beneficial owners can be identified by the City). If issued in certificated form, the certificates representing the Notes shall be numbered in such manner as the Note Registrar shall determine.

**Section 2.03 Designation of Paying Agent and Note Registrar.** Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body has elected to have the provisions of the Kansas Bond Registration Law apply to the Notes.

So long as the Notes remain in book-entry-only form, the Treasurer of the State of Kansas, Topeka, Kansas, has been designated as the initial Paying Agent and Note Registrar for the Notes; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Note Registrars with respect to the Notes upon fifteen (15) days' written notice to the then acting Paying Agent and Note Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Note Registrar and Paying Agent in connection with such designation.

The Paying Agent shall make payment directly to DTC, as the Owner, for the principal of and the interest on the Notes and DTC will remit such principal and interest to its Direct Participants for distribution to the beneficial owners in the manner set forth in the following **Section 2.04(A)** and as governed by the terms of the Letter of Representation.

In the event that the Notes should be issued and delivered in certificated form at any time after the initial delivery of the Notes, the Fiscal Agent shall maintain Registration Books for the ownership of the Notes on behalf of the City and the Paying Agent will make payment for the Notes directly to the Owners as shown by said Registration Books in the manner set forth in the following **Section 2.04(B).**

**Section 2.04 Method and Place of Payment of Principal and Interest on Notes.**

(A) Notes Issued and Delivered in Book-Entry-Only Form. One certificate registered in the name of DTC's nominee, Cede & Co., for the total principal amount of the Notes will be issued to DTC in New York, New York (or to the Fiscal Agent as agent for DTC) and such certificate will be immobilized in its custody. Purchases of the Notes in denominations permitted by **Section 2.02** hereof must be made by or through Direct Participants of DTC, which will receive a credit for the Notes on DTC's records. The ownership interest of each actual purchaser of each Note (the "beneficial owner") is in turn to be recorded on the Direct and Indirect Participants' records. Transfers of ownership will be effected on the records of DTC and its Participants pursuant to the

rules and procedures established by DTC and its Participants. Payment of principal and interest on the Notes will be made in same day funds directly to DTC. The transfer of principal and interest to Participants of DTC will be the responsibility of DTC; the transfer of principal and interest to beneficial owners by Participants of DTC will be the responsibility of such Participants. Neither the City nor the Paying Agent and Note Registrar will be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its Participants or persons acting through such Participants.

(B) In the Event Certificated Notes are Subsequently Issued. The principal of, premium, if any, and the interest on the Notes shall be payable in lawful money of the United States of America by check or draft of the Paying Agent. The principal of and premium, if any, on the Notes shall be paid to the Owner of each Note upon presentation and surrender of the Note to the Paying Agent for payment and cancellation on the maturity date or redemption date, as the case may be, of the Note. The interest on the Notes shall be mailed by the Paying Agent to the Owner of each Note at the Owner's address as it appears on the Registration Books on the Record Dates, or at such other address as is provided in writing by such Owner to the Note Registrar.

**Section 2.05 Method of Execution and Authentication of Notes.** The Notes shall be executed for and on behalf of the City by the manual or facsimile signatures of its Mayor and City Clerk, and shall have impressed or imprinted thereon a true impression or a printed facsimile of the City's official seal. The Notes shall be registered in the Office of the City Clerk, which registration shall be evidenced by the manual or facsimile signature of the City Clerk, on a Certificate of Registration printed on the Notes, with the City's official seal or a facsimile thereof, impressed or imprinted opposite said signature. The Notes shall be registered by the State Treasurer in the municipal bond register in the State Treasurer's office, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer and/or the Assistant State Treasurer on a Certificate of State Treasurer printed on the Notes, attested by a true impression or a printed facsimile of the State Treasurer's official seal opposite such signature. Additionally, the Notes shall be countersigned by the manual or facsimile signature of the City Clerk, which countersignature shall be attested by the City's official seal affixed or imprinted opposite said countersignature.

In case any officer of the City or of the State whose manual or facsimile signature shall appear on the Notes shall cease to be such officer before the actual delivery of the Notes, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery.

No Note shall be valid or obligatory for any purpose unless and until the Certificate of Authentication thereon shall have been duly executed by the Fiscal Agent, and such duly executed Certificate of Authentication shall be conclusive evidence that it has been authenticated and delivered under this Resolution. The Certificate of Authentication shall be deemed to have been duly executed by the Fiscal Agent when manually signed by an authorized officer or signatory thereof, and it shall not be necessary that the same officer or signatory of the Fiscal Agent manually sign the Certificate of Authentication on all Notes issued under the Note Ordinance and this Resolution.

**Section 2.06 Payment of Costs of Notes.** The City shall pay all fees and expenses incurred in connection with the printing, issuance, transfer, exchange, registration and payment of the Notes, including the fees and expenses of the Fiscal Agent, except (i) reasonable fees and expenses in connection with the replacement of a Note or Notes mutilated, stolen, lost or destroyed, or (ii) any tax or other governmental charge imposed in relation to the transfer, exchange, registration or payment of the Notes, or (iii) any additional costs or fees that might be incurred in the secondary market.

**Section 2.07 Form of Notes.** The definitive typewritten or printed form of the certificates representing the Notes issued under this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of the State of Kansas, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act and for the interim financing of portions of the Improvements and the Original Improvements. The Governing Body hereby approves the form and text of the certificates to be prepared for the Notes, and hereby authorizes, orders and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Notes and hereby further authorizes, orders and directs Bond Counsel, in the event the Notes in certificated form are issued at any time after the initial issuance and delivery of the Notes, to prepare the form of and cause such certificated Notes to be printed.

**Section 2.08 Registration, Transfer and Exchange of Notes.** In the event the Notes are subsequently issued in certificated form, the City shall cause books evidencing the registration and transfer of the ownership of the Notes as provided in this Resolution to be kept by the Note Registrar (the "Registration Books"), and the Notes may be transferred only upon the Registration Books and upon the surrender thereof to the Note Registrar duly endorsed for transfer or accompanied by an assignment duly executed by the Owner thereof, or his agent, in such form as shall be satisfactory to the Note Registrar. Upon the surrender for transfer of any certificated Note at its office, the Note Registrar shall authenticate and deliver in the name of the transferee or transferees a new certificated Note or Notes of authorized denominations in the aggregate principal amount of the surrendered certificated Note. The Note Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to such transfer or exchange.

Upon the presentation of the necessary documents as hereinbefore described at the principal office of the Note Registrar, the Note Registrar shall transfer or exchange any Note(s) for new Note(s) in an authorized denomination of the same maturity and for the same aggregate principal amount as the Note(s) presented for transfer or exchange. All Notes presented for transfer or exchange shall be surrendered to the Note Registrar for cancellation. Prior to delivery of any new Note(s) to the transferee, the Note Registrar shall register the same in the Registration Books and shall authenticate each such new Note.

The City and the Note Registrar shall not be required to issue, register, transfer or exchange any Notes during a period beginning on the day following the Record Date preceding any Interest Payment Date and ending at the close of business on the Interest Payment Date.

Notes delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Notes surrendered, shall be secured by the Note Ordinance and

this Resolution and shall be entitled to all of the security and benefits hereof and pledges made herein to the same extent as the Notes surrendered. The person(s) in whose name any Note is registered as shown on the Registration Books shall be deemed and regarded as the absolute Owner thereof for all purposes. Payment of, or on account of the principal of and the interest on any Note shall be made only to or upon the order of the Owner or his duly authorized agent; except that, so long as the Notes remain issued in book-entry-only form, DTC shall be considered to be the Owner of the Notes, and such payments shall be made only to DTC in accordance with **Section 2.04(A)** of this Resolution. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon such Note, including the interest thereon, to the extent of the sum or sums so paid.

**Section 2.09 Mutilated, Lost, Stolen or Destroyed Notes.** In the event any certificate representing a Note is mutilated, lost, stolen or destroyed, the City shall execute, and the Fiscal Agent shall authenticate and deliver, a new certificate of like date, maturity, denomination and interest rate as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated Note, such mutilated Note shall first be surrendered to the Fiscal Agent, and, in the case of any lost, stolen or destroyed Note there shall first be furnished to the Fiscal Agent and the City, evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Fiscal Agent. In the event any such Note shall have matured, instead of issuing a duplicate note the City may pay the same without the surrender thereof. The City and the Fiscal Agent may charge to the Owner of such Note their reasonable fees and expenses in connection with the replacement of such Note or Notes.

**Section 2.10 Surrender and Cancellation of Notes.** Whenever any Outstanding Note shall be delivered to the Fiscal Agent after full payment thereof or for replacement pursuant to this Resolution, such Note shall be canceled and destroyed by the Fiscal Agent and counterparts of a Certificate of Destruction describing Notes so destroyed and evidencing such destruction shall be furnished by the Fiscal Agent to the City, or such Note shall be canceled and the canceled Note shall be returned to the City.

**Section 2.11 Execution and Delivery of Notes.** The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Notes without unnecessary delay in the form and manner hereinbefore specified, including a reasonable quantity of replacement note certificates for use in exchanges, transfers and replacements in accordance with the provisions of this Resolution and when executed the Notes shall be registered in the Office of the City Clerk and in the Office of the State Treasurer, as required by law and as hereinbefore provided, and shall thereupon be deposited with the Fiscal Agent for authentication. When the Notes shall have been so executed, registered and authenticated, they shall be delivered at one time to or upon the order of the Original Purchaser, but only upon receipt by the City of the Purchase Price therefor and the proceeds of the Notes shall immediately be applied by the City as hereinafter in this Resolution provided.

**Section 2.12 Official Statement.** The Governing Body hereby approves the form and content of the "deemed final" Preliminary Official Statement prepared for use in the initial offering and sale of the Notes, and the form and content of any addenda, supplement, or amendment thereto necessary to conform the offering document to the terms of this Resolution, to include information newly available due to assignment of ratings by one or more rating

agencies, or incorporate such other minor corrections or additions as may be approved by the City's Debt Coordinator, including specifically the insertion of interest rates and yields for the Notes. The lawful use of the final Official Statement in the reoffering of the Notes by the Original Purchaser is hereby approved and authorized.

## ARTICLE III
## REDEMPTION OF NOTES

**Section 3.01** **Optional Redemption**. At the option of the City, the Notes may be called for redemption and payment prior to their stated maturity, in whole or in part, on and after August 13, 2013 (the date being so set for redemption and payment being referred to as the "Redemption Date"). Notes called for redemption and payment as aforesaid shall be redeemed at a price (expressed as a percentage of the principal amount), of 100% of the principal amount, plus accrued interest to the Redemption Date.

**Section 3.02** **Selection of Notes to be Redeemed**. The Notes shall be redeemed only in face amounts of $5,000 or integral multiples thereof and if the City elects to call for redemption less than all of the Notes at the time Outstanding, the Notes shall be redeemed in such equitable manner as the City shall determine, with Notes of less than a full maturity to be selected by lot in units of $5,000.

In the case of a partial redemption of Notes by lot when Notes of denominations greater than $5,000 are then Outstanding, then, for all purposes in connection with such redemption, each $5,000 of face value of a Note shall be treated as though it were a separate Note in the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Note has been selected for redemption, then upon receipt of notice of such redemption, the Owner shall forthwith present and surrender such Note to the Fiscal Agent (i) for payment of the redemption price and accrued interest to the Redemption Date of the $5,000 unit or units of face value of the Note called for redemption, and (ii) for exchange, without charge to the Owner, for a new Note or Notes of the aggregate principal amount of the unredeemed portion of the principal amount of such Note. If the Owner of any Note of a denomination greater than $5,000 of which one or more, but not all, of the $5,000 units of face value thereof has been selected for redemption shall fail to present such Note as aforesaid, the $5,000 units of the face value of such Note which have been selected for redemption shall, nevertheless, become due and payable on the Redemption Date, and no further interest shall accrue on such redeemed but unpresented $5,000 units of face value from and after the Redemption Date.

**Section 3.03** **Notice of Redemption**. Unless waived by the Fiscal Agent, the City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than forty-five (45) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Notes so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice.

All notices of redemption given under the provisions of this Article shall state (i) the Redemption Date, (ii) the redemption price, (iii) if less than all Outstanding Notes are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Notes to be redeemed, (iv) that on the Redemption Date the principal amount, and premium, if any, will become due and payable upon each such Note or portion thereof which has been selected for redemption, and that the interest thereon shall cease to accrue from and after the Redemption Date, and (v) that the Notes so selected for redemption are to be surrendered to or at the principal office of the Fiscal Agent for payment.

**Section 3.04** **Deposit of Moneys for and Payment of Redemption Price**. On or prior to the Redemption Date, the City shall cause to be deposited with the Fiscal Agent sufficient funds to pay the redemption price, together with all unpaid and accrued interest thereon to the Redemption Date, of all Notes or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Notes selected for redemption, the Fiscal Agent shall pay the redemption price therefor to the Owners. If one or more, but not all, of the $5,000 units of face value represented by any Note is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Note or Notes in the amount of the unredeemed portion of such Note as provided by **Section 3.02** above. All Notes selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

**Section 3.05** **Effect of Call for Redemption**. Whenever any Note, or one or more of the $5,000 units of face value represented by any Note, has been selected for redemption and payment as provided in this Article, all interest on such Note, or such one or more of the $5,000 units of face value represented by any such Note, shall cease from and after the Redemption Date, provided funds are then available for its payment at the price hereinbefore specified.

## ARTICLE IV
## FUNDS AND ACCOUNTS

**Section 4.01** **Creation of Funds and Accounts.** Simultaneously with the issuance and delivery of the Notes, there shall be created within the Treasury of the City, the following designated funds and accounts:

(A) Improvement Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 254;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 254, to be created within the City's Capital Project Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Renewal and Improvement Temporary Notes, Series 254.

**Section 4.02** **Administration of Funds and Accounts.** The funds and accounts established and created by this Article shall be administered in accordance with the provisions of this Resolution for so long as any of the Notes remain Outstanding.

## ARTICLE V
## APPLICATION OF NOTE PROCEEDS; DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

**Section 5.01 Application of Note Proceeds.** Upon the issuance and delivery of the Notes, the proceeds thereof shall be deposited into the Treasury of the City and credited to the various funds and accounts created by **Article IV** of this Resolution, as follows:

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Notes and the amount of purchase price premium, if any, shown on **Exhibit A** to be deposited in the Principal and Interest Account; and

(B) The balance of the proceeds to the Improvement Account.

**Section 5.02 Disposition of Principal and Interest Account.** Moneys deposited in the Principal and Interest Account from the proceeds of the Notes as provided by clause (A) of the preceding Section, shall be used exclusively for the payment of interest on the Notes on the first Interest Payment Date. Moneys deposited in the Principal and Interest Account from other sources, as provided by the succeeding Sections or elsewhere in this Resolution, shall be used exclusively for the payment of the principal of and the interest on the Notes, and for payment of the usual and customary fees and expenses of the Fiscal Agent.

Upon the issuance of the City's general obligation bonds and/or future renewal temporary notes, as the case may be, for the purpose of paying the Notes, or any portion thereof, the proceeds from such general obligation bonds and/or renewal temporary notes shall be deposited into the Principal and Interest Account. Any other sums of moneys which are designated for payment of the costs of the Notes, if any, shall likewise be deposited into the Principal and Interest Account.

**Section 5.03 Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent.** The Director of Finance is hereby authorized and directed to cause to be withdrawn from the Principal and Interest Account and forwarded to the Fiscal Agent, a sum sufficient in amount to pay the principal of and the interest on the Notes on the Maturity Date, together with such sum as may be required to pay the fees and charges of the Fiscal Agent, if any, for acting in such capacity, and the sum for charges of the Fiscal Agent shall be forwarded to the Fiscal Agent over and above the amount required to pay the Notes as aforesaid. If, through the lapse of time or otherwise, the Owner of any Note shall no longer be entitled to enforce payment of such Note, it shall be the duty of the Fiscal Agent to forthwith return such unexpended funds to the City. All moneys transferred to the Fiscal Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution, and shall be deemed to be deposited with the Fiscal Agent in trust for and on behalf of the Owners of the Notes.

**Section 5.04 Surplus in Principal and Interest Account.** Any moneys remaining in the Principal and Interest Account, from whatever source, from and after the retirement of all

general obligation note issues of the City shall be transferred and paid into the General Fund of the City.

**Section 5.05 Disposition of Improvement Account.** Moneys in the Improvement Account shall be used solely for the purpose of paying the Improvement Costs including paying a portion of the cost of refunding the Original Notes issued for the Original Improvements. The City covenants that in the making of the Improvements, it will perform all duties and obligations relative to such Improvements as are now or may be hereafter imposed by the Act and the provisions of this Resolution.

**Section 5.06 Withdrawals from Improvement Account.** Withdrawals from the Improvement Account shall be made only for a purpose within the scope of the Improvements, and as payment for Improvement Costs and the amount of such payments shall represent only the contract price or reasonable value of the property, labor, materials, service or obligations being paid for, or if such payment is not being made pursuant to an express contract, such payments shall not be in excess of the reasonable value thereof.

**Section 5.07 Surplus in Improvement Account.** All moneys remaining in the Improvement Account after the completion of the Original Improvements and the Improvements and the payment of all Improvement Costs, including paying a portion of the cost of refunding the Original Notes issued for the Original Improvements, shall be immediately transferred to the Principal and Interest Account.

**Section 5.08 Substitution of Improvements.** The City may elect to substitute or add other improvements paid for with the proceeds of the Notes pursuant to this Section provided the following conditions are met: (a) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the Substitute Improvement has been authorized by the Governing Body of the City in accordance with the laws of the State, (b) a resolution or ordinance authorizing the use of the proceeds of the Notes to pay the Improvement Costs of the Substitute Improvement has been adopted by the Governing Body of the City, (c) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Bonds to include the Substitute Improvement and (d) the City has received an opinion of Bond Counsel to the effect that the Substitute Improvement will not adversely affect the tax-exempt status of the Notes under State or federal law and the Substitute Improvement has been authorized pursuant to this Section and the laws of the State.

## ARTICLE VI
## DEPOSITS AND INVESTMENT OF MONEYS

**Section 6.01 Deposits.** Cash moneys in each of the funds and accounts created and established by this Resolution shall be deposited in accordance with the laws of the State.

**Section 6.02 Investments.** Moneys held in the funds and accounts created and established by this Resolution may be invested by the City in Authorized Investments, or in other investments allowed by the laws of the State, in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in said funds and accounts; provided, however, that no such investment shall be made for a period extending longer than to

the date when the moneys so invested may be needed in the fund or account for the purpose for which it was created and established; and provided further, that such moneys shall not be invested in such manner as will violate the provisions of the Certificate as to Arbitrage and Related Tax Matters. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall (except the amounts which are required to be deposited into the Excess Earnings Account in accordance with the Certificate as to Arbitrage and Related Tax Matters) accrue to and become a part of such originating fund or account. The Value of the investments held in the funds and accounts under the provisions of this Resolution, shall be determined as of the end of each calendar month. All investments made pursuant hereto shall be made in accordance with the Certificate as to Arbitrage and Related Tax Matters.

**Section 6.03 Deposits Into and Application of Moneys in Excess Earnings Account.**

(A) The City shall deposit into the Excess Earnings Account such amounts as are required to be deposited therein pursuant to the Certificate as to Arbitrage and Related Tax Matters. All earnings on investments of moneys held in the Excess Earnings Account shall be retained in the Excess Earnings Account. Subject to the payment provisions provided in subsection (B) below, all amounts on deposit in the Excess Earnings Account shall be held by the City in trust, to the extent required to satisfy the Rebate Amount (as defined in the Certificate as to Arbitrage and Related Tax Matters), for payment to the United States of America, and neither the City nor the Owner of any Note shall have any right in or claim to such money. All amounts held in the Excess Earnings Account shall be governed by this Section and by the Certificate as to Arbitrage and Related Tax Matters.

(B) The City shall remit part or all of the balances in the Excess Earnings Account to the United States of America in accordance with the Certificate as to Arbitrage and Related Tax Matters (such amounts herein referred to as the "Rebate Amounts"). Any funds remaining in the Excess Earnings Account after payment of all of the Notes and payment and satisfaction of any Rebate Amount, or provision having been made therefor, shall be withdrawn and released from the Excess Earnings Account and shall be deposited into the City's General Fund.

(C) Notwithstanding any other provision of this Resolution, including in particular the provisions of this Section, the City's obligation to remit the Rebate Amount to the United States of America and to comply with all other requirements of this Section and the Certificate as to Arbitrage and Related Tax Matters shall survive the defeasance or payment in full of the Notes.

(D) The City shall maintain records designed to show compliance with the provisions of this Section and the Certificate as to Arbitrage and Related Tax Matters for at least six (6) years after the date on which no Notes shall remain Outstanding.

(E) The terms, conditions and provisions under which the City will perform its duties regarding the Excess Earnings Account and any Rebate Amount are set forth in a Certificate as to Arbitrage and Related Tax Matters dated as of the Date of Issuance. The

form and text of the Certificate as to Arbitrage and Related Tax Matters is hereby approved and accepted by the Governing Body, and all of the covenants, duties and responsibilities therein contained which are to be performed by and on behalf of the City are hereby declared to be the covenants, duties and responsibilities of the City as though fully set forth at this place. The Mayor and the City Clerk or Director of Finance, as appropriate, or such other officer as may be directed by the Mayor, shall be and are hereby authorized to execute and deliver the Certificate as to Arbitrage and Related Tax Matters for and on behalf of the City. The entire text of the Certificate as to Arbitrage and Related Tax Matters is by reference hereby incorporated in and made a part of this Resolution as though fully set forth at this place.

## ARTICLE VII
## PROVISION FOR PAYMENT OF NOTES

**Section 7.01 Levy and Collection of Annual Taxes.** Pursuant to the Note Ordinance, the Governing Body covenants that it shall make provision for the payment of the principal of and the interest on the Notes on the Maturity Date by the issuance of renewal temporary notes for that purpose or by the issuance of general obligation bonds of the City, as is warranted by the circumstances then existing; and further provided, that if the proceeds of such renewal temporary notes or general obligation bonds are insufficient to fully pay the maturing principal of and interest on the Notes on the Maturity Date, then said Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amounts available for the payment of the Notes. In lieu of issuing renewal temporary notes or general obligation bonds of the City to fund costs of the Original Improvements and Improvements which are to be paid by the City-at-large, the Governing Body may elect to pay said costs, or any portion thereof, from otherwise unencumbered funds or current revenues of the City which are lawfully available for such purpose.

**Section 7.02 Disposition of Taxes; Untimely Receipt.** The proceeds derived from the various sources identified in the preceding Section shall be deposited into the Principal and Interest Account when received; and shall be used to pay the principal of and the interest on the Notes on the Maturity Date; provided, if on the Maturity Date the amount in the Principal and Interest Account shall be insufficient to make the payments of the principal of and the interest on the Notes because of an untimely collection and/or receipt of moneys from said sources, the Director of Finance is authorized to cause to be transferred to the Principal and Interest Account from the City's general funds, the amount required for such payments and to then reimburse the City's general funds for such expended amounts immediately upon the collection and receipt of said moneys.

## ARTICLE VIII
## DEFAULT AND REMEDIES

**Section 8.01 Resolution Constitutes Contract; Remedies of Owners.** The provisions of the Note Ordinance and this Resolution, and all of the covenants and agreements therein and herein contained, shall constitute a contract between the City and the Owners, and the Owner or

Owners of any of the Notes at the time Outstanding shall have the right, for the equal benefit and protection of all Owners similarly situated:

(A) By mandamus or other suit, action or proceedings at law or in equity to enforce his or their rights against the City and its officers, agents and employees, and to require and compel the City and its officers, agents and employees to perform all duties and obligations required by the provisions of the Note Ordinance and this Resolution or by the constitution and laws of the State;

(B) By suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(C) By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners.

**Section 8.02 Rights of Owners; Limitations.** The covenants and agreements of the City contained herein, in the Note Ordinance and in the Notes shall be for the equal benefit, protection and security of the Owners of any or all of the Notes, all of which Notes shall be of equal rank and without preference or priority of any one Note over any other Note in the application of the moneys herein pledged to the payment of the principal of and the interest on the Notes, or otherwise, except as provided in this Resolution.

No one or more of the Owners secured hereby shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Outstanding Notes. Nothing in this Resolution, in the Note Ordinance or in the Notes shall affect or impair the obligations of the City to pay on the respective dates of maturity thereof, the principal of and the interest on the Notes to the respective Owners thereof or affect or impair the right of action of any Owner to enforce payment of the Notes held by him, or to reduce to judgment his claim against the City for payment of the principal of and interest on the Notes without reference to or consent of any other Owner.

**Section 8.03 Remedies Cumulative; Delay or Omission Not Waiver.** No remedy herein conferred upon the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and may be exercised without exhausting and without regard to any other remedy however given. No waiver by the Owner of any Note of any default or breach of duty or contract by the City shall extend to or affect any subsequent default or breach of duty or contract by the City or shall impair any rights or remedies therefor available to the Owners. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or as an acquiescence therein. Every substantive right, power and remedy given by this Resolution to the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient. In case any suit, action or other proceedings taken by any Owner on account of any default or to enforce any right or

exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Owner, then in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as though no such suit, action or other proceedings had been brought or taken.

## ARTICLE IX
## AMENDMENTS

**Section 9.01** **Amendments.** The City may, without the consent of or notice to the Owners, amend or supplement the provisions of this Resolution (i) to cure any ambiguity herein or to correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct errors, provided such action shall not materially adversely affect the interest of the Owners, or (ii) to grant or confer upon the Owners any additional rights, remedies, powers or security that may lawfully be granted or conferred upon the Owners, or (iii) to more precisely identify improvements, or (iv) to provide for the issuance of coupon Notes and the exchange of the fully registered Notes for coupon Notes upon such terms and conditions as the City shall determine; provided, however, that any amendment as provided in this clause (v) shall not become effective unless and until the City shall have received an opinion of Bond Counsel, in form and substance satisfactory to the City, to the effect that the issuance of such coupon notes or the exchange of the fully registered Notes for such coupon notes, will not cause the interest on the Notes to be includable in the gross income of recipients thereof under the provisions of the applicable Federal law, or (vi) to conform this Resolution to the Code or any future applicable Federal law concerning tax-exempt obligations.

The rights and duties of the City and the Owners and the terms and provisions of this Resolution may be modified or altered in any respect by a resolution of the City with the consent of the Owners of not less than seventy-five percent (75%) in principal amount of the Notes then Outstanding, such consent to be evidenced by an instrument or instruments executed by the Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk; provided that, no such modification or alteration shall, except with the written consent of one hundred percent (100%) of the Owners of the Notes then Outstanding:

(A) Extend the Maturity Date of any Note;

(B) Effect a reduction in the amount which the City is required to pay by way of the principal of or the interest on any Note;

(C) Permit a preference or priority of any Note or Notes over any other Note or Notes; or

(D) Reduce the percentage of the principal amount of the then Outstanding Notes for which the written consent of the Owners is required for any modification or alteration of the provisions of this Resolution.

**Section 9.02** **Written Evidence of Amendments.** Any and all modifications or amendments to this Resolution or of the Notes shall be made in the manner hereinabove

provided, and shall not become effective until there has been filed with the City Clerk a copy of the resolution of the City authorizing said modifications or amendments, as hereinabove provided for, duly certified, as well as proof of consent to such modifications or amendments by the Owners of not less than the percentage of the principal amount of Notes then Outstanding as hereinabove required. It shall not be necessary to note on any Outstanding Note any reference to such amendment or modification.

A certified copy of every such amendatory or supplemental ordinance or resolution, if any, and a certified copy of the Note Ordinance and this Resolution, shall always be kept on file in the Office of the City Clerk and shall be made available for inspection by the Owner of any Note or the prospective purchaser or owner of any Note, and upon payment of the reasonable cost of preparing same, a certified copy of any such amendatory or supplemental ordinance or resolution of the Note Ordinance or this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

## ARTICLE X
## DEFEASANCE

**Section 10.01 Defeasance.** When all or any part of the principal of and the interest on the Notes shall have been paid and discharged, then the requirements contained herein and all other rights granted by the Note Ordinance and this Resolution shall cease and determine with respect to that principal and interest so paid. The Notes shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Fiscal Agent or with a bank located in the State of Kansas and having full trust power; at or prior to the Maturity Date of the Notes, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations the payment of the principal of and the interest on which are guaranteed by, the United States of America, or other investments allowed by the laws of the State, which together with the interest to be earned on such Government Obligations or other investments, will be sufficient for the payment of the principal of the Notes and the interest thereon to the Maturity Date; or if default in such payment shall have occurred on such date, then to the date of the tender of such payments. Any moneys and Government Obligations which at any time shall be deposited with the Fiscal Agent or a Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Notes or interest thereon, shall be and are hereby assigned, transferred and set over to the Fiscal Agent or such Kansas bank in trust for the respective Owners of the Notes, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Government Obligations so deposited with the Fiscal Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

## ARTICLE XI
## MISCELLANEOUS PROVISIONS

**Section 11.01 Tax Covenants.** The Governing Body hereby covenants and agrees that so long as any of the Notes remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the

interest on the Notes under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same may be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Notes.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Notes for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Notes or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Notes to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Notes for so long as any of the Notes remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Notes from time to time. This covenant shall survive payment in full or the defeasance of the Notes and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

**Section 11.02 Severability.** In case any one or more of the provisions of the Note Ordinance, this Resolution or of the Notes issued thereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of the Note Ordinance, this Resolution or the Notes appertaining thereto, but the Note Ordinance, this Resolution and the Notes shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Notes or in the Note Ordinance or this Resolution shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

**Section 11.03 Further Authority.** The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Resolution. The Governing Body hereby further authorizes, orders, and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Notes, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Notes, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City

Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Resolution and to give effect to the transactions contemplated hereby.

The execution and attestation of this Resolution and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Resolution, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Resolution and to carry out, give effect to and comply with and perform the duties of the City with respect to the Notes and the Official Statement.

**Section 11.04 Governing Law.** This Resolution, the Note Ordinance and the Notes shall be governed exclusively by and shall be construed in accordance with the applicable laws of the State.

**Section 11.05 Effective Date.** This Resolution shall be in force and take effect from and after its adoption and approval by the Governing Body of the City.

*(The Remainder of This Page Was Intentionally Left Blank)*

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on January 15, 2013.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

## SCHEDULE I

## THE ORIGINAL IMPROVEMENTS AND THE IMPROVEMENTS

## EXHIBIT A

## ADDITIONAL TERMS OF THE SERIES 254 NOTES

**Definitions.** The following terms defined in the Resolution shall have the meanings ascribed below:

"Note Ordinance" shall mean Ordinance No. _____ of the City, passed by the Governing Body on January 15, 2013, and authorizing and providing for the issuance of the Notes.

"Original Purchaser" means _____, _____, _____, the original purchaser of the Notes.

"Purchase Price" for the Notes shall be the par value of the Notes plus accrued interest to the date of delivery, plus a premium of $_____.

**Interest Rate.** The Notes shall bear interest at the rate of _____% per annum.

The final principal amount of the Notes is $_____.

Amount of purchase price premium to be deposited in the Principal and Interest Account is $_____.

Approved by:

_____
Title: _____
City of Wichita, Kansas

**RESOLUTION NO. 13-011**

**OF THE**

**CITY OF WICHITA, KANSAS**

**AS ADOPTED JANUARY 15, 2013**

**AUTHORIZING THE ISSUANCE OF**

**NOT TO EXCEED $15,065,000**

**GENERAL OBLIGATION IMPROVEMENT TEMPORARY NOTES**
**SERIES 256 (SUBJECT TO ALTERNATIVE MINIMUM TAX)**

**DATED FEBRUARY 14, 2013**

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**RESOLUTION NO. 13-011**

**A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION IMPROVEMENT TEMPORARY NOTES, SERIES 256 (SUBJECT TO ALTERNATIVE MINIMUM TAX), OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $15,065,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS FOR THE INTERIM FINANCING OF COSTS IN CONNECTION WITH CERTAIN MUNICIPAL AIRPORT CAPITAL IMPROVEMENTS; PRESCRIBING THE TERMS AND DETAILS OF THE NOTES; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON THE NOTES, AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE NOTES.**

**WHEREAS**, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Note Ordinance (as herein defined), has authorized the issuance of the Notes in the aggregate principal amount not to exceed $15,065,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Notes; and

**WHEREAS**, pursuant to and under the authority of various laws of the State of Kansas, the Governing Body of the City has duly taken various actions, including the adoption, and publication where necessary, of resolutions, ordinances and other proceedings as required by said laws, and has authorized and caused to be commenced the construction of those certain capital improvements in the City described in **Schedule I** which is attached to this Resolution and made a part hereof by reference as though fully set forth herein (which capital improvements are referred to as the "Improvements") and has provided that the costs thereof shall be paid, either in whole or in part, by the issuance of general obligation bonds of the City; and

**WHEREAS**, the Governing Body hereby finds and determines that as provided by K.S.A. 10-123, as amended and supplemented, temporary notes should be issued at this time for the purpose of providing interim financing for the costs of making the Improvements which are or will be newly commenced or for which additional interim financing is now required; and

**WHEREAS**, in accordance with the provisions of the Note Ordinance, the Governing Body hereby finds and determines that it is necessary to prescribe the terms and details of the Notes pursuant to this Resolution, and to make certain other covenants and agreements with respect thereto;

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

## ARTICLE I
## DEFINITIONS

**Section 1.01 Definitions of Words and Terms.** In addition to words and terms elsewhere defined in this Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Act" shall mean the Constitution of the State of Kansas (including particularly Article 12, Section 5 thereof), Charter Ordinance Nos. 78 and 156, and of the City, K.S.A. 10-123, K.S.A. 13-1024c and K.S.A. 13-1348a, all as amended and supplemented, under the authority of which the ordinance and statutes the Improvements were authorized and the Notes are issued.

"Authorized Investments" shall mean those investments authorized by K.S.A. 10-131, as amended and supplemented, and by other provisions of State law applicable to the City.

"Bond Counsel" shall mean Kutak Rock LLP, Kansas City, Missouri, or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

"Certificate as to Arbitrage and Related Tax Matters" shall mean the Certificate as to Arbitrage and Related Tax Matters, dated as of and delivered on the Date of Issuance, executed by the City, relating to certain matters within the scope of Section 148 of the Code, as the same may be amended or supplemented in accordance with its terms.

"City" shall mean the City of Wichita, Kansas.

"City Clerk" shall mean the duly appointed and acting City Clerk of the City, or in the City Clerk's absence (or in the event of a vacancy in such office) any Deputy City Clerk or Acting City Clerk of the City.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or such other general Federal tax code as shall be adopted by the United States Congress in substitution therefor, together with regulations promulgated thereunder by the United States Department of the Treasury.

"Costs of Issuance" shall mean any and all expenses of whatever nature incurred in connection with the issuance and sale of the Notes, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent, fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the yield on the Notes or investment of the proceeds of the Notes, and in connection with receiving municipal bond insurance and/or ratings on the Notes. An amount for

Costs of Issuance has been factored into the total final cost of each capital improvement comprising the Improvements.

"Date of Issuance" shall mean the date on which the Notes are delivered to the Original Purchaser and the City receives from the Original Purchaser the full purchase price therefor.

"Dated Date" shall mean the dated date of the Notes, which is February 14, 2013.

"Debt Service" shall mean the scheduled amount of interest and maturing principal payable on the Notes for a single Bond Year, as described in the Code.

"Direct Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Director of Finance" shall mean the duly appointed and acting Director of Finance of the City, or in the Director of Finance's absence, the duly appointed Assistant Director of Finance or Acting Director of Finance of the City.

"DTC" shall mean The Depository Trust Company and its successors or assigns.

"Excess Earnings Account" shall mean the Excess Earnings Account created pursuant to **Article IV** hereof.

"Fiscal Agent" shall mean the Note Registrar and/or the Paying Agent.

"Fiscal Year" shall mean the fiscal year of the City, currently being the 12-months ending each December 31.

"Governing Body" shall mean the duly elected and/or appointed and acting persons comprising the City Council of the City.

"Government Obligations" means (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following phrase (ii)), or (ii) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

"Improvement Account" shall mean the Improvement Account created by **Article IV** hereof.

"Improvement Costs" shall mean the amount of capital expenditures for an Improvement, including interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding notes issued to pay for such improvement and Costs of Issuance of the Notes, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such Improvement Costs and (b) any Improvement Costs which have been previously paid by the City or by any eligible source of funds unless such amounts are entitled to be reimbursed under State and Federal law.

"Improvements" shall mean the newly commenced capital improvements constructed in the City as described on **Schedule I** hereto or any Substitute Improvements.

"Indirect Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Interest Payment Date" shall be February 11, 2014.

"Letter of Representation" shall mean that certain Letter of Representation between the City and DTC with respect to the Notes.

"Maturity Date" shall mean February 11, 2014.

"Mayor" shall mean the duly elected and acting Mayor of the City or in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

"Municipal Bond Insurance Policy" shall mean, if applicable, the municipal bond insurance policy issued by Note Insurer insuring the payment when due of the principal of and interest on the Notes as described on **Exhibit A** to this Resolution.

"Note Insurer" shall mean any issuer of a Municipal Bond Insurance Policy described on **Exhibit A** to this Resolution.

"Note Ordinance" shall mean the ordinance of the City authorizing the issuance of the Notes as further described on **Exhibit A** to this Resolution.

"Note Registrar" shall mean the Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

"Noteowner(s)" shall mean the Owner(s) of the Notes.

"Notes" shall mean the General Obligation Improvement Temporary Notes, Series 256 (Subject to Alternative Minimum Tax), dated February 14, 2013, of the City of Wichita, Kansas, in the principal amount set forth on **Exhibit A** which are authorized by and will be issued pursuant to the authority of the Note Ordinance and this Resolution.

"Original Proceeds" shall mean all of the proceeds, including accrued interest, derived from the sale of the Notes to the Original Purchaser.

"Original Purchaser" shall mean the original purchaser of the Notes described on **Exhibit A** to this Resolution.

"Outstanding," when used with reference to the Notes, shall mean, as of a particular date, all Notes theretofore authenticated and delivered under this Resolution, except (i) Notes theretofore canceled by the Fiscal Agent or delivered to the Fiscal Agent for cancellation, (ii) Notes for which moneys for payment or Government Obligations (the principal of and the interest on which Government Obligations, if any, when due, provide sufficient moneys to pay, with such other moneys so deposited with the Fiscal Agent, the principal of and interest on the

Notes being paid), or both, in the necessary amount have theretofore been deposited with the Fiscal Agent, or other depository as provided in this Resolution, in trust for the Owners thereof (whether upon or prior to the Maturity Date of the Notes), and (iii) Notes in exchange for or in lieu of which other Notes have been authenticated and delivered pursuant to this Resolution.

"Owner(s)" or "Registered Owner(s)" shall mean, when used with respect to any Note, the person or entity in whose name the Note is registered as shown on the Registration Books maintained by the Fiscal Agent.

"Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Paying Agent" shall mean the Treasurer of the State of Kansas, Topeka, Kansas, and its successors and assigns.

"Principal and Interest Account" shall mean the Principal and Interest Account created within the City's Capital Project Fund pursuant to **Article IV** hereof, which is created and shall be held and administered solely for the purpose of receiving and disbursing funds for the payment of the Notes.

"Principal Payment Date" shall mean the Maturity Date.

"Purchase Price" shall mean the original purchase price of the Notes described on **Exhibit A** to this Resolution.

"Record Date" shall mean fifteen days prior to the Maturity Date.

"Registration Books" shall mean the books maintained on behalf of the City by the Fiscal Agent for the registration and transfer from time to time of the ownership of the Notes.

"Resolution" or "Note Resolution" shall mean this Resolution adopted by the Governing Body of the City on January 15, 2013, prescribing the terms and details of the Notes.

"State" shall mean the State of Kansas.

"Substitute Improvements" means the substitute or additional improvements authorized pursuant to **Section 5.08** of this Resolution.

"Value" shall mean the value of the Authorized Investments (which Value shall be determined as of the end of each month) and shall be the amortized cost of an obligation or the market cost thereof, whichever is lower.

## ARTICLE II
## AUTHORIZATION, ISSUANCE AND DELIVERY OF NOTES

**Section 2.01 Authorization of and Security for Notes.** Pursuant to the Note Ordinance, the Governing Body has authorized, ordered and directed that in order to provide the necessary funds to provide interim financing for the Improvements, there shall be issued the

Notes. In all matters relating to the issuance, registration and delivery of the Notes, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Notes shall be and constitute valid and legally binding general obligations of the City, and the full faith, credit and resources of the City are pledged by the Note Ordinance and this Note Resolution to the payment of the Notes and the interest thereon. The Notes are payable as to both principal and interest from the proceeds of general obligation bonds which will subsequently be issued by the City for such purpose and/or from current revenues of the City available for such purposes, or the Notes may be payable from the proceeds of renewal temporary notes which the City may in the future issue for such purpose.

**Section 2.02 Description and Details of Notes.** The Notes shall be designated "City of Wichita, Kansas, General Obligation Improvement Temporary Notes, Series 256 (Subject to Alternative Minimum Tax)." The Notes shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount of the Notes. The Notes shall be dated the Dated Date, shall mature on the Maturity Date, and shall bear interest at the rate set forth on **Exhibit A** to this Resolution. The Notes shall bear interest from their Dated Date (computed on the basis of a 360-day year of 12 30-day months) and such interest shall become due and payable on the Interest Payment Date. The City Manager, the Finance Director, or the City Manager's designee is hereby authorized to approve the final principal amount and Purchase Price for the Bonds as to be set forth on **Exhibit A** to this Resolution provided the final principal amount shall not exceed $15,065,000 which shall be the par value of the Notes unless otherwise indicated on **Exhibit A**, the principal shall mature on the date and at the interest rate shown on **Exhibit A** to this Resolution and such amounts are consistent with the other terms and provisions of this Resolution.

The Notes will initially be distributed in book-entry-only form through DTC, by depositing with DTC (or the Fiscal Agent as agent for DTC) one certificate, registered in the name of DTC's nominee, Cede & Co., in an amount equal to the total principal amount of the Notes. The manner of payment of the principal of and the interest on the Notes to DTC, and other matters relating to the distribution of the Notes in book-entry-only form through DTC, shall be governed by the Letter of Representation, which the Director of Finance is hereby authorized to execute and deliver on behalf of the City.

Subject to the operational arrangements of DTC, in the event (i) DTC determines not to continue to act as securities depository for the Notes, or (ii) the City determines that continuation of the book-entry-only system of evidence and transfer of ownership of the Notes would adversely affect the interests of the beneficial owners of the Notes, the City will discontinue the book-entry-only system with DTC. If the City fails to identify another qualified securities depository to replace DTC, the City will cause replacement Notes in the form of fully registered certificates to be authenticated and delivered to the beneficial owners (to the extent such beneficial owners can be identified by the City). If issued in certificated form, the certificates representing the Notes shall be numbered in such manner as the Note Registrar shall determine.

**Section 2.03** **Designation of Paying Agent and Note Registrar.** Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body has elected to have the provisions of the Kansas Bond Registration Law apply to the Notes.

So long as the Notes remain in book-entry-only form, the Treasurer of the State of Kansas, Topeka, Kansas, has been designated as the initial Paying Agent and Note Registrar for the Notes; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Note Registrars with respect to the Notes upon fifteen (15) days' written notice to the then acting Paying Agent and Note Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Note Registrar and Paying Agent in connection with such designation.

The Paying Agent shall make payment directly to DTC, as the Owner, for the principal of and the interest on the Notes and DTC will remit such principal and interest to its Direct Participants for distribution to the beneficial owners in the manner set forth in the following **Section 2.04(A)** and as governed by the terms of the Letter of Representation.

In the event that the Notes should be issued and delivered in certificated form at any time after the initial delivery of the Notes, the Fiscal Agent shall maintain Registration Books for the ownership of the Notes on behalf of the City and the Paying Agent will make payment for the Notes directly to the Owners as shown by said Registration Books in the manner set forth in the following **Section 2.04(B).**

**Section 2.04** **Method and Place of Payment of Principal and Interest on Notes.**

(A) Notes Issued and Delivered in Book-Entry-Only Form. One certificate registered in the name of DTC's nominee, Cede & Co., for the total principal amount of the Notes will be issued to DTC in New York, New York (or to the Fiscal Agent as agent for DTC) and such certificate will be immobilized in its custody. Purchases of the Notes in denominations permitted by **Section 2.02** hereof must be made by or through Direct Participants of DTC, which will receive a credit for the Notes on DTC's records. The ownership interest of each actual purchaser of each Note (the "beneficial owner") is in turn to be recorded on the Direct and Indirect Participants' records. Transfers of ownership will be effected on the records of DTC and its Participants pursuant to the rules and procedures established by DTC and its Participants. Payment of principal and interest on the Notes will be made in same day funds directly to DTC. The transfer of principal and interest to Participants of DTC will be the responsibility of DTC; the transfer of principal and interest to beneficial owners by Participants of DTC will be the responsibility of such Participants. Neither the City nor the Paying Agent and Note Registrar will be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its Participants or persons acting through such Participants.

(B) In the Event Certificated Notes are Subsequently Issued. The principal of, premium, if any, and the interest on the Notes shall be payable in lawful money of the United States of America by check or draft of the Paying Agent. The principal of and premium, if any, on the Notes shall be paid to the Owner of each Note upon presentation and surrender of the Note to the Paying Agent for payment and cancellation on the

maturity date or redemption date, as the case may be, of the Note. The interest on the Notes shall be mailed by the Paying Agent to the Owner of each Note at the Owner's address as it appears on the Registration Books on the Record Dates, or at such other address as is provided in writing by such Owner to the Note Registrar.

**Section 2.05 Method of Execution and Authentication of Notes.** The Notes shall be executed for and on behalf of the City by the manual or facsimile signatures of its Mayor and City Clerk, and shall have impressed or imprinted thereon a true impression or a printed facsimile of the City's official seal. The Notes shall be registered in the Office of the City Clerk, which registration shall be evidenced by the manual or facsimile signature of the City Clerk, on a Certificate of Registration printed on the Notes, with the City's official seal or a facsimile thereof, impressed or imprinted opposite said signature. The Notes shall be registered by the State Treasurer in the municipal bond register in the State Treasurer's office, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer and/or the Assistant State Treasurer on a Certificate of State Treasurer printed on the Notes, attested by a true impression or a printed facsimile of the State Treasurer's official seal opposite such signature. Additionally, the Notes shall be countersigned by the manual or facsimile signature of the City Clerk, which countersignature shall be attested by the City's official seal affixed or imprinted opposite said countersignature.

In case any officer of the City or of the State whose manual or facsimile signature shall appear on the Notes shall cease to be such officer before the actual delivery of the Notes, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery.

No Note shall be valid or obligatory for any purpose unless and until the Certificate of Authentication thereon shall have been duly executed by the Fiscal Agent, and such duly executed Certificate of Authentication shall be conclusive evidence that it has been authenticated and delivered under this Resolution. The Certificate of Authentication shall be deemed to have been duly executed by the Fiscal Agent when manually signed by an authorized officer or signatory thereof, and it shall not be necessary that the same officer or signatory of the Fiscal Agent manually sign the Certificate of Authentication on all Notes issued under the Note Ordinance and this Resolution.

**Section 2.06 Payment of Costs of Notes.** The City shall pay all fees and expenses incurred in connection with the printing, issuance, transfer, exchange, registration and payment of the Notes, including the fees and expenses of the Fiscal Agent, except (i) reasonable fees and expenses in connection with the replacement of a Note or Notes mutilated, stolen, lost or destroyed, or (ii) any tax or other governmental charge imposed in relation to the transfer, exchange, registration or payment of the Notes, or (iii) any additional costs or fees that might be incurred in the secondary market.

**Section 2.07 Form of Notes.** The definitive typewritten or printed form of the certificates representing the Notes issued under this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of the State of Kansas, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act and for the interim financing of portions

of the Improvements. The Governing Body hereby approves the form and text of the certificates to be prepared for the Notes, and hereby authorizes, orders and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Notes and hereby further authorizes, orders and directs Bond Counsel, in the event the Notes in certificated form are issued at any time after the initial issuance and delivery of the Notes, to prepare the form of and cause such certificated Notes to be printed.

**Section 2.08** **Registration, Transfer and Exchange of Notes.** In the event the Notes are subsequently issued in certificated form, the City shall cause books evidencing the registration and transfer of the ownership of the Notes as provided in this Resolution to be kept by the Note Registrar (the "Registration Books"), and the Notes may be transferred only upon the Registration Books and upon the surrender thereof to the Note Registrar duly endorsed for transfer or accompanied by an assignment duly executed by the Owner thereof, or his agent, in such form as shall be satisfactory to the Note Registrar. Upon the surrender for transfer of any certificated Note at its office, the Note Registrar shall authenticate and deliver in the name of the transferee or transferees a new certificated Note or Notes of authorized denominations in the aggregate principal amount of the surrendered certificated Note. The Note Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to such transfer or exchange.

Upon the presentation of the necessary documents as hereinbefore described at the principal office of the Note Registrar, the Note Registrar shall transfer or exchange any Note(s) for new Note(s) in an authorized denomination of the same maturity and for the same aggregate principal amount as the Note(s) presented for transfer or exchange. All Notes presented for transfer or exchange shall be surrendered to the Note Registrar for cancellation. Prior to delivery of any new Note(s) to the transferee, the Note Registrar shall register the same in the Registration Books and shall authenticate each such new Note.

The City and the Note Registrar shall not be required to issue, register, transfer or exchange any Notes during a period beginning on the day following the Record Date preceding any Interest Payment Date and ending at the close of business on the Interest Payment Date.

Notes delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Notes surrendered, shall be secured by the Note Ordinance and this Resolution and shall be entitled to all of the security and benefits hereof and pledges made herein to the same extent as the Notes surrendered. The person(s) in whose name any Note is registered as shown on the Registration Books shall be deemed and regarded as the absolute Owner thereof for all purposes. Payment of, or on account of the principal of and the interest on any Note shall be made only to or upon the order of the Owner or his duly authorized agent; except that, so long as the Notes remain issued in book-entry-only form, DTC shall be considered to be the Owner of the Notes, and such payments shall be made only to DTC in accordance with **Section 2.04(A)** of this Resolution. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon such Note, including the interest thereon, to the extent of the sum or sums so paid.

**Section 2.09** **Mutilated, Lost, Stolen or Destroyed Notes.** In the event any certificate representing a Note is mutilated, lost, stolen or destroyed, the City shall execute, and the Fiscal

Agent shall authenticate and deliver, a new certificate of like date, maturity, denomination and interest rate as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated Note, such mutilated Note shall first be surrendered to the Fiscal Agent, and, in the case of any lost, stolen or destroyed Note there shall first be furnished to the Fiscal Agent and the City, evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Fiscal Agent. In the event any such Note shall have matured, instead of issuing a duplicate note the City may pay the same without the surrender thereof. The City and the Fiscal Agent may charge to the Owner of such Note their reasonable fees and expenses in connection with the replacement of such Note or Notes.

**Section 2.10 Surrender and Cancellation of Notes.** Whenever any Outstanding Note shall be delivered to the Fiscal Agent after full payment thereof or for replacement pursuant to this Resolution, such Note shall be canceled and destroyed by the Fiscal Agent and counterparts of a Certificate of Destruction describing Notes so destroyed and evidencing such destruction shall be furnished by the Fiscal Agent to the City, or such Note shall be canceled and the canceled Note shall be returned to the City.

**Section 2.11 Execution and Delivery of Notes.** The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Notes without unnecessary delay in the form and manner hereinbefore specified, including a reasonable quantity of replacement note certificates for use in exchanges, transfers and replacements in accordance with the provisions of this Resolution and when executed the Notes shall be registered in the Office of the City Clerk and in the Office of the State Treasurer, as required by law and as hereinbefore provided, and shall thereupon be deposited with the Fiscal Agent for authentication. When the Notes shall have been so executed, registered and authenticated, they shall be delivered at one time to or upon the order of the Original Purchaser, but only upon receipt by the City of the Purchase Price therefor and the proceeds of the Notes shall immediately be applied by the City as hereinafter in this Resolution provided.

**Section 2.12 Official Statement.** The Governing Body hereby approves the form and content of the "deemed final" Preliminary Official Statement prepared for use in the initial offering and sale of the Notes, and the form and content of any addenda, supplement, or amendment thereto necessary to conform the offering document to the terms of this Resolution, to include information newly available due to assignment of ratings by one or more rating agencies, or incorporate such other minor corrections or additions as may be approved by the City's Debt Coordinator, including specifically the insertion of interest rates and yields for the Notes. The lawful use of the final Official Statement in the reoffering of the Notes by the Original Purchaser is hereby approved and authorized.

## ARTICLE III
## REDEMPTION OF NOTES

**Section 3.01 Optional Redemption**. At the option of the City, the Notes may be called for redemption and payment prior to their stated maturity, in whole or in part, on and after August 13, 2013 (the date being so set for redemption and payment being referred to as the "Redemption Date"). Notes called for redemption and payment as aforesaid shall be redeemed

at a price (expressed as a percentage of the principal amount), of 100% of the principal amount, plus accrued interest to the Redemption Date.

**Section 3.02** **Selection of Notes to be Redeemed**. The Notes shall be redeemed only in face amounts of $5,000 or integral multiples thereof and if the City elects to call for redemption less than all of the Notes at the time Outstanding, the Notes shall be redeemed in such equitable manner as the City shall determine, with Notes of less than a full maturity to be selected by lot in units of $5,000.

In the case of a partial redemption of Notes by lot when Notes of denominations greater than $5,000 are then Outstanding, then, for all purposes in connection with such redemption, each $5,000 of face value of a Note shall be treated as though it were a separate Note in the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Note has been selected for redemption, then upon receipt of notice of such redemption, the Owner shall forthwith present and surrender such Note to the Fiscal Agent (i) for payment of the redemption price and accrued interest to the Redemption Date of the $5,000 unit or units of face value of the Note called for redemption, and (ii) for exchange, without charge to the Owner, for a new Note or Notes of the aggregate principal amount of the unredeemed portion of the principal amount of such Note. If the Owner of any Note of a denomination greater than $5,000 of which one or more, but not all, of the $5,000 units of face value thereof has been selected for redemption shall fail to present such Note as aforesaid, the $5,000 units of the face value of such Note which have been selected for redemption shall, nevertheless, become due and payable on the Redemption Date, and no further interest shall accrue on such redeemed but unpresented $5,000 units of face value from and after the Redemption Date.

**Section 3.03** **Notice of Redemption**. Unless waived by the Fiscal Agent, the City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than forty-five (45) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Notes so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice.

All notices of redemption given under the provisions of this Article shall state (i) the Redemption Date, (ii) the redemption price, (iii) if less than all Outstanding Notes are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Notes to be redeemed, (iv) that on the Redemption Date the principal amount, and premium, if any, will become due and payable upon each such Note or portion thereof which has been selected for redemption, and that the interest thereon shall cease to accrue from and after the Redemption Date, and (v) that the Notes so selected for redemption are to be surrendered to or at the principal office of the Fiscal Agent for payment.

**Section 3.04** **Deposit of Moneys for and Payment of Redemption Price**. On or prior to the Redemption Date, the City shall cause to be deposited with the Fiscal Agent sufficient funds to pay the redemption price, together with all unpaid and accrued interest thereon to the

Redemption Date, of all Notes or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Notes selected for redemption, the Fiscal Agent shall pay the redemption price therefor to the Owners. If one or more, but not all, of the $5,000 units of face value represented by any Note is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Note or Notes in the amount of the unredeemed portion of such Note as provided by **Section 3.02** above. All Notes selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

**Section 3.05** **Effect of Call for Redemption**. Whenever any Note, or one or more of the $5,000 units of face value represented by any Note, has been selected for redemption and payment as provided in this Article, all interest on such Note, or such one or more of the $5,000 units of face value represented by any such Note, shall cease from and after the Redemption Date, provided funds are then available for its payment at the price hereinbefore specified.

## ARTICLE IV
## FUNDS AND ACCOUNTS

**Section 4.01** **Creation of Funds and Accounts.** Simultaneously with the issuance and delivery of the Notes, there shall be created within the Treasury of the City, the following designated funds and accounts:

(A) Improvement Account for the City of Wichita, Kansas, General Obligation Improvement Temporary Notes, Series 256 (Subject to Alternative Minimum Tax);

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Improvement Temporary Notes, Series 256 (Subject to Alternative Minimum Tax), to be created within the City's Capital Project Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Improvement Temporary Notes, Series 256 (Subject to Alternative Minimum Tax).

**Section 4.02** **Administration of Funds and Accounts.** The funds and accounts established and created by this Article shall be administered in accordance with the provisions of this Resolution for so long as any of the Notes remain Outstanding.

## ARTICLE V
## APPLICATION OF NOTE PROCEEDS; DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

**Section 5.01** **Application of Note Proceeds.** Upon the issuance and delivery of the Notes, the proceeds thereof shall be deposited into the Treasury of the City and credited to the various funds and accounts created by **Article IV** of this Resolution, as follows:

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Notes and the amount of purchase price

premium, if any, shown on **Exhibit A** to be deposited in the Principal and Interest Account; and

(B) The balance of the proceeds to the Improvement Account.

**Section 5.02 Disposition of Principal and Interest Account.** Moneys deposited in the Principal and Interest Account from the proceeds of the Notes as provided by clause (A) of the preceding Section, shall be used exclusively for the payment of interest on the Notes on the first Interest Payment Date. Moneys deposited in the Principal and Interest Account from other sources, as provided by the succeeding Sections or elsewhere in this Resolution, shall be used exclusively for the payment of the principal of and the interest on the Notes, and for payment of the usual and customary fees and expenses of the Fiscal Agent.

Upon the issuance of the City's general obligation bonds and/or future renewal temporary notes, as the case may be, for the purpose of paying the Notes, or any portion thereof, the proceeds from such general obligation bonds and/or renewal temporary notes shall be deposited into the Principal and Interest Account. Any other sums of moneys which are designated for payment of the costs of the Notes, if any, shall likewise be deposited into the Principal and Interest Account.

**Section 5.03 Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent.** The Director of Finance is hereby authorized and directed to cause to be withdrawn from the Principal and Interest Account and forwarded to the Fiscal Agent, a sum sufficient in amount to pay the principal of and the interest on the Notes on the Maturity Date, together with such sum as may be required to pay the fees and charges of the Fiscal Agent, if any, for acting in such capacity, and the sum for charges of the Fiscal Agent shall be forwarded to the Fiscal Agent over and above the amount required to pay the Notes as aforesaid. If, through the lapse of time or otherwise, the Owner of any Note shall no longer be entitled to enforce payment of such Note, it shall be the duty of the Fiscal Agent to forthwith return such unexpended funds to the City. All moneys transferred to the Fiscal Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution, and shall be deemed to be deposited with the Fiscal Agent in trust for and on behalf of the Owners of the Notes.

**Section 5.04 Surplus in Principal and Interest Account.** Any moneys remaining in the Principal and Interest Account, from whatever source, from and after the retirement of all general obligation note issues of the City shall be transferred and paid into the General Fund of the City.

**Section 5.05 Disposition of Improvement Account.** Moneys in the Improvement Account shall be used solely for the purpose of paying the Improvement Costs. The City covenants that in the making of the Improvements, it will perform all duties and obligations relative to such Improvements as are now or may be hereafter imposed by the Act and the provisions of this Resolution.

**Section 5.06 Withdrawals from Improvement Account.** Withdrawals from the Improvement Account shall be made only for a purpose within the scope of the Improvements,

and as payment for Improvement Costs and the amount of such payments shall represent only the contract price or reasonable value of the property, labor, materials, service or obligations being paid for, or if such payment is not being made pursuant to an express contract, such payments shall not be in excess of the reasonable value thereof.

**Section 5.07 Surplus in Improvement Account.** All moneys remaining in the Improvement Account after the completion of the Improvements and the payment of all Improvement Costs shall be immediately transferred to the Principal and Interest Account.

**Section 5.08 Substitution of Improvements.** The City may elect to substitute or add other improvements paid for with the proceeds of the Notes pursuant to this Section provided the following conditions are met: (a) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the Substitute Improvement has been authorized by the Governing Body of the City in accordance with the laws of the State, (b) a resolution or ordinance authorizing the use of the proceeds of the Notes to pay the Improvement Costs of the Substitute Improvement has been adopted by the Governing Body of the City, (c) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Bonds to include the Substitute Improvement and (d) the City has received an opinion of Bond Counsel to the effect that the Substitute Improvement will not adversely affect the tax-exempt status of the Notes under State or federal law and the Substitute Improvement has been authorized pursuant to this Section and the laws of the State.

## ARTICLE VI
## DEPOSITS AND INVESTMENT OF MONEYS

**Section 6.01 Deposits.** Cash moneys in each of the funds and accounts created and established by this Resolution shall be deposited in accordance with the laws of the State.

**Section 6.02 Investments.** Moneys held in the funds and accounts created and established by this Resolution may be invested by the City in Authorized Investments, or in other investments allowed by the laws of the State, in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in said funds and accounts; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys so invested may be needed in the fund or account for the purpose for which it was created and established; and provided further, that such moneys shall not be invested in such manner as will violate the provisions of the Certificate as to Arbitrage and Related Tax Matters. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall (except the amounts which are required to be deposited into the Excess Earnings Account in accordance with the Certificate as to Arbitrage and Related Tax Matters) accrue to and become a part of such originating fund or account. The Value of the investments held in the funds and accounts under the provisions of this Resolution, shall be determined as of the end of each calendar month. All investments made pursuant hereto shall be made in accordance with the Certificate as to Arbitrage and Related Tax Matters.

**Section 6.03 Deposits Into and Application of Moneys in Excess Earnings Account.**

(A) The City shall deposit into the Excess Earnings Account such amounts as are required to be deposited therein pursuant to the Certificate as to Arbitrage and Related Tax Matters. All earnings on investments of moneys held in the Excess Earnings Account shall be retained in the Excess Earnings Account. Subject to the payment provisions provided in subsection (B) below, all amounts on deposit in the Excess Earnings Account shall be held by the City in trust, to the extent required to satisfy the Rebate Amount (as defined in the Certificate as to Arbitrage and Related Tax Matters), for payment to the United States of America, and neither the City nor the Owner of any Note shall have any right in or claim to such money. All amounts held in the Excess Earnings Account shall be governed by this Section and by the Certificate as to Arbitrage and Related Tax Matters.

(B) The City shall remit part or all of the balances in the Excess Earnings Account to the United States of America in accordance with the Certificate as to Arbitrage and Related Tax Matters (such amounts herein referred to as the "Rebate Amounts"). Any funds remaining in the Excess Earnings Account after payment of all of the Notes and payment and satisfaction of any Rebate Amount, or provision having been made therefor, shall be withdrawn and released from the Excess Earnings Account and shall be deposited into the City's General Fund.

(C) Notwithstanding any other provision of this Resolution, including in particular the provisions of this Section, the City's obligation to remit the Rebate Amount to the United States of America and to comply with all other requirements of this Section and the Certificate as to Arbitrage and Related Tax Matters shall survive the defeasance or payment in full of the Notes.

(D) The City shall maintain records designed to show compliance with the provisions of this Section and the Certificate as to Arbitrage and Related Tax Matters for at least six (6) years after the date on which no Notes shall remain Outstanding.

(E) The terms, conditions and provisions under which the City will perform its duties regarding the Excess Earnings Account and any Rebate Amount are set forth in a Certificate as to Arbitrage and Related Tax Matters dated as of the Date of Issuance. The form and text of the Certificate as to Arbitrage and Related Tax Matters is hereby approved and accepted by the Governing Body, and all of the covenants, duties and responsibilities therein contained which are to be performed by and on behalf of the City are hereby declared to be the covenants, duties and responsibilities of the City as though fully set forth at this place. The Mayor and the City Clerk or Director of Finance, as appropriate, or such other officer as may be directed by the Mayor, shall be and are hereby authorized to execute and deliver the Certificate as to Arbitrage and Related Tax Matters for and on behalf of the City. The entire text of the Certificate as to Arbitrage and Related Tax Matters is by reference hereby incorporated in and made a part of this Resolution as though fully set forth at this place.

## ARTICLE VII
## PROVISION FOR PAYMENT OF NOTES

**Section 7.01 Levy and Collection of Annual Taxes.** Pursuant to the Note Ordinance, the Governing Body covenants that it shall make provision for the payment of the principal of and the interest on the Notes on the Maturity Date by the issuance of renewal temporary notes for that purpose or by the issuance of general obligation bonds of the City, as is warranted by the circumstances then existing; and further provided, that if the proceeds of such renewal temporary notes or general obligation bonds are insufficient to fully pay the maturing principal of and interest on the Notes on the Maturity Date, then said Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amounts available for the payment of the Notes. In lieu of issuing renewal temporary notes or general obligation bonds of the City to fund costs of the Improvements, the Governing Body may elect to pay said costs, or any portion thereof, from otherwise unencumbered funds or current revenues of the City which are lawfully available for such purpose.

**Section 7.02 Disposition of Taxes; Untimely Receipt.** The proceeds derived from the various sources identified in the preceding Section shall be deposited into the Principal and Interest Account when received; and shall be used to pay the principal of and the interest on the Notes on the Maturity Date; provided, if on the Maturity Date the amount in the Principal and Interest Account shall be insufficient to make the payments of the principal of and the interest on the Notes because of an untimely collection and/or receipt of moneys from said sources, the Director of Finance is authorized to cause to be transferred to the Principal and Interest Account from the City's general funds, the amount required for such payments and to then reimburse the City's general funds for such expended amounts immediately upon the collection and receipt of said moneys.

## ARTICLE VIII
## DEFAULT AND REMEDIES

**Section 8.01 Resolution Constitutes Contract; Remedies of Owners.** The provisions of the Note Ordinance and this Resolution, and all of the covenants and agreements therein and herein contained, shall constitute a contract between the City and the Owners, and the Owner or Owners of any of the Notes at the time Outstanding shall have the right, for the equal benefit and protection of all Owners similarly situated:

(A) By mandamus or other suit, action or proceedings at law or in equity to enforce his or their rights against the City and its officers, agents and employees, and to require and compel the City and its officers, agents and employees to perform all duties and obligations required by the provisions of the Note Ordinance and this Resolution or by the constitution and laws of the State;

(B) By suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(C) By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners.

**Section 8.02** **Rights of Owners; Limitations.** The covenants and agreements of the City contained herein, in the Note Ordinance and in the Notes shall be for the equal benefit, protection and security of the Owners of any or all of the Notes, all of which Notes shall be of equal rank and without preference or priority of any one Note over any other Note in the application of the moneys herein pledged to the payment of the principal of and the interest on the Notes, or otherwise, except as provided in this Resolution.

No one or more of the Owners secured hereby shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Outstanding Notes. Nothing in this Resolution, in the Note Ordinance or in the Notes shall affect or impair the obligations of the City to pay on the respective dates of maturity thereof, the principal of and the interest on the Notes to the respective Owners thereof or affect or impair the right of action of any Owner to enforce payment of the Notes held by him, or to reduce to judgment his claim against the City for payment of the principal of and interest on the Notes without reference to or consent of any other Owner.

**Section 8.03** **Remedies Cumulative; Delay or Omission Not Waiver.** No remedy herein conferred upon the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and may be exercised without exhausting and without regard to any other remedy however given. No waiver by the Owner of any Note of any default or breach of duty or contract by the City shall extend to or affect any subsequent default or breach of duty or contract by the City or shall impair any rights or remedies therefor available to the Owners. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or as an acquiescence therein. Every substantive right, power and remedy given by this Resolution to the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient. In case any suit, action or other proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Owner, then in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as though no such suit, action or other proceedings had been brought or taken.

## ARTICLE IX
## AMENDMENTS

**Section 9.01** **Amendments.** The City may, without the consent of or notice to the Owners, amend or supplement the provisions of this Resolution (i) to cure any ambiguity herein or to correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct errors, provided such action shall not materially adversely affect the interest of the Owners, or (ii) to grant or confer upon the Owners any additional rights, remedies, powers or security that may lawfully be granted or conferred upon the Owners, or (iii) to more precisely identify improvements, or (iv) to provide for the issuance of coupon Notes

and the exchange of the fully registered Notes for coupon Notes upon such terms and conditions as the City shall determine; provided, however, that any amendment as provided in this clause (v) shall not become effective unless and until the City shall have received an opinion of Bond Counsel, in form and substance satisfactory to the City, to the effect that the issuance of such coupon notes or the exchange of the fully registered Notes for such coupon notes, will not cause the interest on the Notes to be includable in the gross income of recipients thereof under the provisions of the applicable Federal law, or (vi) to conform this Resolution to the Code or any future applicable Federal law concerning tax-exempt obligations.

The rights and duties of the City and the Owners and the terms and provisions of this Resolution may be modified or altered in any respect by a resolution of the City with the consent of the Owners of not less than seventy-five percent (75%) in principal amount of the Notes then Outstanding, such consent to be evidenced by an instrument or instruments executed by the Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk; provided that, no such modification or alteration shall, except with the written consent of one hundred percent (100%) of the Owners of the Notes then Outstanding:

(A) Extend the Maturity Date of any Note;

(B) Effect a reduction in the amount which the City is required to pay by way of the principal of or the interest on any Note;

(C) Permit a preference or priority of any Note or Notes over any other Note or Notes; or

(D) Reduce the percentage of the principal amount of the then Outstanding Notes for which the written consent of the Owners is required for any modification or alteration of the provisions of this Resolution.

**Section 9.02 Written Evidence of Amendments.** Any and all modifications or amendments to this Resolution or of the Notes shall be made in the manner hereinabove provided, and shall not become effective until there has been filed with the City Clerk a copy of the resolution of the City authorizing said modifications or amendments, as hereinabove provided for, duly certified, as well as proof of consent to such modifications or amendments by the Owners of not less than the percentage of the principal amount of Notes then Outstanding as hereinabove required. It shall not be necessary to note on any Outstanding Note any reference to such amendment or modification.

A certified copy of every such amendatory or supplemental ordinance or resolution, if any, and a certified copy of the Note Ordinance and this Resolution, shall always be kept on file in the Office of the City Clerk and shall be made available for inspection by the Owner of any Note or the prospective purchaser or owner of any Note, and upon payment of the reasonable cost of preparing same, a certified copy of any such amendatory or supplemental ordinance or resolution of the Note Ordinance or this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

## ARTICLE X

## DEFEASANCE

**Section 10.01 Defeasance.** When all or any part of the principal of and the interest on the Notes shall have been paid and discharged, then the requirements contained herein and all other rights granted by the Note Ordinance and this Resolution shall cease and determine with respect to that principal and interest so paid. The Notes shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Fiscal Agent or with a bank located in the State of Kansas and having full trust power; at or prior to the Maturity Date of the Notes, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations the payment of the principal of and the interest on which are guaranteed by, the United States of America, or other investments allowed by the laws of the State, which together with the interest to be earned on such Government Obligations or other investments, will be sufficient for the payment of the principal of the Notes and the interest thereon to the Maturity Date; or if default in such payment shall have occurred on such date, then to the date of the tender of such payments. Any moneys and Government Obligations which at any time shall be deposited with the Fiscal Agent or a Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Notes or interest thereon, shall be and are hereby assigned, transferred and set over to the Fiscal Agent or such Kansas bank in trust for the respective Owners of the Notes, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Government Obligations so deposited with the Fiscal Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

## ARTICLE XI
## MISCELLANEOUS PROVISIONS

**Section 11.01 Tax Covenants.** The Governing Body hereby covenants and agrees that so long as any of the Notes remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Notes under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same may be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Notes.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Notes for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Notes or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Notes to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Notes for so long as any of the Notes remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Notes from time to time. This covenant shall survive payment in full or the defeasance of the Notes and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

**Section 11.02 Severability.** In case any one or more of the provisions of the Note Ordinance, this Resolution or of the Notes issued thereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of the Note Ordinance, this Resolution or the Notes appertaining thereto, but the Note Ordinance, this Resolution and the Notes shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Notes or in the Note Ordinance or this Resolution shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

**Section 11.03 Further Authority.** The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Resolution. The Governing Body hereby further authorizes, orders, and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Notes, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Notes, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Resolution and to give effect to the transactions contemplated hereby.

The execution and attestation of this Resolution and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Resolution, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Resolution and to

carry out, give effect to and comply with and perform the duties of the City with respect to the Notes and the Official Statement.

**Section 11.04 Governing Law.** This Resolution, the Note Ordinance and the Notes shall be governed exclusively by and shall be construed in accordance with the applicable laws of the State.

**Section 11.05 Effective Date.** This Resolution shall be in force and take effect from and after its adoption and approval by the Governing Body of the City.

*(The Remainder of This Page Was Intentionally Left Blank)*

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on January 15, 2013.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

4842-6583-7586.3

# SCHEDULE I

# THE IMPROVEMENTS

## EXHIBIT A

## ADDITIONAL TERMS OF THE SERIES 256 NOTES

**Definitions.** The following terms defined in the Resolution shall have the meanings ascribed below:

"Note Ordinance" shall mean Ordinance No. _____ of the City, passed by the Governing Body on January 15, 2013, and authorizing and providing for the issuance of the Notes.

"Original Purchaser" means _____, _____, _____, the original purchaser of the Notes.

"Purchase Price" for the Notes shall be the par value of the Notes plus accrued interest to the date of delivery, plus a premium of $_____.

**Interest Rate.** The Notes shall bear interest at the rate of _____% per annum.

The final principal amount of the Notes is $_____.

Amount of purchase price premium to be deposited in the Principal and Interest Account is $_____.

Approved by:

_____
Title: _____
City of Wichita, Kansas

**RESOLUTION NO. 13-012**

**OF THE**

**CITY OF WICHITA, KANSAS**

**AS ADOPTED JANUARY 15, 2013**

**AUTHORIZING THE ISSUANCE OF**

**NOT TO EXCEED $9,800,000**

**GENERAL OBLIGATION BONDS**
**SERIES 807**

**DATED FEBRUARY 1, 2013**

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| Schedule I: | The Improvements | |
| Exhibit A | Additional Terms of the Series 807 Bonds | |
| Exhibit B | Final Sizing Terms of the Series 807 Bonds | |

**RESOLUTION NO. 13-012**

**A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 807, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $9,800,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE BONDS; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.**

**WHEREAS**, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Bond Ordinance (as herein defined), has authorized the issuance of the Bonds in the aggregate principal amount not to exceed $9,800,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Bonds; and

**WHEREAS**, in accordance with the provisions of the Bond Ordinance, the Governing Body hereby finds and determines that it is necessary to prescribe the terms and details of the Bonds pursuant to this Resolution, and to make certain other covenants and agreements with respect thereto;

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

## ARTICLE I
## DEFINITIONS

**Section 1.01 Definitions of Words and Terms.** In addition to words and terms elsewhere defined in this Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Act" shall mean the Constitution of the State (including particularly Article 12, Section 5 thereof), Charter Ordinance No. 156, K.S.A. 10-101 *et seq.*, K.S.A. 12-685 *et seq.*, and K.S.A. 13-1024c, all as amended and supplemented.

"Authentication Date" shall mean the date on which a Bond is registered and authenticated by the Fiscal Agent as shown on a Certificate of Authentication printed on the Bond.

"Authorized Investments" shall mean those investments authorized by K.S.A. 10-131, as amended and supplemented, and by other provisions of State law applicable to the City.

"Bond Counsel" shall mean Kutak Rock LLP, Kansas City, Missouri, or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

"Bond Insurer" shall mean any issuer of a Municipal Bond Insurance Policy, if applicable, described on **Exhibit A** to this Resolution.

"Bond Ordinance" shall mean the ordinance authorizing the issuance of the Bonds as further described on **Exhibit A** to this Resolution.

"Bond Registrar" shall mean the Treasurer of the State, Topeka, Kansas, and its successors and assigns.

"Bondowner(s)" shall mean the Owner(s) of the Bonds.

"Bonds" shall mean the General Obligation Bonds, Series 807, dated February 1, 2013, of the City of Wichita, Kansas, which are authorized by and will be issued pursuant to the authority of the Bond Ordinance and this Resolution; provided the original principal amount of the Bonds shall not exceed $9,800,000.

"Certificate as to Arbitrage and Related Tax Matters" shall mean the Certificate as to Arbitrage and Related Tax Matters, dated as of and delivered on the Date of Issuance, executed by the City, relating to certain matters within the scope of Section 148 of the Code, as the same may be amended or supplemented in accordance with its terms.

"City" shall mean the City of Wichita, Kansas.

"City Clerk" shall mean the duly appointed and acting City Clerk of the City, or in the City Clerk's absence (or in the event of a vacancy in such office) any Deputy City Clerk or Acting City Clerk of the City.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or such other general Federal tax code as shall be adopted by the United States Congress in substitution therefor, together with regulations promulgated thereunder by the United States Department of the Treasury.

"Costs of Issuance" shall mean any and all expenses of whatever nature incurred in connection with the issuance and sale of the Bonds, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent, fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the Yield on the Bonds or investment of the proceeds of the Bonds, and in connection with receiving municipal bond insurance and/or ratings on the Bonds. An amount for Costs of Issuance has been factored into the total final cost of each capital improvement comprising the Improvements.

"Date of Issuance" shall mean the date on which the Bonds are delivered to the Original Purchaser and the City receives from the Original Purchaser the full purchase price therefor.

"Dated Date" shall mean the dated date of the Bonds which is February 1, 2013.

"Debt Service" shall mean the scheduled amount of interest and maturing principal payable on the Bonds for a single Bond Year, as described in the Code.

"Debt Service Fund" shall mean the Debt Service Fund of the City created, held and administered solely for the purpose of receiving and disbursing funds for the payment of the City's general obligation indebtedness.

"Direct Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Director of Finance" shall mean the duly appointed and acting Director of Finance of the City, or in the Director of Finance's absence, the duly appointed Assistant Director of Finance or Acting Director of Finance of the City.

"DTC" shall mean The Depository Trust Company and its successors or assigns.

"Excess Earnings Account" shall mean the Excess Earnings Account created pursuant to **Article IV** hereof.

"Fiscal Agent" shall mean the Bond Registrar and/or the Paying Agent.

"Fiscal Year" shall mean the fiscal year of the City, currently being the 12-months ending each December 31.

"Governing Body" shall mean the duly elected and/or appointed and acting persons comprising the City Council of the City.

"Government Obligations" shall mean (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following phrase (ii)), or (ii) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

"Improvement Account" shall mean the Improvement Account for the Improvements created by **Article IV** hereof.

"Improvement Costs" shall mean the amount of capital expenditures for an Improvement, including interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding notes issued to pay for such improvement and Costs of Issuance of the Bonds, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such Improvement Costs and (b) any Improvement Costs which have been previously paid by the City or by any eligible source of funds, unless such amounts are entitled to be reimbursed under State and Federal law.

"Improvements" shall mean the capital improvements constructed in the City as described on **Schedule I** hereto or any Substitute Improvements.

"Indirect Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Interest Payment Dates" shall be June 1 and December 1 of each year commencing December 1, 2013, and ending June 1, 2023, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

"Letter of Representation" shall mean that certain Letter of Representation between the City and DTC with respect to the Bonds.

"Mayor" shall mean the duly elected and acting Mayor of the City or in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

"Municipal Bond Insurance Policy" shall mean, if applicable, the municipal bond insurance policy issued by Bond Insurer insuring the payment when due of the principal of and interest on the Bonds as described on **Exhibit A** to this Resolution.

"Original Proceeds" shall mean all of the proceeds, including accrued interest, derived from the sale of the Bonds to the Original Purchaser.

"Original Purchaser" shall mean the original purchaser of the Bonds described on **Exhibit A** to this Resolution.

"Outstanding," when used with reference to the Bonds, shall mean, as of a particular date, all Bonds theretofore authenticated and delivered under this Resolution, except (i) Bonds theretofore canceled by the Fiscal Agent or delivered to the Fiscal Agent for cancellation, (ii) Bonds for which payment or redemption moneys or Government Obligations (the principal of and the interest on which Government Obligations, if any, when due, provide sufficient moneys to pay, with such other moneys so deposited with the Fiscal Agent, the principal, redemption premium, if any, and interest on the Bonds being paid or redeemed), or both, in the necessary amount have theretofore been deposited with the Fiscal Agent, or other depository as provided in this Resolution, in trust for the Owners thereof (whether upon or prior to maturity or the Redemption Date of the Bonds), and (iii) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Resolution.

"Owner(s)" or "Registered Owner(s)" shall mean, when used with respect to any Bond, the person or entity in whose name the Bond is registered as shown on the Registration Books maintained by the Fiscal Agent.

"Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Paying Agent" shall mean the Treasurer of the State, Topeka, Kansas, and its successors and assigns.

"Principal and Interest Account" shall mean the Principal and Interest Account created within the City's Debt Service Fund pursuant to **Article IV** hereof, which is created and shall be held and administered solely for the purpose of receiving and disbursing funds for the payment of the Bonds.

"Principal Payment Date" shall mean June 1 of each year, commencing June 1, 2014, and ending June 1, 2023, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

"Purchase Price" means the original purchase price of the Bonds described on **Exhibit A** to this Resolution.

"Record Date" shall mean the 15th day of a month next preceding an Interest Payment Date.

"Registration Books" shall mean the books maintained on behalf of the City by the Fiscal Agent for the registration and transfer from time to time of the ownership of the Bonds.

"Resolution" or "Bond Resolution" shall mean this Resolution, adopted by the Governing Body of the City on January 15, 2013, prescribing the terms and details of the Bonds.

"State" shall mean the State of Kansas.

"Substitute Improvements" shall mean the substitute or additional improvements authorized pursuant to **Section 5.08** of this Resolution.

"Term Bonds" means the Term Bonds, if any, described on **Exhibit B** to this Resolution.

"Value" shall mean the value of the Authorized Investments (which Value shall be determined as of the end of each month), and shall be the amortized cost of an obligation or the market cost thereof, whichever is lower.

## ARTICLE II
## AUTHORIZATION, ISSUANCE AND DELIVERY OF BONDS

**Section 2.01 Authorization of and Security for Bonds**. Pursuant to the Bond Ordinance, the Governing Body has authorized, ordered and directed that in order to provide the necessary funds to pay the Improvement Costs, the Bonds shall be issued. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and the interest thereon from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City. Pursuant to the Bond Ordinance, the full faith, credit and resources of the City are irrevocably pledged to secure the prompt payment of the principal of and the interest on the Bonds as the same severally becomes due and payable.

**Section 2.02** **Description and Details of Bonds**. The Bonds shall be designated "City of Wichita, Kansas, General Obligation Bonds, Series 807." All of the Bonds shall be dated the Dated Date and shall become due on the dates set forth on **Exhibit A** to this Resolution (the "Principal Payment Dates"). The Bonds shall bear interest at the rates described on **Exhibit A** to this Resolution (computed on the basis of a 360-day year of 12 30-day months) and shall be payable on the Interest Payment Dates. The City Manager, the Finance Director or the City Manager's designee is hereby authorized to approve the final principal amount, maturity schedule (including any mandatory redemption) and Purchase Price for the Bonds as to be set forth on **Exhibit B** to this Resolution provided the final principal amount shall not exceed $9,800,000, the principal shall mature or be subject to mandatory redemption on the dates and at the interest rates shown on **Exhibit A** to this Resolution and such amounts are consistent with the other terms and provisions of this Resolution.

The Bonds shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount of Bonds maturing on the respective Principal Payment Dates, and shall be numbered in such manner as the Fiscal Agent shall determine. The Bonds shall bear interest from the Interest Payment Date immediately preceding their effective Date of Authentication, unless such effective Date of Authentication shall be prior to the first Interest Payment Date in which case the Bonds shall bear interest from the Dated Date.

The Bonds will be issued and distributed in book-entry-only form through DTC, by depositing with DTC (or the Fiscal Agent as agent for DTC) one certificate for each maturity in fully registered form, registered in the name of DTC's nominee, Cede & Co., in an amount equal to the total principal amount of the Bonds maturing on the respective Principal Payment Dates as authorized herein. The manner of payment of the principal of and the interest on the Bonds to DTC, and other matters relating to the distribution of the Bonds in book-entry-only form through DTC, shall be governed by the Letter of Representation, which the Director of Finance is hereby authorized to execute and deliver on behalf of the City.

Subject to the operational arrangements of DTC, in the event (i) DTC determines not to continue to act as securities depository for the Bonds, or (ii) the City determines that continuation of the book-entry-only system of evidence and transfer of ownership of the Bonds would adversely affect the interests of the beneficial owners of the Bonds, the City will discontinue the book-entry-only system with DTC. If the City fails to identify another qualified securities depository to replace DTC, the City will cause replacement Bonds in the form of fully registered certificates in denominations of $5,000, or integral multiples thereof not exceeding the principal amount thereof maturing on any Principal Payment Date, to be authenticated and delivered to the beneficial owners (to the extent such beneficial owners can be identified by the City). If issued in certificated form, the certificates representing the Bonds shall be numbered in such manner as the Bond Registrar shall determine.

**Section 2.03** **Designation of Paying Agent and Bond Registrar**. Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body has elected to have the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State, Topeka, Kansas, has been designated as the initial Paying Agent and Bond Registrar for the Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds upon fifteen (15) days'

written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

The Paying Agent shall make payment directly to DTC, as the Owner, for the principal of and the interest on the Bonds and DTC will remit such principal and interest to its Direct Participants for distribution to the beneficial owners in the manner set forth in the following **Section 2.04(A)** and as governed by the terms of the Letter of Representation.

In the event that the Bonds should be issued and delivered in certificated form at any time after the initial delivery of the Bonds, the Fiscal Agent shall maintain Registration Books for the ownership of the Bonds on behalf of the City and the Paying Agent will make payment for the Bonds directly to the Owners as shown by said Registration Books in the manner set forth in the following **Section 2.04(B)**.

**Section 2.04 Method and Place of Payment of Principal and Interest on Bonds**.

(A) Bonds Issued and Delivered in Book-Entry-Only Form. One certificate per maturity registered in the name of DTC's nominee, Cede & Co., for the total principal amount of the Bonds maturing on the respective Principal Payment Dates will be issued to DTC in New York, New York (or to the Fiscal Agent as agent for DTC) and such certificates will be immobilized in its custody. Purchases of the Bonds in denominations permitted by **Section 2.02** hereof must be made by or through Direct Participants of DTC, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond (the "beneficial owner") is in turn to be recorded on the Direct and Indirect Participants' records. Transfers of ownership will be effected on the records of DTC and its Participants pursuant to the rules and procedures established by DTC and its Participants. Payment of principal and interest on the Bonds will be made in same day funds directly to DTC. The transfer of principal and interest to Participants of DTC will be the responsibility of DTC; the transfer of principal and interest to beneficial owners by Participants of DTC will be the responsibility of such Participants. Neither the City nor the Paying Agent and Bond Registrar will be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its Participants or persons acting through such Participants.

(B) In the Event Certificated Bonds are Subsequently Issued. The principal of, premium, if any, and the interest on the Bonds shall be payable in lawful money of the United States of America by check or draft of the Paying Agent. The principal of and premium, if any, on the Bonds shall be paid to the Owner of each Bond upon presentation and surrender of the Bond to the Paying Agent for payment and cancellation on the maturity date or redemption date, as the case may be, of the Bond. The interest on the Bonds shall be mailed by the Paying Agent to the Owner of each Bond at the Owner's address as it appears on the Registration Books on the Record Dates, or at such other address as is provided in writing by such Owner to the Bond Registrar.

**Section 2.05 Method of Execution and Authentication of Bonds**. The Bonds shall be executed for and on behalf of the City by the manual or facsimile signatures of its Mayor and

City Clerk, and shall have impressed or imprinted thereon a true impression or a printed facsimile of the City's official seal. The Bonds shall be registered in the Office of the City Clerk, which registration shall be evidenced by the manual or facsimile signature of the City Clerk, on a Certificate of Registration printed on the Bonds, with the City's official seal or a facsimile thereof, impressed or imprinted opposite said signature. The Bonds shall be registered by the State Treasurer in the municipal bond register in the State Treasurer's office, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer and/or the Assistant State Treasurer on a Certificate of State Treasurer printed on the Bonds, attested by a true impression or a printed facsimile of the State Treasurer's official seal opposite such signature.

In case any officer of the City or of the State whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the actual delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery.

No Bond shall be valid or obligatory for any purpose unless and until the Certificate of Authentication thereon shall have been duly executed by the Fiscal Agent, and such duly executed Certificate of Authentication shall be conclusive evidence that it has been authenticated and delivered under this Resolution. The Certificate of Authentication shall be deemed to have been duly executed by the Fiscal Agent when manually signed by an authorized officer or signatory thereof, and it shall not be necessary that the same officer or signatory of the Fiscal Agent manually sign the Certificate of Authentication on all Bonds issued under the Bond Ordinance and this Resolution.

**Section 2.06 Payment of Costs of Bonds**. The City shall pay all fees and expenses incurred in connection with the printing, issuance, transfer, exchange, registration, redemption and payment of the Bonds, including the fees and expenses of the Fiscal Agent, except (i) reasonable fees and expenses in connection with the replacement of a Bond or Bonds mutilated, stolen, lost or destroyed, or (ii) any tax or other governmental charge imposed in relation to the transfer, exchange, registration, redemption or payment of the Bonds, or (iii) any additional costs or fees that might be incurred in the secondary market.

**Section 2.07 Form of Bonds**. The definitive typewritten or printed form of the certificates representing the Bonds issued under this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of the State, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act. The Governing Body hereby approves the form and text of the certificates to be prepared for the Bonds, and hereby authorizes, orders, and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Bonds and hereby further authorizes, orders, and directs Bond Counsel, in the event the Bonds in certificated form are issued at any time after the initial issuance and delivery of the Bonds, to prepare the form of and cause such certificated Bonds to be printed.

**Section 2.08 Registration, Transfer and Exchange of Bonds**. In the event the Bonds are subsequently issued in certificated form, the City shall cause books evidencing the registration and transfer of the ownership of the Bonds as provided in this Resolution to be kept

by the Bond Registrar (the "Registration Books"), and the Bonds may be transferred only upon the Registration Books and upon the surrender thereof to the Bond Registrar duly endorsed for transfer or accompanied by an assignment duly executed by the Owner thereof, or his agent, in such form as shall be satisfactory to the Bond Registrar. Upon the surrender for transfer of any certificated Bond at its office, the Bond Registrar shall authenticate and deliver in the name of the transferee or transferees a new certificated Bond or Bonds of authorized denominations in the aggregate principal amount of the surrendered certificated Bond. The Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to such transfer or exchange.

Upon the presentation of the necessary documents as hereinbefore described at the principal office of the Bond Registrar, the Bond Registrar shall transfer or exchange any Bond(s) for new Bond(s) in an authorized denomination of the same maturity and for the same aggregate principal amount as the Bond(s) presented for transfer or exchange. All Bonds presented for transfer or exchange shall be surrendered to the Bond Registrar for cancellation. Prior to delivery of any new Bond(s) to the transferee, the Bond Registrar shall register the same in the Registration Books and shall authenticate each such new Bond.

The City and the Bond Registrar shall not be required to issue, register, transfer or exchange any Bonds during a period beginning on the day following the Record Date preceding any Interest Payment Date and ending at the close of business on the Interest Payment Date.

Bonds delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Bonds surrendered, shall be secured by the Bond Ordinance and this Resolution and shall be entitled to all of the security and benefits hereof and pledges made herein to the same extent as the Bonds surrendered. The person(s) in whose name any Bond is registered as shown on the Registration Books shall be deemed and regarded as the absolute Owner thereof for all purposes. Payment of, or on account of the principal of and the interest on any Bond shall be made only to or upon the order of the Owner or his duly authorized agent; except that, so long as the Bonds remain issued in book-entry-only form, DTC shall be considered to be the Owner of the Bonds, and such payments shall be made only to DTC in accordance with **Section 2.04(A)** of this Resolution. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

**Section 2.09** **Mutilated, Lost, Stolen or Destroyed Bonds**. In the event any certificate representing a Bond is mutilated, lost, stolen or destroyed, the City shall execute, and the Fiscal Agent shall authenticate and deliver, a new certificate of like date, maturity, denomination and interest rate as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Fiscal Agent, and, in the case of any lost, stolen or destroyed Bond there shall first be furnished to the Fiscal Agent and the City, evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Fiscal Agent. In the event any such Bond shall have matured or been called for redemption, instead of issuing a duplicate bond the City may pay the same without the surrender thereof. The City and the Fiscal Agent may charge to the Owner of such Bond their reasonable fees and expenses in connection with the replacement of such Bond or Bonds.

**Section 2.10 Surrender and Cancellation of Bonds.** Whenever any Outstanding Bond shall be delivered to the Fiscal Agent after full payment thereof or for replacement pursuant to this Resolution, such Bond shall be canceled and destroyed by the Fiscal Agent and counterparts of a Certificate of Destruction describing Bonds so destroyed and evidencing such destruction shall be furnished by the Fiscal Agent to the City, or such Bond shall be canceled and the canceled Bond shall be returned to the City.

**Section 2.11 Execution and Delivery of Bonds**. The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Bonds without unnecessary delay in the form and manner hereinbefore specified, including a reasonable quantity of replacement bond certificates for use in exchanges, transfers and replacements in accordance with the provisions of this Resolution and when executed the Bonds shall be registered in the Office of the City Clerk and in the Office of the State Treasurer, as required by law and as hereinbefore provided, and shall thereupon be deposited with the Fiscal Agent for authentication. When the Bonds shall have been so executed, registered and authenticated, they shall be delivered at one time to or upon the order of the Original Purchaser, but only upon receipt by the City of the Purchase Price therefor and the proceeds of the Bonds shall immediately be applied by the City as hereinafter in this Resolution provided.

**Section 2.12 Official Statement**. The Governing Body hereby approves the form and content of the "deemed final" Preliminary Official Statement prepared for use in the initial offering and sale of the Bonds, and the form and content of any addenda, supplement, or amendment thereto necessary to conform the offering document to the terms of this Resolution, to include information newly available due to assignment of ratings by one or more rating agencies, or incorporate such other minor corrections or additions as may be approved by the City's Debt Coordinator, including specifically the insertion of interest rates and yields for the Bonds. The lawful use of the final Official Statement in the reoffering of the Bonds by the Original Purchaser is hereby approved and authorized.

## ARTICLE III
## REDEMPTION OF BONDS

**Section 3.01 Optional Redemption**. The Bonds maturing June 1, 2014, to June 1, 2021, inclusive, shall mature and become due on their respective maturity dates without the option of prior redemption and payment. At the option of the City, the Bonds maturing June 1, 2022, and thereafter, may be called for redemption and payment prior to the respective stated maturities thereof on and after June 1, 2021. Bonds called for redemption and payment may be called in whole or in part at any time from and after the first date authorized for redemption as aforesaid (the date being so set for redemption and payment being referred to as the "Redemption Date"). Bonds called for redemption and payment as aforesaid shall be redeemed at a price (expressed as a percentage of the principal amount) of 100% of the principal amount thereof, plus accrued interest to the Redemption Date.

**Section 3.02 Sinking Fund Redemption.** Any Term Bonds shall also be subject to mandatory redemption and payment as described on **Exhibit B** to this Resolution.

**Section 3.03** **Selection of Bonds to be Redeemed**. The Bonds shall be redeemed only in face amounts of $5,000 or integral multiples thereof and if the City elects to call for redemption less than all of the Bonds at the time Outstanding, the Bonds shall be redeemed in such equitable manner as the City shall determine, with Bonds of less than a full maturity to be selected by lot in units of $5,000.

In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than $5,000 are then Outstanding, then, for all purposes in connection with such redemption, each $5,000 of face value of a Bond shall be treated as though it were a separate Bond in the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Bond has been selected for redemption, then upon receipt of notice of such redemption, the Owner shall forthwith present and surrender such Bond to the Fiscal Agent (i) for payment of the redemption price and accrued interest to the Redemption Date of the $5,000 unit or units of face value of the Bond called for redemption, and (ii) for exchange, without charge to the Owner, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any Bond of a denomination greater than $5,000 of which one or more, but not all, of the $5,000 units of face value thereof has been selected for redemption shall fail to present such Bond as aforesaid, the $5,000 units of the face value of such Bond which have been selected for redemption shall, nevertheless, become due and payable on the Redemption Date, and no further interest shall accrue on such redeemed but unpresented $5,000 units of face value from and after the Redemption Date.

**Section 3.04** **Notice of Redemption**. Unless waived by the Fiscal Agent, the City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than forty-five (45) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Bonds so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice.

All notices of redemption given under the provisions of this Article shall state (i) the Redemption Date, (ii) the redemption price, (iii) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed, (iv) that on the Redemption Date the principal amount, and premium, if any, will become due and payable upon each such Bond or portion thereof which has been selected for redemption, and that the interest thereon shall cease to accrue from and after the Redemption Date, and (v) that the Bonds so selected for redemption are to be surrendered to or at the principal office of the Fiscal Agent for payment.

**Section 3.05** **Deposit of Moneys for and Payment of Redemption Price**. On or prior to the Redemption Date, the City shall cause to be deposited with the Fiscal Agent sufficient funds to pay the redemption price, together with all unpaid and accrued interest thereon to the Redemption Date, of all Bonds or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Bonds selected for redemption, the Fiscal Agent shall pay the redemption price therefor to the Owners. If one or more, but not all, of the $5,000

units of face value represented by any Bond is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Bond or Bonds of the same maturity and in the amount of the unredeemed portion of such Bond as provided by **Section 3.02** above. All Bonds selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

**Section 3.06** **Effect of Call for Redemption**. Whenever any Bond, or one or more of the $5,000 units of face value represented by any Bond, has been selected for redemption and payment as provided in this Article, all interest on such Bond, or such one or more of the $5,000 units of face value represented by any such Bond, shall cease from and after the Redemption Date, provided funds are then available for its payment at the price hereinbefore specified.

## ARTICLE IV
## FUNDS AND ACCOUNTS

**Section 4.01** **Creation of Funds and Accounts**. Simultaneously with the issuance and delivery of the Bonds, there shall be created within the Treasury of the City, the following designated funds and accounts:

(A) Improvement Account for the City of Wichita, Kansas, General Obligation Bonds, Series 807;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Bonds, Series 807, to be created within the City's Debt Service Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Bonds, Series 807.

**Section 4.02** **Administration of Funds and Accounts**. The funds and accounts established and created by this Article shall be administered in accordance with the provisions of this Resolution for so long as any of the Bonds remain Outstanding.

## ARTICLE V
## APPLICATION OF BOND PROCEEDS; DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

**Section 5.01** **Application of Bond Proceeds**. Upon the issuance and delivery of the Bonds, the proceeds thereof shall be deposited into the Treasury of the City and credited to the various funds and accounts created by **Article IV** of this Resolution, as follows:

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Bond and the amount of purchase price premium, if any, shown on **Exhibit B** to be deposited in the Principal and Interest Accounts; and

(B) The balance of the proceeds to the Improvement Account.

**Section 5.02** **Disposition of Principal and Interest Account**. Moneys deposited in the Principal and Interest Account from the proceeds of the Bonds as provided by clause (A) of the preceding Section, shall be used exclusively for the payment of interest on the Bonds on the first Interest Payment Date. Moneys deposited in the Principal and Interest Account from other sources, as provided by the succeeding Sections or elsewhere in this Resolution, shall be used exclusively for the payment of the principal of, premium, if any, and the interest on the Bonds, and for payment of the usual and customary fees and expenses of the Fiscal Agent.

**Section 5.03** **Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent**. The Director of Finance is hereby authorized and directed to cause to be withdrawn from the Principal and Interest Account and forwarded to the Fiscal Agent, a sum sufficient to pay the principal of, premium, if any, and the interest on the Bonds as and when the same become due and payable, together with such sum as may be required to pay the fees and charges of the Fiscal Agent, if any, for acting in such capacity, and the sum for charges of the Fiscal Agent shall be forwarded to the Fiscal Agent over and above the amount required to pay the Bonds as aforesaid. If, through the lapse of time or otherwise, the Owner of any Bond shall no longer be entitled to enforce payment of such Bond, it shall be the duty of the Fiscal Agent to forthwith return such unexpended funds to the City. All moneys transferred to the Fiscal Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution, and shall be deemed to be deposited with the Fiscal Agent in trust for and on behalf of the Owners of the Bonds.

**Section 5.04** **Surplus in Principal and Interest Account**. Any moneys remaining in the Principal and Interest Account, from whatever source, from and after the retirement of all general obligation bond issues of the City shall be transferred and paid into the General Fund of the City.

**Section 5.05** **Disposition of Improvement Account**. Moneys in the Improvement Account shall be used solely for the purpose of paying the Improvement Costs. The City covenants that in the making of the Improvements, it will perform all duties and obligations relative to such Improvements as are now or may be hereafter imposed by the Act and the provisions of this Resolution.

**Section 5.06** **Withdrawals from Improvement Account**. Withdrawals from the Improvement Account shall be made only for a purpose within the scope of the Improvements and as payment for Improvement Costs and the amount of such payments shall represent only the contract price or reasonable value of the property, labor, materials, service or obligations being paid for, or if such payment is not being made pursuant to an express contract, such payments shall not be in excess of the reasonable value thereof.

**Section 5.07** **Surplus in Improvement Account**. All moneys remaining in the Improvement Account after the completion of the Improvements and the payment of all Improvement Costs shall be immediately transferred to the Principal and Interest Account.

**Section 5.08** **Substitution of Improvements**. The City may elect to substitute or add other improvements pursuant to this Section provided the following conditions are met: (a) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the

Substitute Improvement has been authorized by the Governing Body of the City in accordance with the laws of the State, (b) a resolution or ordinance authorizing the use of the proceeds of the Bonds to pay the Improvement Costs of the Substitute Improvement has been adopted by the Governing Body of the City, (c) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Bonds to include the Substitute Improvement and (d) the City has received an opinion of Bond Counsel to the effect that the Substitute Improvement will not adversely affect the tax-exempt status of the Bonds under State or federal law and the Substitute Improvement has been authorized pursuant to this Section and the laws of the State.

## ARTICLE VI
## DEPOSITS AND INVESTMENT OF MONEYS

**Section 6.01 Deposits**. Cash moneys in each of the funds and accounts created and established by this Resolution shall be deposited and secured in accordance with State law.

**Section 6.02 Investments**. Moneys held in the funds and accounts created and established by this Resolution may be invested by the City in Authorized Investments, or in other investments allowed by the laws of the State, in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in said funds and accounts; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys so invested may be needed in the fund or account for the purpose for which it was created and established; and provided further, that such moneys shall not be invested in such manner as will violate the provisions of the Certificate as to Arbitrage and Related Tax Matters. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall (except the amounts which are required to be deposited into the Excess Earnings Account in accordance with the Certificate as to Arbitrage and Related Tax Matters) accrue to and become a part of such originating fund or account. The Value of the investments held in the funds and accounts under the provisions of this Resolution, shall be determined as of the end of each calendar month. All investments made pursuant hereto shall be made in accordance with the Certificate as to Arbitrage and Related Tax Matters.

**Section 6.03 Deposits into and Application of Moneys in Excess Earnings Account**.

(A) The City shall deposit into the Excess Earnings Account such amounts as are required to be deposited therein pursuant to the Certificate as to Arbitrage and Related Tax Matters. All earnings on investments of moneys held in the Excess Earnings Account shall be retained in the Excess Earnings Account. Subject to the payment provisions provided in subsection (B) below, all amounts on deposit in the Excess Earnings Account shall be held by the City in trust, to the extent required to satisfy the Rebate Amount (as defined in the Certificate as to Arbitrage and Related Tax Matters), for payment to the United States of America, and neither the City nor the Owner of any Bond shall have any right in or claim to such money. All amounts held in the Excess Earnings Account shall be governed by this Section and by the Certificate as to Arbitrage and Related Tax Matters.

(B) The City shall remit part or all of the balances in the Excess Earnings Account to the United States of America in accordance with the Certificate as to Arbitrage and Related Tax Matters (such amounts herein referred to as the "Rebate Amounts"). Any funds remaining in the Excess Earnings Account after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision having been made therefor, shall be withdrawn and released from the Excess Earnings Account and shall be deposited into the City's General Fund.

(C) Notwithstanding any other provision of this Resolution, including in particular the provisions of this Section, the City's obligation to remit the Rebate Amount to the United States of America and to comply with all other requirements of this Section and the Certificate as to Arbitrage and Related Tax Matters shall survive the defeasance or payment in full of the Bonds.

(D) The City shall maintain records designed to show compliance with the provisions of this Section and the Certificate as to Arbitrage and Related Tax Matters for at least six (6) years after the date on which no Bonds shall remain Outstanding.

(E) The terms, conditions and provisions under which the City will perform its duties regarding the Excess Earnings Account and any Rebate Amount are set forth in a Certificate as to Arbitrage and Related Tax Matters dated as of the Date of Issuance. The form and text of the Certificate as to Arbitrage and Related Tax Matters is hereby approved and accepted by the Governing Body, and all of the covenants, duties and responsibilities therein contained which are to be performed by and on behalf of the City are hereby declared to be the covenants, duties and responsibilities of the City as though fully set forth at this place. The Mayor and the City Clerk or Director of Finance, as appropriate, or such other officer as may be directed by the Mayor, shall be and are hereby authorized to execute and deliver the Certificate as to Arbitrage and Related Tax Matters for and on behalf of the City. The entire text of the Certificate as to Arbitrage and Related Tax Matters is by reference hereby incorporated in and made a part of this Resolution as though fully set forth at this place.

## ARTICLE VII
## PROVISION FOR PAYMENT OF BONDS

**Section 7.01** **Levy and Collection of Annual Taxes**. Pursuant to the Bond Ordinance, the Governing Body covenants that it shall annually make provision for the payment of the principal of and the interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City.

**Section 7.02** **Disposition of Taxes; Untimely Receipt**. The proceeds derived from the aforesaid annual taxes shall be deposited into the Principal and Interest Account when received; provided, if at any time the amount in the Principal and Interest Account shall be insufficient to make the payments of the principal of and the interest on the Bonds when required because of an untimely collection and/or receipt of said taxes, the Director of Finance is authorized to cause to be transferred to the Principal and Interest Account from the City's general funds, the amount

required for such payments and to then reimburse the City's general funds for such expended amounts immediately upon the collection and receipt of said taxes.

## ARTICLE VIII
## DEFAULT AND REMEDIES

**Section 8.01 Resolution Constitutes Contract; Remedies of Owners**. The provisions of the Bond Ordinance and this Resolution, and all of the covenants and agreements therein and herein contained, shall constitute a contract between the City and the Owners, and the Owner or Owners of any of the Bonds at the time Outstanding shall have the right, for the equal benefit and protection of all Owners similarly situated:

(A) By mandamus or other suit, action or proceedings at law or in equity to enforce his or their rights against the City and its officers, agents and employees, and to require and compel the City and its officers, agents and employees to perform all duties and obligations required by the provisions of the Bond Ordinance and this Resolution or by the constitution and laws of the State;

(B) By suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(C) By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners.

**Section 8.02 Rights of Owners; Limitations**. The covenants and agreements of the City contained herein, in the Bond Ordinance and in the Bonds shall be for the equal benefit, protection and security of the Owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of any one Bond over any other Bond in the application of the moneys herein pledged to the payment of the principal of, premium, if any, and the interest on the Bonds, or otherwise, except as to the rate of interest, Principal Payment Date and right of prior redemption as provided in this Resolution.

No one or more of the Owners secured hereby shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of the Outstanding Bonds. Nothing in this Resolution, in the Bond Ordinance or in the Bonds shall affect or impair the obligations of the City to pay on the respective dates of maturity thereof, the principal of and the interest on the Bonds to the respective Owners thereof or affect or impair the right of action of any Owner to enforce payment of the Bonds held by such Owner, or to reduce to judgment his claim against the City for payment of the principal of and interest on the Bonds without reference to or consent of any other Owner.

**Section 8.03 Remedies Cumulative; Delay or Omission Not Waiver**. No remedy herein conferred upon the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and may be

exercised without exhausting and without regard to any other remedy however given. No waiver by the Owner of any Bond of any default or breach of duty or contract by the City shall extend to or affect any subsequent default or breach of duty or contract by the City or shall impair any rights or remedies therefor available to the Owners. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or as an acquiescence therein. Every substantive right, power and remedy given by this Resolution to the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient. In case any suit, action or other proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Owner, then in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as though no such suit, action or other proceedings had been brought or taken.

## ARTICLE IX
## AMENDMENTS

**Section 9.01** **Amendments**. The City may, without the consent of or notice to the Owners, amend or supplement the provisions of this Resolution (i) to cure any ambiguity herein or to correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct errors, provided such action shall not materially adversely affect the interest of the Owners, or (ii) to grant or confer upon the Owners any additional rights, remedies, powers or security that may lawfully be granted or conferred upon the Owners, or (iii) to more precisely identify the Improvements, or (iv) to provide for the issuance of coupon bonds and the exchange of the fully registered Bonds for coupon bonds upon such terms and conditions as the City shall determine; provided, however, that any amendment as provided in this clause (iv) shall not become effective unless and until the City shall have received an opinion of Bond Counsel, in form and substance satisfactory to the City, to the effect that the issuance of such coupon bonds or the exchange of the fully registered Bonds for such coupon bonds, will not cause the interest on the Bonds to be includable in the gross income of recipients thereof under the provisions of the applicable Federal law, or (v) to conform this Resolution to the Code or any future applicable Federal law concerning tax-exempt obligations.

The rights and duties of the City and the Owners and the terms and provisions of this Resolution may be modified or altered in any respect by a resolution of the City with the consent of the Owners of not less than seventy-five percent (75%) in principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by the Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk; provided that, no such modification or alteration shall, except with the written consent of one hundred percent (100%) of the Owners of the Bonds then Outstanding:

(A) Extend the maturity of any payment of principal or interest due upon any Bond;

(B) Effect a reduction in the amount which the City is required to pay by way of the principal of or the interest on any Bond;

(C) Permit a preference or priority of any Bond or Bonds over any other Bond or Bonds; or

(D) Reduce the percentage of the principal amount of the then Outstanding Bonds for which the written consent of the Owners is required for any modification or alteration of the provisions of this Resolution.

**Section 9.02 Written Evidence of Amendments**. Any and all modifications or amendments to this Resolution or of the Bonds shall be made in the manner hereinabove provided, and shall not become effective until there has been filed with the City Clerk a copy of the resolution of the City authorizing said modifications or amendments, as hereinabove provided for, duly certified, as well as proof of consent to such modifications or amendments by the Owners of not less than the percentage of the principal amount of Bonds then Outstanding as hereinabove required. It shall not be necessary to note on any Outstanding Bond any reference to such amendment or modification.

A certified copy of every such amendatory or supplemental ordinance or resolution, if any, and a certified copy of the Bond Ordinance and this Resolution, shall always be kept on file in the Office of the City Clerk and shall be made available for inspection by the Owner of any Bond or the prospective purchaser or owner of any Bond, and upon payment of the reasonable cost of preparing same, a certified copy of any such amendatory or supplemental ordinance or resolution of the Bond Ordinance or this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

## ARTICLE X
## DEFEASANCE

**Section 10.01 Defeasance**. When all or any part of the principal of, premium, if any, and the interest on the Bonds shall have been paid and discharged, then the requirements contained herein and all other rights granted by the Bond Ordinance and this Resolution shall cease and determine with respect to that principal, premium and interest so paid. The Bonds shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Fiscal Agent or with a bank located in the State and having full trust power; at or prior to the maturity or redemption date of the Bonds, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations the payment of the principal of and the interest on which are guaranteed by, the United States of America, or other investments allowed by the laws of the State, which together with the interest to be earned on such Government Obligations or other investments, will be sufficient for the payment of the principal of the Bonds, the premium, if any, and the interest thereon to the date of maturity or the Redemption Date, as the case may be; or if default in such payment shall have occurred on such date, then to the date of the tender of such payments, provided always that if any Bonds shall be redeemed prior to the maturity thereof, the City shall have elected to redeem such Bonds and notice of such redemption shall have been given as provided by the terms of this Resolution. Any moneys and Government Obligations which at any time shall be deposited with the Fiscal Agent or a Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or interest thereon, shall be and are hereby assigned, transferred and set over to the Fiscal Agent or such Kansas bank in trust

for the respective Owners of the Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Government Obligations so deposited with the Fiscal Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

## ARTICLE XI
## MISCELLANEOUS PROVISIONS

**Section 11.01 Tax Covenants**. The Governing Body hereby covenants and agrees that so long as any of the Bonds remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Bonds under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same may be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Bonds or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Bonds for so long as any of the Bonds remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Bonds and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

**Section 11.02 Severability**. In case any one or more of the provisions of the Bond Ordinance, this Resolution or of the Bonds issued thereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of the Bond Ordinance, this Resolution or the Bonds appertaining thereto, but the Bond Ordinance, this Resolution and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Bonds or in the Bond Ordinance or this Resolution shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

**Section 11.03** **Further Authority**. The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Resolution. The Governing Body hereby further authorizes, orders, and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Resolution and to give effect to the transactions contemplated hereby.

The execution and attestation of this Resolution and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Resolution, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Resolution and to carry out, give effect to and comply with and perform the duties of the City with respect to the Bonds and the Official Statement.

**Section 11.04** **Governing Law**. This Resolution, the Bond Ordinance and the Bonds shall be governed exclusively by and shall be construed in accordance with the applicable laws of the State.

**Section 11.05** **Effective Date**. This Resolution shall be in force and take effect from and after its adoption and approval by the Governing Body of the City.

*(The Remainder of this Page was Intentionally Left Blank)*

**ADOPTED AND APPROVED** by the Governing Body of the City of Wichita, Kansas, on January 15, 2013.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

4838-7131-0098.3

# SCHEDULE I

# THE IMPROVEMENTS

## EXHIBIT A

## ADDITIONAL TERMS OF THE SERIES 807 BONDS

**Definitions.** The following terms defined in the Resolution shall have the meanings ascribed below:

"Bond Ordinance" shall mean Ordinance No. _____ of the City, passed by the Governing Body on January 15, 2013, and authorizing and providing for the issuance of the Bonds.

"Original Purchaser" shall mean _____, _____, _____, the original purchaser of the Bonds.

**Maturity Schedule.** All of the Bonds shall be become due or be subject to mandatory redemption on the dates and shall bear interest as the rates per annum as follows:

| **Maturity or Mandatory Redemption Date** | **Interest Rate** |
|---|---|
| June 1, 2014 | % |
| June 1, 2015 | |
| June 1, 2016 | |
| June 1, 2017 | |
| June 1, 2018 | |
| June 1, 2019 | |
| June 1, 2020 | |
| June 1, 2021 | |
| June 1, 2022 | |
| June 1, 2023 | |

**[TERM BONDS**

| **Maturity or Mandatory Redemption Date** | **Interest Rate** |
|---|---|
| June 1, 20__ | % |
| June 1, 20__ | |
| June 1, 20__] | |

## EXHIBIT B

## FINAL SIZING TERMS OF THE SERIES 807 BONDS

**Definitions.** The following terms defined in the Resolution shall have the meanings ascribed below:

"Purchase Price" for the Bonds shall be the par value of the Bonds, *i.e.*, the principal amount of $_____, plus a premium of $_____, plus accrued interest to the date of delivery.

["_____ Term Bonds" shall mean the Bonds maturing in the year 20__.]

**Maturity Schedule.** All of the Bonds shall be become due in the amounts and on the dates set forth below:

**SERIAL BONDS**

| **Maturity Date** | **Maturing Principal** |
|---|---|
| June 1, 2014 | $ |
| June 1, 2015 | |
| June 1, 2016 | |
| June 1, 2017 | |
| June 1, 2018 | |
| June 1, 2019 | |
| June 1, 2020 | |
| June 1, 2021 | |
| June 1, 2022 | |
| June 1, 2023 | |

**[TERM BONDS**

| **Principal Payment Date** | **Amount of Principal Payment** |
|---|---|
| June 1, 20__ | $ |
| June 1, 20__ | |
| June 1, 20__ | |

**Mandatory Redemption.** Each of the 20__ Term Bonds shall also be subject to mandatory redemption and payment on June 1, 20__, or on any Principal Payment Date thereafter, pursuant to the redemption schedule set out below, at the principal amount, plus accrued interest to date fixed for redemption and payment, without premium. The City agrees to redeem the following principal amounts of the 20__ Term Bonds in each of the following years:

| Year | Principal Amount |
|---|---|
| 20__ | $ |
| 20__* | |

*Final maturity]

Amount of purchase price premium to be deposited in the Principal and Interest Account is $_____.

Approved by:

_____
Title: _____
City of Wichita, Kansas

**RESOLUTION NO. 13-013**

**OF THE**

**CITY OF WICHITA, KANSAS**

**AS ADOPTED JANUARY 15, 2013**

**AUTHORIZING THE ISSUANCE OF**

**NOT TO EXCEED $3,645,000**

**GENERAL OBLIGATION BONDS**
**SERIES 812**

**DATED FEBRUARY 1, 2013**

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**RESOLUTION NO. 13-013**

**A RESOLUTION PROVIDING FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS, SERIES 812, OF THE CITY OF WICHITA, KANSAS, IN THE TOTAL PRINCIPAL AMOUNT NOT TO EXCEED $3,645,000, FOR THE PURPOSE OF PROVIDING THE NECESSARY FUNDS TO PAY COSTS IN CONNECTION WITH THE MAKING OF CAPITAL IMPROVEMENTS IN THE CITY; PRESCRIBING THE TERMS AND DETAILS OF THE BONDS; AND MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS WITH RESPECT TO THE BONDS.**

**WHEREAS**, the Governing Body of the City of Wichita, Kansas (the "City"), pursuant to the Bond Ordinance (as herein defined), has authorized the issuance of the Bonds in the aggregate principal amount not to exceed $3,645,000 and provided for the levy and collection of an annual tax for the purpose of providing for the payment of the principal of and interest on the Bonds; and

**WHEREAS**, in accordance with the provisions of the Bond Ordinance, the Governing Body hereby finds and determines that it is necessary to prescribe the terms and details of the Bonds pursuant to this Resolution, and to make certain other covenants and agreements with respect thereto;

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

## ARTICLE I
## DEFINITIONS

**Section 1.01 Definitions of Words and Terms.** In addition to words and terms elsewhere defined in this Resolution, the following words and terms as used herein, whether or not the words have initial capitals, shall have the following meanings unless the context or use indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Act" shall mean K.S.A. 10-101 *et seq.*, and K.S.A. 12-6a01 *et seq.*, all as amended and supplemented, under the authority of which statutes the Improvements are authorized and the Bonds are issued.

"Authentication Date" shall mean the date on which a Bond is registered and authenticated by the Fiscal Agent as shown on a Certificate of Authentication printed on the Bond.

"Authorized Investments" shall mean those investments authorized by K.S.A. 10-131, as amended and supplemented, and by other provisions of State law applicable to the City.

"Bond Counsel" shall mean Kutak Rock LLP, Kansas City, Missouri, or any other attorney or firm of attorneys whose expertise in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized and acceptable to the City.

"Bond Insurer" shall mean any issuer of a Municipal Bond Insurance Policy described on **Exhibit A** to this Resolution.

"Bond Ordinance" shall mean the ordinance authorizing the issuance of the Bonds as further described on **Exhibit A** to this Resolution.

"Bond Registrar" shall mean the Treasurer of the State, Topeka, Kansas, and its successors and assigns.

"Bondowner(s)" shall mean the Owner(s) of the Bonds.

"Bonds" shall mean the General Obligation Bonds, Series 812, dated February 1, 2013, of the City of Wichita, Kansas, which are authorized by and will be issued pursuant to the authority of the Bond Ordinance and this Resolution; provided the original principal amount of the Bonds shall not exceed $3,645,000.

"Certificate as to Arbitrage and Related Tax Matters" shall mean the Certificate as to Arbitrage and Related Tax Matters, dated as of and delivered on the Date of Issuance, executed by the City, relating to certain matters within the scope of Section 148 of the Code, as the same may be amended or supplemented in accordance with its terms.

"City" shall mean the City of Wichita, Kansas.

"City Clerk" shall mean the duly appointed and acting City Clerk of the City, or in the City Clerk's absence (or in the event of a vacancy in such office) any Deputy City Clerk or Acting City Clerk of the City.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or such other general Federal tax code as shall be adopted by the United States Congress in substitution therefor, together with regulations promulgated thereunder by the United States Department of the Treasury.

"Costs of Issuance" shall mean any and all expenses of whatever nature incurred in connection with the issuance and sale of the Bonds, including, but not limited to, publication, printing, signing and mailing expenses, registration fees, fees and expenses of the Fiscal Agent, fees and expenses of Bond Counsel and other legal counsel, expenses incurred in connection with determining the Yield on the Bonds or investment of the proceeds of the Bonds, and in connection with receiving municipal bond insurance and/or ratings on the Bonds. An amount for Costs of Issuance has been factored into the total final cost of each capital improvement comprising the Improvements.

"Date of Issuance" shall mean the date on which the Bonds are delivered to the Original Purchaser and the City receives from the Original Purchaser the full purchase price therefor.

"Dated Date" shall mean the dated date of the Bonds which is February 1, 2013.

"Debt Service" shall mean the scheduled amount of interest and maturing principal payable on the Bonds for a single Bond Year, as described in the Code.

"Debt Service Fund" shall mean the Debt Service Fund of the City created, held and administered solely for the purpose of receiving and disbursing funds for the payment of the City's general obligation indebtedness.

"Direct Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Director of Finance" shall mean the duly appointed and acting Director of Finance of the City, or in the Director of Finance's absence, the duly appointed Assistant Director of Finance or Acting Director of Finance of the City.

"DTC" shall mean The Depository Trust Company and its successors or assigns.

"Excess Earnings Account" shall mean the Excess Earnings Account created pursuant to **Article IV** hereof.

"Fiscal Agent" shall mean the Bond Registrar and/or the Paying Agent.

"Fiscal Year" shall mean the fiscal year of the City, currently being the 12-months ending each December 31.

"Governing Body" shall mean the duly elected and/or appointed and acting persons comprising the City Council of the City.

"Government Obligations" shall mean (i) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in the following phrase (ii)), or (ii) direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America).

"Improvement Account" shall mean the Improvement Account for the Improvements created by **Article IV** hereof.

"Improvement Costs" shall mean the amount of capital expenditures for an Improvement, including interest during construction, which has been authorized to be paid by the City by an ordinance or resolution of the City, including expenditures made to redeem outstanding notes issued to pay for such improvement and Costs of Issuance of the Bonds, less (a) the amount of any notes or bonds of the City which are currently outstanding and available to pay such Improvement Costs and (b) any Improvement Costs which have been previously paid by the City or by any eligible source of funds, unless such amounts are entitled to be reimbursed under State and Federal law.

"Improvements" shall mean the capital improvements constructed in the City as described on **Schedule I** hereto or any Substitute Improvements.

"Indirect Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Interest Payment Dates" shall be June 1 and December 1 of each year commencing December 1, 2013, and ending June 1, 2033, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

"Letter of Representation" shall mean that certain Letter of Representation between the City and DTC with respect to the Bonds.

"Mayor" shall mean the duly elected and acting Mayor of the City or in the Mayor's absence, the duly appointed and/or elected Vice Mayor or Acting Mayor of the City.

"Municipal Bond Insurance Policy" shall mean, if applicable, the municipal bond insurance policy issued by Bond Insurer insuring the payment when due of the principal of and interest on the Bonds as described on **Exhibit A** to this Resolution.

"Original Proceeds" shall mean all of the proceeds, including accrued interest, derived from the sale of the Bonds to the Original Purchaser.

"Original Purchaser" shall mean the original purchaser of the Bonds described on **Exhibit A** to this Resolution.

"Outstanding," when used with reference to the Bonds, shall mean, as of a particular date, all Bonds theretofore authenticated and delivered under this Resolution, except (i) Bonds theretofore canceled by the Fiscal Agent or delivered to the Fiscal Agent for cancellation, (ii) Bonds for which payment or redemption moneys or Government Obligations (the principal of and the interest on which Government Obligations, if any, when due, provide sufficient moneys to pay, with such other moneys so deposited with the Fiscal Agent, the principal, redemption premium, if any, and interest on the Bonds being paid or redeemed), or both, in the necessary amount have theretofore been deposited with the Fiscal Agent, or other depository as provided in this Resolution, in trust for the Owners thereof (whether upon or prior to maturity or the Redemption Date of the Bonds), and (iii) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Resolution.

"Owner(s)" or "Registered Owner(s)" shall mean, when used with respect to any Bond, the person or entity in whose name the Bond is registered as shown on the Registration Books maintained by the Fiscal Agent.

"Participants" shall have the meaning set forth in and defined by the Letter of Representation.

"Paying Agent" shall mean the Treasurer of the State, Topeka, Kansas, and its successors and assigns.

"Principal and Interest Account" shall mean the Principal and Interest Account created within the City's Debt Service Fund pursuant to **Article IV** hereof, which is created and shall be held and administered solely for the purpose of receiving and disbursing funds for the payment of the Bonds.

"Principal Payment Date" shall mean June 1 of each year, commencing June 1, 2014, and ending June 1, 2033, or until such other date as all of the Bonds shall have been paid or provision for such payment has been made.

"Purchase Price" shall mean the original purchase price of the Bonds described on **Exhibit B** to this Resolution.

"Record Date" shall mean the 15th day of a month next preceding an Interest Payment Date.

"Registration Books" shall mean the books maintained on behalf of the City by the Fiscal Agent for the registration and transfer from time to time of the ownership of the Bonds.

"Resolution" or "Bond Resolution" shall mean this Resolution adopted by the Governing Body of the City on January 15, 2013, prescribing the terms and details of the Bonds.

"State" shall mean the State of Kansas.

"Substitute Improvements" shall mean the substitute or additional improvements authorized pursuant to **Section 5.08** of this Resolution.

"Term Bonds" shall mean the Term Bonds, if any, described on **Exhibit B** to this Resolution.

"Value" shall mean the value of the Authorized Investments (which Value shall be determined as of the end of each month) and shall be the amortized cost of an obligation or the market cost thereof, whichever is lower.

## ARTICLE II
## AUTHORIZATION, ISSUANCE AND DELIVERY OF BONDS

**Section 2.01 Authorization of and Security for Bonds**. Pursuant to the Bond Ordinance, the Governing Body has authorized, ordered and directed that in order to provide the necessary funds to pay the Improvement Costs, the Bonds shall be issued. In all matters relating to the issuance, registration and delivery of the Bonds, the City shall comply with the provisions, requirements and restrictions of K.S.A. 10-101 *et seq.*, as amended and supplemented.

The Bonds shall be and constitute valid and legally binding general obligations of the City, and shall be payable as to both the principal of and the interest thereon from the collection of special assessment taxes which have been levied against real properties in the City which benefited from the Improvements, and if not so paid, then said principal and interest shall be paid from ad valorem taxes which may be levied without limitation as to rate or amount upon all of the taxable tangible property within the territorial limits of the City. Pursuant to the Bond

Ordinance, the full faith, credit and resources of the City are irrevocably pledged to secure the prompt payment of the principal of and the interest on the Bonds as the same severally becomes due and payable.

**Section 2.02** **Description and Details of Bonds**. The Bonds shall be designated "City of Wichita, Kansas, General Obligation Bonds, Series 812." All of the Bonds shall be dated the Dated Date and shall become due on the dates set forth on **Exhibit A** to this Resolution (the "Principal Payment Dates"). The Bonds shall bear interest at the rates described on **Exhibit A** to this Resolution (computed on the basis of a 360-day year of 12 30-day months) and shall be payable on the Interest Payment Dates. The City Manager, the Finance Director or the City Manager's designee is hereby authorized to approve the final principal amount, maturity schedule (including any mandatory redemption) and Purchase Price for the Bonds as to be set forth on **Exhibit B** to this Resolution provided the final principal amount shall not exceed $3,645,000, the principal shall mature or be subject to mandatory redemption on the dates and at the interest rates shown on **Exhibit A** to this Resolution and such amounts are consistent with the other terms and provisions of this Resolution.

The Bonds shall be issued in denominations of $5,000, or integral multiples thereof not exceeding the principal amount of Bonds maturing on the respective Principal Payment Dates, and shall be numbered in such manner as the Fiscal Agent shall determine. The Bonds shall bear interest from the Interest Payment Date immediately preceding their effective Date of Authentication, unless such effective Date of Authentication shall be prior to the first Interest Payment Date in which case the Bonds shall bear interest from the Dated Date.

The Bonds will be issued and distributed in book-entry-only form through DTC, by depositing with DTC (or the Fiscal Agent as agent for DTC) one certificate for each maturity in fully registered form, registered in the name of DTC's nominee, Cede & Co., in an amount equal to the total principal amount of the Bonds maturing on the respective Principal Payment Dates as authorized herein. The manner of payment of the principal of and the interest on the Bonds to DTC, and other matters relating to the distribution of the Bonds in book-entry-only form through DTC, shall be governed by the Letter of Representation, which the Director of Finance is hereby authorized to execute and deliver on behalf of the City.

Subject to the operational arrangements of DTC, in the event (i) DTC determines not to continue to act as securities depository for the Bonds, or (ii) the City determines that continuation of the book-entry-only system of evidence and transfer of ownership of the Bonds would adversely affect the interests of the beneficial owners of the Bonds, the City will discontinue the book-entry-only system with DTC. If the City fails to identify another qualified securities depository to replace DTC, the City will cause replacement Bonds in the form of fully registered certificates in denominations of $5,000, or integral multiples thereof not exceeding the principal amount thereof maturing on any Principal Payment Date, to be authenticated and delivered to the beneficial owners (to the extent such beneficial owners can be identified by the City). If issued in certificated form, the certificates representing the Bonds shall be numbered in such manner as the Bond Registrar shall determine.

**Section 2.03** **Designation of Paying Agent and Bond Registrar**. Pursuant to K.S.A. 10-620 *et seq.*, as amended and supplemented, the Governing Body has elected to have

the provisions of the Kansas Bond Registration Law apply to the Bonds. The Treasurer of the State, Topeka, Kansas, has been designated as the initial Paying Agent and Bond Registrar for the Bonds; provided, however, the City reserves the right, in its sole discretion, to designate successor Paying Agents and Bond Registrars with respect to the Bonds upon fifteen (15) days' written notice to the then acting Paying Agent and Bond Registrar. The Mayor and City Clerk are authorized and empowered to execute on behalf of the City all necessary agreements with the initial or any successor Bond Registrar and Paying Agent in connection with such designation.

The Paying Agent shall make payment directly to DTC, as the Owner, for the principal of and the interest on the Bonds and DTC will remit such principal and interest to its Direct Participants for distribution to the beneficial owners in the manner set forth in the following **Section 2.04(A)** and as governed by the terms of the Letter of Representation.

In the event that the Bonds should be issued and delivered in certificated form at any time after the initial delivery of the Bonds, the Fiscal Agent shall maintain Registration Books for the ownership of the Bonds on behalf of the City and the Paying Agent will make payment for the Bonds directly to the Owners as shown by said Registration Books in the manner set forth in the following **Section 2.04(B).**

**Section 2.04 Method and Place of Payment of Principal and Interest on Bonds**.

(A) Bonds Issued and Delivered in Book-Entry-Only Form. One certificate per maturity registered in the name of DTC's nominee, Cede & Co., for the total principal amount of the Bonds maturing on the respective Principal Payment Dates will be issued to DTC in New York, New York (or to the Fiscal Agent as agent for DTC) and such certificates will be immobilized in its custody. Purchases of the Bonds in denominations permitted by **Section 2.02** hereof must be made by or through Direct Participants of DTC, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond (the "beneficial owner") is in turn to be recorded on the Direct and Indirect Participants' records. Transfers of ownership will be effected on the records of DTC and its Participants pursuant to the rules and procedures established by DTC and its Participants. Payment of principal and interest on the Bonds will be made in same day funds directly to DTC. The transfer of principal and interest to Participants of DTC will be the responsibility of DTC; the transfer of principal and interest to beneficial owners by Participants of DTC will be the responsibility of such Participants. Neither the City nor the Paying Agent and Bond Registrar will be responsible or liable for maintaining, supervising or reviewing the records maintained by DTC, its Participants or persons acting through such Participants.

(B) In the Event Certificated Bonds are Subsequently Issued. The principal of, premium, if any, and the interest on the Bonds shall be payable in lawful money of the United States of America by check or draft of the Paying Agent. The principal of and premium, if any, on the Bonds shall be paid to the Owner of each Bond upon presentation and surrender of the Bond to the Paying Agent for payment and cancellation on the maturity date or redemption date, as the case may be, of the Bond. The interest on the Bonds shall be mailed by the Paying Agent to the Owner of each Bond at the Owner's

address as it appears on the Registration Books on the Record Dates, or at such other address as is provided in writing by such Owner to the Bond Registrar.

**Section 2.05** **Method of Execution and Authentication of Bonds**. The Bonds shall be executed for and on behalf of the City by the manual or facsimile signatures of its Mayor and City Clerk, and shall have impressed or imprinted thereon a true impression or a printed facsimile of the City's official seal. The Bonds shall be registered in the Office of the City Clerk, which registration shall be evidenced by the manual or facsimile signature of the City Clerk, on a Certificate of Registration printed on the Bonds, with the City's official seal or a facsimile thereof, impressed or imprinted opposite said signature. The Bonds shall be registered by the State Treasurer in the municipal bond register in the State Treasurer's office, which registration shall be evidenced by the manual or facsimile signature of the State Treasurer and/or the Assistant State Treasurer on a Certificate of State Treasurer printed on the Bonds, attested by a true impression or a printed facsimile of the State Treasurer's official seal opposite such signature.

In case any officer of the City or of the State whose manual or facsimile signature shall appear on the Bonds shall cease to be such officer before the actual delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until such delivery.

No Bond shall be valid or obligatory for any purpose unless and until the Certificate of Authentication thereon shall have been duly executed by the Fiscal Agent, and such duly executed Certificate of Authentication shall be conclusive evidence that it has been authenticated and delivered under this Resolution. The Certificate of Authentication shall be deemed to have been duly executed by the Fiscal Agent when manually signed by an authorized officer or signatory thereof, and it shall not be necessary that the same officer or signatory of the Fiscal Agent manually sign the Certificate of Authentication on all Bonds issued under the Bond Ordinance and this Resolution.

**Section 2.06** **Payment of Costs of Bonds**. The City shall pay all fees and expenses incurred in connection with the printing, issuance, transfer, exchange, registration, redemption and payment of the Bonds, including the fees and expenses of the Fiscal Agent, except (i) reasonable fees and expenses in connection with the replacement of a Bond or Bonds mutilated, stolen, lost or destroyed, or (ii) any tax or other governmental charge imposed in relation to the transfer, exchange, registration, redemption or payment of the Bonds, or (iii) any additional costs or fees that might be incurred in the secondary market.

**Section 2.07** **Form of Bonds**. The definitive typewritten or printed form of the certificates representing the Bonds issued under this Resolution, including the registration certificates and certificate of authentication thereon, shall be in the form required by the laws of the State, and shall contain the usual and required recitals and provisions, including a recital that they are issued under the authority of the Act. The Governing Body hereby approves the form and text of the certificates to be prepared for the Bonds, and hereby authorizes, orders, and directs Bond Counsel to prepare the certificates to be used for the initial delivery of the Bonds and hereby further authorizes, orders, and directs Bond Counsel, in the event the Bonds in

certificated form are issued at any time after the initial issuance and delivery of the Bonds, to prepare the form of and cause such certificated Bonds to be printed.

**Section 2.08 Registration, Transfer and Exchange of Bonds**. In the event the Bonds are subsequently issued in certificated form, the City shall cause books evidencing the registration and transfer of the ownership of the Bonds as provided in this Resolution to be kept by the Bond Registrar (the "Registration Books"), and the Bonds may be transferred only upon the Registration Books and upon the surrender thereof to the Bond Registrar duly endorsed for transfer or accompanied by an assignment duly executed by the Owner thereof, or his agent, in such form as shall be satisfactory to the Bond Registrar. Upon the surrender for transfer of any certificated Bond at its office, the Bond Registrar shall authenticate and deliver in the name of the transferee or transferees a new certificated Bond or Bonds of authorized denominations in the aggregate principal amount of the surrendered certificated Bond. The Bond Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation to such transfer or exchange.

Upon the presentation of the necessary documents as hereinbefore described at the principal office of the Bond Registrar, the Bond Registrar shall transfer or exchange any Bond(s) for new Bond(s) in an authorized denomination of the same maturity and for the same aggregate principal amount as the Bond(s) presented for transfer or exchange. All Bonds presented for transfer or exchange shall be surrendered to the Bond Registrar for cancellation. Prior to delivery of any new Bond(s) to the transferee, the Bond Registrar shall register the same in the Registration Books and shall authenticate each such new Bond.

The City and the Bond Registrar shall not be required to issue, register, transfer or exchange any Bonds during a period beginning on the day following the Record Date preceding any Interest Payment Date and ending at the close of business on the Interest Payment Date.

Bonds delivered upon any transfer or exchange shall be valid obligations of the City, evidencing the same debt as the Bonds surrendered, shall be secured by the Bond Ordinance and this Resolution and shall be entitled to all of the security and benefits hereof and pledges made herein to the same extent as the Bonds surrendered. The person(s) in whose name any Bond is registered as shown on the Registration Books shall be deemed and regarded as the absolute Owner thereof for all purposes. Payment of, or on account of the principal of and the interest on any Bond shall be made only to or upon the order of the Owner or his duly authorized agent; except that, so long as the Bonds remain issued in book-entry-only form, DTC shall be considered to be the Owner of the Bonds, and such payments shall be made only to DTC in accordance with **Section 2.04(A)** of this Resolution. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

**Section 2.09 Mutilated, Lost, Stolen or Destroyed Bonds**. In the event any certificate representing a Bond is mutilated, lost, stolen or destroyed, the City shall execute, and the Fiscal Agent shall authenticate and deliver, a new certificate of like date, maturity, denomination and interest rate as that mutilated, lost, stolen or destroyed; provided, that in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Fiscal Agent, and, in the case of any lost, stolen or destroyed Bond there shall first be furnished to the Fiscal Agent and the City,

evidence of such loss, theft or destruction satisfactory to them, together with an indemnity satisfactory to the City and the Fiscal Agent. In the event any such Bond shall have matured or been called for redemption, instead of issuing a duplicate bond the City may pay the same without the surrender thereof. The City and the Fiscal Agent may charge to the Owner of such Bond their reasonable fees and expenses in connection with the replacement of such Bond or Bonds.

**Section 2.10 Surrender and Cancellation of Bonds.** Whenever any Outstanding Bond shall be delivered to the Fiscal Agent after full payment thereof or for replacement pursuant to this Resolution, such Bond shall be canceled and destroyed by the Fiscal Agent and counterparts of a Certificate of Destruction describing Bonds so destroyed and evidencing such destruction shall be furnished by the Fiscal Agent to the City, or such Bond shall be canceled and the canceled Bond shall be returned to the City.

**Section 2.11 Execution and Delivery of Bonds**. The Mayor and City Clerk are hereby empowered, authorized and directed to prepare and execute the Bonds without unnecessary delay in the form and manner hereinbefore specified, including a reasonable quantity of replacement bond certificates for use in exchanges, transfers and replacements in accordance with the provisions of this Resolution and when executed the Bonds shall be registered in the Office of the City Clerk and in the Office of the State Treasurer, as required by law and as hereinbefore provided, and shall thereupon be deposited with the Fiscal Agent for authentication. When the Bonds shall have been so executed, registered and authenticated, they shall be delivered at one time to or upon the order of the Original Purchaser, but only upon receipt by the City of the Purchase Price therefor and the proceeds of the Bonds shall immediately be applied by the City as hereinafter in this Resolution provided.

**Section 2.12 Official Statement**. The Governing Body hereby approves the form and content of the "deemed final" Preliminary Official Statement prepared for use in the initial offering and sale of the Bonds, and the form and content of any addenda, supplement, or amendment thereto necessary to conform the offering document to the terms of this Resolution, to include information newly available due to assignment of ratings by one or more rating agencies, or incorporate such other minor corrections or additions as may be approved by the City's Debt Coordinator, including specifically the insertion of interest rates and yields for the Bonds. The lawful use of the final Official Statement in the reoffering of the Bonds by the Original Purchaser is hereby approved and authorized.

## ARTICLE III
## REDEMPTION OF BONDS

**Section 3.01 Optional Redemption**. The Bonds maturing June 1, 2014, to June 1, 2022, inclusive, shall mature and become due on their respective maturity dates without the option of prior redemption and payment. At the option of the City, the Bonds maturing June 1, 2023, and thereafter, may be called for redemption and payment prior to the respective stated maturities thereof on and after June 1, 2022. Bonds called for redemption and payment may be called in whole or in part at any time from and after the first date authorized for redemption as aforesaid (the date being so set for redemption and payment being referred to as the "Redemption Date"). Bonds called for redemption and payment as aforesaid shall be

redeemed at a price (expressed as a percentage of the principal amount) of 100% of the principal amount thereof, plus accrued interest to the Redemption Date.

**Section 3.02** **Sinking Fund Redemption**. Any Term Bonds shall also be subject to mandatory redemption and payment as described on **Exhibit B** to this Resolution.

**Section 3.03** **Selection of Bonds to be Redeemed**. The Bonds shall be redeemed only in face amounts of $5,000 or integral multiples thereof and if the City elects to call for redemption less than all of the Bonds at the time Outstanding, the Bonds shall be redeemed in such equitable manner as the City shall determine, with Bonds of less than a full maturity to be selected by lot in units of $5,000.

In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than $5,000 are then Outstanding, then, for all purposes in connection with such redemption, each $5,000 of face value of a Bond shall be treated as though it were a separate Bond in the denomination of $5,000. If it is determined that one or more, but not all, of the $5,000 units of face value represented by any Bond has been selected for redemption, then upon receipt of notice of such redemption, the Owner shall forthwith present and surrender such Bond to the Fiscal Agent (i) for payment of the redemption price and accrued interest to the Redemption Date of the $5,000 unit or units of face value of the Bond called for redemption, and (ii) for exchange, without charge to the Owner, for a new Bond or Bonds of the aggregate principal amount of the unredeemed portion of the principal amount of such Bond. If the Owner of any Bond of a denomination greater than $5,000 of which one or more, but not all, of the $5,000 units of face value thereof has been selected for redemption shall fail to present such Bond as aforesaid, the $5,000 units of the face value of such Bond which have been selected for redemption shall, nevertheless, become due and payable on the Redemption Date, and no further interest shall accrue on such redeemed but unpresented $5,000 units of face value from and after the Redemption Date.

**Section 3.04** **Notice of Redemption**. Unless waived by the Fiscal Agent, the City shall give notice of any call for redemption and payment in writing to the Fiscal Agent not less than forty-five (45) days prior to the Redemption Date; and the Fiscal Agent shall give notice of such call for redemption and payment in writing mailed via United States first class mail to the Owners of the Bonds so called not less than thirty (30) days prior to the Redemption Date, unless any Owner has waived such written notice of redemption. The City shall also give or cause to be given such additional notice of any call for redemption and payment as may be required by the laws of the State which are in effect as of the date of giving any such notice.

All notices of redemption given under the provisions of this Article shall state (i) the Redemption Date, (ii) the redemption price, (iii) if less than all Outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed, (iv) that on the Redemption Date the principal amount, and premium, if any, will become due and payable upon each such Bond or portion thereof which has been selected for redemption, and that the interest thereon shall cease to accrue from and after the Redemption Date, and (v) that the Bonds so selected for redemption are to be surrendered to or at the principal office of the Fiscal Agent for payment.

**Section 3.05** **Deposit of Moneys for and Payment of Redemption Price**. On or prior to the Redemption Date, the City shall cause to be deposited with the Fiscal Agent sufficient funds to pay the redemption price, together with all unpaid and accrued interest thereon to the Redemption Date, of all Bonds or portions thereof selected for redemption on the Redemption Date. Upon the surrender by the Owners of Bonds selected for redemption, the Fiscal Agent shall pay the redemption price therefor to the Owners. If one or more, but not all, of the $5,000 units of face value represented by any Bond is selected for redemption and surrendered and paid, then the Fiscal Agent shall prepare and furnish to the Owner thereof a new Bond or Bonds of the same maturity and in the amount of the unredeemed portion of such Bond as provided by **Section 3.03** above. All Bonds selected, called and surrendered for redemption shall be canceled by the Fiscal Agent and shall not be reissued.

**Section 3.06** **Effect of Call for Redemption**. Whenever any Bond, or one or more of the $5,000 units of face value represented by any Bond, has been selected for redemption and payment as provided in this Article, all interest on such Bond, or such one or more of the $5,000 units of face value represented by any such Bond, shall cease from and after the Redemption Date, provided funds are then available for its payment at the price hereinbefore specified.

## ARTICLE IV
## FUNDS AND ACCOUNTS

**Section 4.01** **Creation of Funds and Accounts**. Simultaneously with the issuance and delivery of the Bonds, there shall be created within the Treasury of the City, the following designated funds and accounts:

(A) Improvement Account for the City of Wichita, Kansas, General Obligation Bonds, Series 812;

(B) Principal and Interest Account for the City of Wichita, Kansas, General Obligation Bonds, Series 812, to be created within the City's Debt Service Fund; and

(C) Excess Earnings Account for the City of Wichita, Kansas, General Obligation Bonds, Series 812.

**Section 4.02** **Administration of Funds and Accounts**. The funds and accounts established and created by this Article shall be administered in accordance with the provisions of this Resolution for so long as any of the Bonds remain Outstanding.

## ARTICLE V
## APPLICATION OF BOND PROCEEDS; DISPOSITION OF MONEYS IN FUNDS AND ACCOUNTS

**Section 5.01** **Application of Bond Proceeds**. Upon the issuance and delivery of the Bonds, the proceeds thereof shall be deposited into the Treasury of the City and credited to the various funds and accounts created by **Article IV** of this Resolution, as follows:

(A) To the Principal and Interest Account, the portion of the Purchase Price which represents accrued interest paid on the Bonds and the amount of purchase price premium, if any, shown on **Exhibit B** to be deposited in the Principal and Interest Account; and

(B) The balance of the proceeds to the Improvement Account.

**Section 5.02 Disposition of Principal and Interest Account**. Moneys deposited in the Principal and Interest Account from the proceeds of the Bonds as provided by clause (A) of the preceding Section, shall be used exclusively for the payment of interest on the Bonds on the first Interest Payment Date. Moneys deposited in the Principal and Interest Account from other sources, as provided by the succeeding Sections or elsewhere in this Resolution, shall be used exclusively for the payment of the principal of, premium, if any, and the interest on the Bonds, and for payment of the usual and customary fees and expenses of the Fiscal Agent.

**Section 5.03 Withdrawals from Principal and Interest Account; Transfer of Funds to Fiscal Agent**. The Director of Finance is hereby authorized and directed to cause to be withdrawn from the Principal and Interest Account and forwarded to the Fiscal Agent, a sum sufficient to pay the principal of, premium, if any, and the interest on the Bonds as and when the same become due and payable, together with such sum as may be required to pay the fees and charges of the Fiscal Agent, if any, for acting in such capacity, and the sum for charges of the Fiscal Agent shall be forwarded to the Fiscal Agent over and above the amount required to pay the Bonds as aforesaid. If, through the lapse of time or otherwise, the Owner of any Bond shall no longer be entitled to enforce payment of such Bond, it shall be the duty of the Fiscal Agent to forthwith return such unexpended funds to the City. All moneys transferred to the Fiscal Agent shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution, and shall be deemed to be deposited with the Fiscal Agent in trust for and on behalf of the Owners of the Bonds.

**Section 5.04 Surplus in Principal and Interest Account**. Any moneys remaining in the Principal and Interest Account, from whatever source, from and after the retirement of all general obligation bond issues of the City shall be transferred and paid into the General Fund of the City.

**Section 5.05 Disposition of Improvement Account**. Moneys in the Improvement Account shall be used solely for the purpose of paying the Improvement Costs. The City covenants that in the making of the Improvements, it will perform all duties and obligations relative to such Improvements as are now or may be hereafter imposed by the Act and the provisions of this Resolution.

**Section 5.06 Withdrawals from Improvement Account**. Withdrawals from the Improvement Account shall be made only for a purpose within the scope of the Improvements and as payment for Improvement Costs and the amount of such payments shall represent only the contract price or reasonable value of the property, labor, materials, service or obligations being paid for, or if such payment is not being made pursuant to an express contract, such payments shall not be in excess of the reasonable value thereof.

**Section 5.07** **Surplus in Improvement Account**. All moneys remaining in the Improvement Account after the completion of the Improvements and the payment of all Improvement Costs shall be immediately transferred to the Principal and Interest Account.

**Section 5.08** **Substitution of Improvements**. The City may elect to substitute or add other improvements pursuant to this Section provided the following conditions are met: (a) the Substitute Improvement and the issuance of general obligation bonds to pay the cost of the Substitute Improvement has been authorized by the Governing Body of the City in accordance with the laws of the State, (b) a resolution or ordinance authorizing the use of the proceeds of the Bonds to pay the Improvement Costs of the Substitute Improvement has been adopted by the Governing Body of the City, (c) the Attorney General of the State has approved the amendment to the transcript of proceedings for the Bonds to include the Substitute Improvement and (d) the City has received an opinion of Bond Counsel to the effect that the Substitute Improvement will not adversely affect the tax-exempt status of the Bonds under State or federal law and the Substitute Improvement has been authorized pursuant to this Section and the laws of the State.

## ARTICLE VI
## DEPOSITS AND INVESTMENT OF MONEYS

**Section 6.01** **Deposits**. Cash moneys in each of the funds and accounts created and established by this Resolution shall be deposited and secured in accordance with State law.

**Section 6.02** **Investments**. Moneys held in the funds and accounts created and established by this Resolution may be invested by the City in Authorized Investments, or in other investments allowed by the laws of the State, in such amounts and maturing at such times as shall reasonably provide for moneys to be available when required in said funds and accounts; provided, however, that no such investment shall be made for a period extending longer than to the date when the moneys so invested may be needed in the fund or account for the purpose for which it was created and established; and provided further, that such moneys shall not be invested in such manner as will violate the provisions of the Certificate as to Arbitrage and Related Tax Matters. All interest on any Authorized Investment made from the moneys in any fund or account created and established by this Resolution shall (except the amounts which are required to be deposited into the Excess Earnings Account in accordance with the Certificate as to Arbitrage and Related Tax Matters) accrue to and become a part of such originating fund or account. The Value of the investments held in the funds and accounts under the provisions of this Resolution, shall be determined as of the end of each calendar month. All investments made pursuant hereto shall be made in accordance with the Certificate as to Arbitrage and Related Tax Matters.

**Section 6.03** **Deposits into and Application of Moneys in Excess Earnings Account**.

(A) The City shall deposit into the Excess Earnings Account such amounts as are required to be deposited therein pursuant to the Certificate as to Arbitrage and Related Tax Matters. All earnings on investments of moneys held in the Excess Earnings Account shall be retained in the Excess Earnings Account. Subject to the payment provisions provided in subsection (B) below, all amounts on deposit in the Excess Earnings Account shall be held by the City in trust, to the extent required to satisfy the

Rebate Amount (as defined in the Certificate as to Arbitrage and Related Tax Matters), for payment to the United States of America, and neither the City nor the Owner of any Bond shall have any right in or claim to such money. All amounts held in the Excess Earnings Account shall be governed by this Section and by the Certificate as to Arbitrage and Related Tax Matters.

(B) The City shall remit part or all of the balances in the Excess Earnings Account to the United States of America in accordance with the Certificate as to Arbitrage and Related Tax Matters (such amounts herein referred to as the "Rebate Amounts"). Any funds remaining in the Excess Earnings Account after redemption and payment of all of the Bonds and payment and satisfaction of any Rebate Amount, or provision having been made therefor, shall be withdrawn and released from the Excess Earnings Account and shall be deposited into the City's General Fund.

(C) Notwithstanding any other provision of this Resolution, including in particular the provisions of this Section, the City's obligation to remit the Rebate Amount to the United States of America and to comply with all other requirements of this Section and the Certificate as to Arbitrage and Related Tax Matters shall survive the defeasance or payment in full of the Bonds.

(D) The City shall maintain records designed to show compliance with the provisions of this Section and the Certificate as to Arbitrage and Related Tax Matters for at least six (6) years after the date on which no Bonds shall remain Outstanding.

(E) The terms, conditions and provisions under which the City will perform its duties regarding the Excess Earnings Account and any Rebate Amount are set forth in a Certificate as to Arbitrage and Related Tax Matters dated as of the Date of Issuance. The form and text of the Certificate as to Arbitrage and Related Tax Matters is hereby approved and accepted by the Governing Body, and all of the covenants, duties and responsibilities therein contained which are to be performed by and on behalf of the City are hereby declared to be the covenants, duties and responsibilities of the City as though fully set forth at this place. The Mayor and the City Clerk or Director of Finance, as appropriate, or such other officer as may be directed by the Mayor, shall be and are hereby authorized to execute and deliver the Certificate as to Arbitrage and Related Tax Matters for and on behalf of the City. The entire text of the Certificate as to Arbitrage and Related Tax Matters is by reference hereby incorporated in and made a part of this Resolution as though fully set forth at this place.

## ARTICLE VII
## PROVISION FOR PAYMENT OF BONDS

**Section 7.01** **Levy and Collection of Annual Taxes**. Pursuant to the Bond Ordinance, the Governing Body covenants that it shall annually make provision for the payment of the principal of, premium, if any, and the interest on the Bonds as and when the same becomes due and payable by levying and collecting the necessary special assessment taxes upon the real properties within the City liable therefor as provided by law; provided, that if the amounts collected from such special assessment taxes are insufficient to fully pay the maturing principal

and interest on the Bonds when due, then the Governing Body shall levy ad valorem taxes upon all of the taxable tangible property located within the territorial limits of the City in such amounts as are necessary to rectify any deficiency in the amount of special assessment taxes collected.

**Section 7.02 Disposition of Taxes; Untimely Receipt**. The proceeds derived from the aforesaid annual taxes shall be deposited into the Principal and Interest Account when received; provided, if at any time the amount in the Principal and Interest Account shall be insufficient to make the payments of the principal of and the interest on the Bonds when required because of an untimely collection and/or receipt of said taxes, the Director of Finance is authorized to cause to be transferred to the Principal and Interest Account from the City's general funds, the amount required for such payments and to then reimburse the City's general funds for such expended amounts immediately upon the collection and receipt of said taxes.

## ARTICLE VIII
## DEFAULT AND REMEDIES

**Section 8.01 Resolution Constitutes Contract; Remedies of Owners**. The provisions of the Bond Ordinance and this Resolution, and all of the covenants and agreements therein and herein contained, shall constitute a contract between the City and the Owners, and the Owner or Owners of any of the Bonds at the time Outstanding shall have the right, for the equal benefit and protection of all Owners similarly situated:

(A) By mandamus or other suit, action or proceedings at law or in equity to enforce his or their rights against the City and its officers, agents and employees, and to require and compel the City and its officers, agents and employees to perform all duties and obligations required by the provisions of the Bond Ordinance and this Resolution or by the constitution and laws of the State;

(B) By suit, action or other proceedings in equity or at law to require the City, its officers, agents and employees to account as if they were the trustees of an express trust; and

(C) By suit, action or other proceedings in equity or at law to enjoin any acts or things which may be unlawful or in violation of the rights of the Owners.

**Section 8.02 Rights of Owners; Limitations**. The covenants and agreements of the City contained herein, in the Bond Ordinance and in the Bonds shall be for the equal benefit, protection and security of the Owners of any or all of the Bonds, all of which Bonds shall be of equal rank and without preference or priority of any one Bond over any other Bond in the application of the moneys herein pledged to the payment of the principal of, premium, if any, and the interest on the Bonds, or otherwise, except as to the rate of interest, Principal Payment Date and right of prior redemption as provided in this Resolution.

No one or more of the Owners secured hereby shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the security granted and provided for herein, or to enforce any right hereunder, except in the manner herein provided, and all proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all

Owners of the Outstanding Bonds. Nothing in this Resolution, in the Bond Ordinance or in the Bonds shall affect or impair the obligations of the City to pay on the respective dates of maturity thereof, the principal of and the interest on the Bonds to the respective Owners thereof or affect or impair the right of action of any Owner to enforce payment of the Bonds held by such Owner, or to reduce to judgment his claim against the City for payment of the principal of and interest on the Bonds without reference to or consent of any other Owner.

**Section 8.03** **Remedies Cumulative; Delay or Omission Not Waiver**. No remedy herein conferred upon the Owners is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, and may be exercised without exhausting and without regard to any other remedy however given. No waiver by the Owner of any Bond of any default or breach of duty or contract by the City shall extend to or affect any subsequent default or breach of duty or contract by the City or shall impair any rights or remedies therefor available to the Owners. No delay or omission of any Owner to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or as an acquiescence therein. Every substantive right, power and remedy given by this Resolution to the Owners, respectively, may be exercised from time to time and as often as may be deemed expedient. In case any suit, action or other proceedings taken by any Owner on account of any default or to enforce any right or exercise any remedy shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Owner, then in every such case the City and the Owners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Owners shall continue as though no such suit, action or other proceedings had been brought or taken.

## ARTICLE IX
## AMENDMENTS

**Section 9.01** **Amendments**. The City may, without the consent of or notice to the Owners, amend or supplement the provisions of this Resolution (i) to cure any ambiguity herein or to correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct errors, provided such action shall not materially adversely affect the interest of the Owners, or (ii) to grant or confer upon the Owners any additional rights, remedies, powers or security that may lawfully be granted or conferred upon the Owners, or (iii) to more precisely identify the Improvements, or (iv) to provide for the issuance of coupon bonds and the exchange of the fully registered Bonds for coupon bonds upon such terms and conditions as the City shall determine; provided, however, that any amendment as provided in this clause (iv) shall not become effective unless and until the City shall have received an opinion of Bond Counsel, in form and substance satisfactory to the City, to the effect that the issuance of such coupon bonds or the exchange of the fully registered Bonds for such coupon bonds, will not cause the interest on the Bonds to be includable in the gross income of recipients thereof under the provisions of the applicable Federal law, or (v) to conform this Resolution to the Code or any future applicable Federal law concerning tax-exempt obligations.

The rights and duties of the City and the Owners and the terms and provisions of this Resolution may be modified or altered in any respect by a resolution of the City with the consent

of the Owners of not less than seventy-five percent (75%) in principal amount of the Bonds then Outstanding, such consent to be evidenced by an instrument or instruments executed by the Owners and duly acknowledged or proved in the manner of a deed to be recorded, and such instrument or instruments shall be filed with the City Clerk; provided that, no such modification or alteration shall, except with the written consent of one hundred percent (100%) of the Owners of the Bonds then Outstanding:

(A) Extend the maturity of any payment of principal or interest due upon any Bond;

(B) Effect a reduction in the amount which the City is required to pay by way of the principal of or the interest on any Bond;

(C) Permit a preference or priority of any Bond or Bonds over any other Bond or Bonds; or

(D) Reduce the percentage of the principal amount of the then Outstanding Bonds for which the written consent of the Owners is required for any modification or alteration of the provisions of this Resolution.

**Section 9.02 Written Evidence of Amendments**. Any and all modifications or amendments to this Resolution or of the Bonds shall be made in the manner hereinabove provided, and shall not become effective until there has been filed with the City Clerk a copy of the resolution of the City authorizing said modifications or amendments, as hereinabove provided for, duly certified, as well as proof of consent to such modifications or amendments by the Owners of not less than the percentage of the principal amount of Bonds then Outstanding as hereinabove required. It shall not be necessary to note on any Outstanding Bond any reference to such amendment or modification.

A certified copy of every such amendatory or supplemental ordinance or resolution, if any, and a certified copy of the Bond Ordinance and this Resolution, shall always be kept on file in the Office of the City Clerk and shall be made available for inspection by the Owner of any Bond or the prospective purchaser or owner of any Bond, and upon payment of the reasonable cost of preparing same, a certified copy of any such amendatory or supplemental ordinance or resolution of the Bond Ordinance or this Resolution will be sent by the City Clerk to any such Owner or prospective Owner.

## ARTICLE X
## DEFEASANCE

**Section 10.01 Defeasance**. When all or any part of the principal of, premium, if any, and the interest on the Bonds shall have been paid and discharged, then the requirements contained herein and all other rights granted by the Bond Ordinance and this Resolution shall cease and determine with respect to that principal, premium and interest so paid. The Bonds shall be deemed to have been paid and discharged within the meaning of this Resolution if there shall have been deposited with the Fiscal Agent or with a bank located in the State and having full trust power; at or prior to the maturity or redemption date of the Bonds, in trust for and irrevocably appropriated thereto, moneys and/or Government Obligations consisting of direct obligations of, or obligations the payment of the principal of and the interest on which are

guaranteed by, the United States of America, or other investments allowed by the laws of the State, which together with the interest to be earned on such Government Obligations or other investments, will be sufficient for the payment of the principal of the Bonds, the premium, if any, and the interest thereon to the date of maturity or the Redemption Date, as the case may be; or if default in such payment shall have occurred on such date, then to the date of the tender of such payments, provided always that if any Bonds shall be redeemed prior to the maturity thereof, the City shall have elected to redeem such Bonds and notice of such redemption shall have been given as provided by the terms of this Resolution. Any moneys and Government Obligations which at any time shall be deposited with the Fiscal Agent or a Kansas bank by or on behalf of the City, for the purpose of paying and discharging any of the Bonds or interest thereon, shall be and are hereby assigned, transferred and set over to the Fiscal Agent or such Kansas bank in trust for the respective Owners of the Bonds, and such moneys shall be and are hereby irrevocably appropriated to the payment and discharge thereof. All moneys and Government Obligations so deposited with the Fiscal Agent or a Kansas bank shall be deemed to be deposited in accordance with and subject to all of the provisions contained in this Resolution.

## ARTICLE XI
## MISCELLANEOUS PROVISIONS

**Section 11.01 Tax Covenants**. The Governing Body hereby covenants and agrees that so long as any of the Bonds remain outstanding and unpaid, it will not take any action, or fail to take any action in its power, if any such action or the failure to take such action, would adversely affect the continued exclusion from gross income for purposes of Federal income taxation of the interest on the Bonds under Section 103 of the Code, and further covenants to comply with all other provisions of the Code, as the same may be amended, and any applicable rules and regulations of the United States Treasury Department thereunder, to the extent applicable to the Bonds.

The Governing Body hereby further covenants that it will use and expend the proceeds of the Bonds for the purpose for which they are issued as soon as practicable and with all reasonable dispatch, and that it will not directly or indirectly use or permit the use of the proceeds of the Bonds or any other funds of the City, or take or omit to take any action which, if such use or taking or omission of action had been reasonably expected on the Date of Issuance, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 103(b)(2) of the Code and that to that end, it will comply with all applicable requirements of Section 148 of the Code and the rules and regulations of the United States Treasury Department thereunder to the extent applicable to the Bonds for so long as any of the Bonds remain outstanding and unpaid.

Without limiting the generality of the foregoing, the Governing Body agrees that there shall be paid from time to time, all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Code, and any temporary, proposed or final Treasury regulations as may be applicable to the Bonds from time to time. This covenant shall survive payment in full or the defeasance of the Bonds and the Governing Body specifically hereby covenants to pay or cause to be paid to the United States of America, at the times and in the amounts determined under this Resolution, the Rebate Amount as described in the Certificate as to Arbitrage and Related Tax Matters.

**Section 11.02** **Severability**. In case any one or more of the provisions of the Bond Ordinance, this Resolution or of the Bonds issued thereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of the Bond Ordinance, this Resolution or the Bonds appertaining thereto, but the Bond Ordinance, this Resolution and the Bonds shall be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement contained in the Bonds or in the Bond Ordinance or this Resolution shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the City to the full extent permitted by law.

**Section 11.03** **Further Authority**. The Governing Body hereby authorizes, orders, and directs the Mayor to execute, and the City Clerk to attest by signing and affixing the official seal of the City, and thereupon deliver this Resolution. The Governing Body hereby further authorizes, orders, and directs the Mayor and the City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, to execute and deliver any and all supporting documents and certificates required in the issuance of the Bonds, including final certificates required to be included in the official Transcript of Proceedings relating to the authorization and issuance of the Bonds, all for and on behalf of and as the act and deed of the City and without further action by the Governing Body, such documents to be in substantially the forms thereof as are presented to the Governing Body on this date, with such minor corrections or amendments thereto as the Mayor shall approve, which approval shall be evidenced by his execution thereof and the Mayor and City Clerk, or the Director of Finance, as appropriate, or such other officers, officials, agents and employees of the City as the Mayor may designate and direct, are also authorized to execute and deliver such other documents, certificates and instruments as may be necessary or desirable in order to carry out, give effect to and comply with the intent of this Resolution and to give effect to the transactions contemplated hereby.

The execution and attestation of this Resolution and such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the intent of this Resolution, shall be conclusive as to the approval of said documents and each of them.

The Governing Body shall, and the officers, agents and employees of the City are hereby authorized and directed to, take such actions, expend such funds and execute such other documents, certificates and instruments as may be necessary or desirable to carry out, give effect to and comply with the provisions of and transactions contemplated by this Resolution and to carry out, give effect to and comply with and perform the duties of the City with respect to the Bonds and the Official Statement.

**Section 11.04** **Governing Law**. This Resolution, the Bond Ordinance and the Bonds shall be governed exclusively by and shall be construed in accordance with the applicable laws of the State.

**Section 11.05** **Effective Date**. This Resolution shall be in force and take effect from and after its adoption and approval by the Governing Body of the City.

ADOPTED AND APPROVED by the Governing Body of the City of Wichita, Kansas, on January 15, 2013.

_____
Carl Brewer, Mayor

(Seal)

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM:

By: _____
Gary E. Rebenstorf, Director of Law

4821-1088-2322.2

# SCHEDULE I

# THE IMPROVEMENTS

## EXHIBIT A

## ADDITIONAL TERMS OF THE SERIES 812 BONDS

**Definitions.** The following terms defined in the Resolution shall have the meanings ascribed below

"Bond Ordinance" shall mean Ordinance No. _____ of the City, passed by the Governing Body on January 15, 2013, and authorizing and providing for the issuance of the Bonds.

"Original Purchaser" shall mean _____, _____, _____, the original purchaser of the Bonds.

**Maturity Schedule.** All of the Bonds shall be become due or be subject to mandatory redemption on the dates and shall bear interest as the rates per annum as follows:

### SERIAL BONDS

| Maturity or Mandatory Redemption Date | Interest Rate |
|---|---|
| June 1, 2014 | % |
| June 1, 2015 | |
| June 1, 2016 | |
| June 1, 2017 | |
| June 1, 2018 | |
| June 1, 2019 | |
| June 1, 2020 | |
| June 1, 2021 | |
| June 1, 2022 | |
| June 1, 2023 | |
| June 1, 2024 | |
| June 1, 2025 | |
| June 1, 2026 | |
| June 1, 2027 | |
| June 1, 2028 | |
| June 1, 2029 | |
| June 1, 2030 | |
| June 1, 2031 | |
| June 1, 2032 | |
| June 1, 2033 | |

**[TERM BONDS**

| **Maturity or Mandatory Redemption Date** | **Interest Rate** |
|---|---|
| June 1, 20__ | % |
| June 1, 20__ | |
| June 1, 20__ | |

## EXHIBIT B

## FINAL SIZING TERMS OF THE SERIES 812 BONDS

**Definitions.** The following terms defined in the Resolution shall have the meanings ascribed below:

"Purchase Price" for the Bonds shall be the par value of the Bonds, *i.e.,* the principal amount of $_____, plus a premium of $_____, plus accrued interest to the date of delivery.

["_____ Term Bonds" shall mean the Bonds maturing in the 20__.]

**Maturity Schedule.** All of the Bonds shall be become due in the amounts and on the dates set forth below:

**SERIAL BONDS**

| **Maturity Date** | **Maturing Principal** |
|---|---|
| June 1, 2014 | $ |
| June 1, 2015 | |
| June 1, 2016 | |
| June 1, 2017 | |
| June 1, 2018 | |
| June 1, 2019 | |
| June 1, 2020 | |
| June 1, 2021 | |
| June 1, 2022 | |
| June 1, 2023 | |
| June 1, 2024 | |
| June 1, 2025 | |
| June 1, 2026 | |
| June 1, 2027 | |
| June 1, 2028 | |
| June 1, 2029 | |
| June 1, 2030 | |
| June 1, 2031 | |
| June 1, 2032 | |
| June 1, 2033 | |

**[TERM BONDS**

| **Principal Payment Date** | **Amount of Principal Payment** |
|---|---|
| June 1, 20__ | $ |

June 1, 20__
June 1, 20__

**Mandatory Redemption.** Each of the 20__ Term Bonds shall also be subject to mandatory redemption and payment on June 1, 20__, or on any Principal Payment Date thereafter, pursuant to the redemption schedule set out below, at the principal amount, plus accrued interest to date fixed for redemption and payment, without premium. The City agrees to redeem the following principal amounts of the 20__ Term Bonds in each of the following years:

| **Year** | **Principal Amount** |
|---|---|
| 20__ | $ |
| 20__* | |

*Final maturity]

Amount of purchase price premium to be deposited in the Principal and Interest Account is $_____.

Approved by:

_____
Title: _____
City of Wichita, Kansas

Wichita, Kansas
January 14, 2013
10:00 a.m., Monday
Conference Room, 12th Floor

MINUTES - BOARD OF BIDS AND CONTRACTS*

The Board of Bids and Contracts met with Martha Strayer, Administrative Assistant, Public Works Engineering in the Chair; Fanny Chan, Accountant, Finance, representing the Director of Finance, Elizabeth Goltry Wadle, Budget Analyst, Budget Office, Clarence Rose, Senior Buyer, representing Purchasing, Jason Earl, Management Intern, representing the City Manager's Office and Janis Edwards Deputy City Clerk, present.

Minutes of the regular meeting dated January 7, 2013, were read and on motion approved.

Bid was opened on December 21, 2012, pursuant to advertisements published on:

**Central Street from 135th to 119th West; (Central Street from 135th Street West to 119th Street West) 87N-0351-01/472-84017 (706898/635814)**

Defer three weeks

The Purchasing Manager recommended that the contracts be deferred as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

On motion the Board recommended that the contracts be deferred as outlined above, subject to check, same being the lowest and best bids within the Engineer's construction estimate.

On motion the Board of Bids adjourned.

Martha Strayer, Administrative Assistant,
Department of Public Works

Janis Edwards, CMC
Deputy City Clerk

EXHIBIT A

# FORMAL BID REPORT

**TO:** Robert Layton, City Manager
**DATE:** January 14, 2013

**ENGINEERING BIDS – GARY JANZEN, CITY ENGINEER**
**December 21, 2012**
Paving - Central Street from 135th to 119th West – Public Works & Utilities Department/Engineering Division
**(Defer to February 4, 2013) (Pending KDOT Approval)**

**ITEMS TO BE PURCHASED AS ADVERTISED IN THE OFFICIAL CITY NEWSPAPER.**

Melinda A. Walker

**Melinda A. Walker**
**Purchasing Manager**

# PAVING BID TABULATION SUMMARY

BOARD OF BIDS - December 21, 2012

RQ#241094_RQ#241095

| FB#240194 | | Engineer's Construction Estimate | APAC - Kansas Inc | Barkley Construction | Cornejo & Sons, LLC |
|---|---|---|---|---|---|
| Central Street from 135th to 119th West | | | | | $7,928,061.97 |
| (Central Street from 135th Street West to 119th Street West) | BID BOND | | | | |
| | ADDENDA | 2 | | | X |
| 87N-0351-01/472-84017 (706898/635814) | | | | | |
| | | Engineer's Construction Estimate | Dondlinger & Sons | Kansas Paving Company | Lafarge North America |
| Central Street from 135th to 119th West | | | $8,181,350.59 | $8,060,215.88 | $8,097,028.13 |
| (Central Street from 135th Street West to 119th Street West) | BID BOND | | | X | |
| | ADDENDA | 2 | X | X | X |
| 87N-0351-01/472-84017 (706898/635814) | | | | | |
| | | Engineer's Construction Estimate | | | |
| Central Street from 135th to 119th West | | | | | |
| (Central Street from 135th Street West to 119th Street West) | BID BOND | | | | |
| | ADDENDA | 2 | | | |
| 87N-0351-01/472-84017 (706898/635814) | | | | | |
| | | Engineer's Construction Estimate | | | |
| Central Street from 135th to 119th West | | | | | |
| (Central Street from 135th Street West to 119th Street West) | BID BOND | | | | |
| | ADDENDA | 2 | | | |
| 87N-0351-01/472-84017 (706898/635814) | | | | | |

DEFER 3 WEEKS PENDING KDOT APPROVAL

CHECKED BY: KP

REVIEWED BY: AJ

THE CITY OF WICHITA
Department of Public Works

Wichita, Kansas

**PRELIMINARY ESTIMATES**
**FOR CITY COUNCIL JANUARY 15, 2013**

a. Lateral 11, Main 14, Four Mile Creek Interceptor Sewer to serve Krug South 2nd Addition (south of 21st Street North, west of 143rd Street East) (468-84847/744342/480034) Traffic to be maintained during construction using flagpersons and barricades. (District II) - $16,000.00

b. Planeview Consumer Water Service Line Replacements Planeview Addition (east of Hillside, south of Pawnee) (448-90575/636267/772075) Traffic to be maintained during construction using flagpersons and barricades. (District III) - $190,000.00

c. Planeview Area Sanitary Sewer Improvements, Sewer Reconstruction Phase 2 Planeview Addition (north of 31st Street South, east of Hillside) (468-84838/624101/652019) Traffic to be maintained during construction using flagpersons and barricades. (District III) - $956,000.00

d. 2013 Utility Cut Repair of Streets, Driveways and Sidewalks (within City of Wichita city limits) (472-85076/132035/620591/636246/133116/132035/661686/771633/133116) Traffic to be maintained during construction using flagpersons and barricades. (District I,II,III,IV,V,VI) - $1,720,000.00

e. Pavement on 21st Street to remove an entrance and construct a new entrance serving Remington Place Addition (north of 21st Street North, east of Webb) (472-85061/766285/490303) Traffic to be maintained during construction using flagpersons and barricades. (District II) - $23,000.00

468-84847 (744342) 480034 District II

To be Bid: December 21, 2012

**PRELIMINARY ESTIMATE of the cost of:**
Lateral 11, Main 14, Four Mile Creek Interceptor Sewer to serve Krug South 2nd Addition
(south of 21st Street North, west of 143rd Street East)

All work done and all materials furnished to be in accordance with plans and specifications on file in the office of the City Engineer.

| | | | |
|---|---|---|---|
| | **Lump Sum Bid Items** | | |
| 1 | Pipe SS, 8" | 95 | lf |
| 2 | Pipe Stub, 4" | 1 | ea |
| 3 | MH, Connect to Existing | 1 | ea |
| 4 | MH, Standard SS (4') | 1 | ea |
| 5 | Air Testing, SS Pipe | 95 | lf |
| 6 | Site Clearing | 1 | LS |
| 7 | Site Restoration | 1 | LS |
| | **Measured Quantity Bid Items** | | |
| 8 | BMP, Construction Entrance | 1 | ea |

**Construction Subtotal** _____

Design Fee
Engineering & Inspection
Administration
Publication
Contingency

**Total Estimated Cost** $16,000.00

CITY OF WICHITA)
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.

Gary Janzen, P.E., City Engineer

Sworn to and subscribed before me this _____.
(DATE)

_____
City Clerk

480034 (744342) 468-84847
Page _____

EXHIBIT _____

To be Bid: December 21, 2012

**PRELIMINARY ESTIMATE of the cost of:**
Planeview Consumer Water Service Line Replacements
(east of Hillside, south of Pawnee)

All work done and all materials furnished to be in accordance with plans and specifications on file in the office of the City Engineer.

| | | | |
|---|---|---|---|
| | **GROUP 1 - LUMP SUM BID ITEMS (636267)** | | |
| 1 | Site Clearing | 1 | LS |
| 2 | Site Restoration | 1 | LS |
| 3 | Concrete Sidewalk 4" (Match Existing) | 1 | LS |
| 4 | ~~AC Pavement Replaced (Temporary)~~ DO NOT BID | ~~1~~ | LS |
| 5 | AC Pavement (Match Existing) | 1 | LS |
| | **GROUP 1 - MEASURED QUANTITY BID ITEMS (636267)** | | |
| 6 | Private Service Line Replaced | 45 | ea |
| 7 | BMP, Construction Entrance | 1 | ea |
| 8 | BMP, Curb Inlet Protection | 8 | ea |
| 9 | BMP Silt Fence | 525 | lf |
| 10 | BMP, Back of Curb Protection | 100 | lf |
| 11 | AC Pavement Replaced (Temporary) | 44 | sy |

**Construction Subtotal** _____

Engineering & Inspection
Administration
Publication

**Total Estimated Cost** $190,000.00

CITY OF WICHITA)
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.

Gary Janzen, P.E., City Engineer

Sworn to and subscribed before me this _____.
(DATE)

_____
City Clerk

772075 (636267) 448-90575
Page _____ EXHIBIT _____

To be Bid: December 21, 2012

**PRELIMINARY ESTIMATE of the cost of:**
Planeview Area Sanitary Sewer Improvements, Sewer Reconstruction Phase 2
(north of 31st Street South, east of Hillside)

All work done and all materials furnished to be in accordance with plans and specifications on file in the office of the City Engineer.

| | | | |
|---|---|---|---|
| | **GROUP 2 - LUMP SUM BID ITEMS (624101)** | | |
| 1 | MH, Standard SS (4') | 4 | ea |
| 2 | MH, Shallow SS (4') | 4 | ea |
| 3 | MH, Outside Drop Reconstr (or Const) | 1 | ea |
| 4 | MH Adjusted (6" to 12") | 1 | ea |
| 5 | MH Frame & Cover, Rem & Repl | 3 | ea |
| 6 | MH Bench & Invert, Rem & Repl | 1 | ea |
| 7 | Pavement Removed & Replaced | 23 | lf |
| 8 | Concrete Approach Rem & Repl | 19 | lf |
| 9 | Concrete Sidewalk Rem & Repl | 4 | lf |
| 10 | AC Pavement Rem & Repl (parking lot) | 183 | lf |
| 11 | Site Clearing | 1 | LS |
| 12 | Site Restoration | 1 | LS |
| | **GROUP 2 - MEASURED QUANTITY BID ITEMS (624101)** | | |
| 13 | Pipe, SS 8" | 1,500 | lf |
| 14 | Pipe Removed (6") | 1,282 | lf |
| 15 | Pipe Removed (8") | 218 | lf |
| 16 | Service Reconnection, Sewer (4") | 31 | ea |
| 17 | Pipe, SS 4" | 20 | lf |
| 18 | Private Service Line Replaced | 3 | ea |
| 19 | BMP, Erosion Control Mat | 35 | sy |
| 20 | BMP, Silt Fence | 325 | lf |

**Construction Subtotal** _____

Engineering & Inspection
Administration
Publication
Planeview Reconstruction Phase 1 (bid 11-9-12)
Future Phases

**Total Estimated Cost** $956,000.00

CITY OF WICHITA)
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.

Gary Janzen, P.E., City Engineer

Sworn to and subscribed before me this _____.
(DATE)

City Clerk

652019 (624101) 468-84838
Page _____

EXHIBIT _____

**PRELIMINARY ESTIMATE of the cost of:**
2013 Utility Cut Repair of Streets, Driveways and Sidewalks
(within City of Wichita city limits)

All work done and all materials furnished to be in accordance with plans and specifications on file in the office of the City Engineer.

| | | | |
|---|---|---|---|
| | **MEASURED QUANTITY BID ITEMS (132035)** | | |
| 1 | 6" "0" Slump Conc. Base | 100 | sy |
| 2 | 8" "0" Slump Conc. Base | 500 | sy |
| 3 | 10" "0" Slump Conc. Base | 100 | sy |
| 4 | 6" (High Early Strength) Reinf. Conc. Pvmt. or Base | 600 | sy |
| 5 | 8" (High Early Strength) Reinf. Conc. Pvmt. or Base | 5,250 | sy |
| 6 | 10" (High Early Strength) Reinf. Conc. Pvmt. or Base | 250 | sy |
| 7 | 6" Reinf. Conc. Pvmt. (Superplasticizer High Early Strength) | 250 | sy |
| 8 | 8" Reinf. Conc. Pvmt. (Superplasticizer High Early Strength) | 1,000 | sy |
| 9 | 10" Reinf. Conc. Pvmt. (Superplasticizer High Early Strength) | 750 | sy |
| 10 | Asph. Conc. (SC-1) (PG64-22) for Surface Course | 1,000 | tn |
| 11 | Brick (Clay) Surface Reconstr. | 1,000 | sy |
| 12 | Cold Mix Asph. Conc. for Temp Patch | 10 | tn |
| 13 | 4" Sidewalk Conc. Pvmt. | 20,000 | sf |
| 14 | 6" Driveway Conc. Pvmt. | 20,000 | sf |
| 15 | 8" Reinf. Driveway Conc. Pvmt. | 5,000 | sf |
| 16 | WCR Const. w/Det. Warn. | 70 | ea |
| 17 | Colored Conc. Pvmt. (8" Min.) | 50 | sy |
| 18 | 4" Colored Conc. Sidewalk | 50 | sf |
| 19 | Brick Pavers (Concrete) Reconstr. | 50 | sy |
| 20 | Granite Pavers Reconstr. | 20 | sy |
| 21 | Comb. Curb & Gutter Repair | 2,000 | lf |
| 22 | Mono Edge Curb Repair | 1,000 | lf |
| 23 | Compacted Soil Fill (95% Std Density) (Contr. Furnished) | 100 | tn |
| 24 | Compacted Asph. Millings Fill (95% Std Density)(Contr. Furnished) | 100 | tn |
| 25 | Compacted Crushed Conc. Fill (95% Std Density)(Contr. Furnished) | 100 | tn |
| 26 | Utility Test Hole Repair | 200 | ea |
| 27 | Protective Steel Plating | 50 | sy |
| 28 | Exploratory Excavation | 5 | ea |
| 29 | Flowable Fill | 50 | cy |
| 30 | Fescue Sod | 50 | sy |
| 31 | Bermuda Sod | 50 | sy |
| 32 | Zoysia Sod | 50 | sy |
| 33 | Electronic Message Board | 10 | day |
| 34 | Curb Drain (6") | 5 | ea |
| 35 | Curb Drain (8") | 5 | ea |
| 36 | Concr Removal, backfill & seed | 100 | sy |
| | **MEASURED QUANTITY BID ITEMS (620591)** | | |
| 37 | SS MH Adj. w/new Ring & Lid | 3 | ea |
| 38 | SS MH Adj. using existing Ring & Lid | 4 | ea |
| | **MEASURED QUANTITY BID ITEMS (636246)** | | |
| 39 | Ring & Lid for Water Meter Vaults | 5 | ea |
| 40 | Valve box ring & lid replacement | 4 | ea |
| | **MEASURED QUANTITY BID ITEMS (133116)** | | |
| 41 | SWS MH Adj. w/new Ring & Lid | 1 | ea |
| 42 | SWS MH Adj. using existing Ring & Lid | 1 | ea |

**Construction Subtotal** _____

Design Fee
Engineering & Inspection
Administration
Publication
Water Dept
Contingency

**Total Estimated Cost** $1,720,000.00

CITY OF WICHITA)
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.

Gary Janzen, P.E., City Engineer

Sworn to and subscribed before me this _____.
(DATE)

City Clerk

472-85061 (766285) 490303 District II

To be Bid: December 21, 2012

**PRELIMINARY ESTIMATE of the cost of:**
Pavement on 21st Street to remove an entrance and construct a new entrance serving Remington Place Addition

All work done and all materials furnished to be in accordance with plans and specifications on file in the office of the City Engineer.

| | | | | |
|---|---|---|---|---|
| | **Lump Sum Bid Items** | | | |
| 1 | Brick Pavers | 10 | sy | |
| 2 | Concrete C & G Removed | 42 | lf | |
| 3 | Concrete C & G , Type 3 (8") | 44 | lf | |
| 4 | Concrete C & G , Type 4 (6-5/8") | 46 | lf | |
| 5 | Concrete Driveway Removed | 146 | sy | |
| 6 | Crushed Rock Base 6", Reinforced | 189 | sy | |
| 7 | Concrete Pavement (VG) 8" (Reinf) | 150 | sy | |
| 8 | Traffic Control | 1 | LS | |
| 9 | Site Clearing | 1 | LS | |
| 10 | Site Restoration | 1 | LS | |
| | **Measured Quantity Bid Items** | | | |
| 11 | BMP, Back of Curb Protection | 135 | lf | |

**Construction Subtotal** _____

Design Fee
Engineering & Inspection
Administration
Publication

**Total Estimated Cost** $23,000.00

CITY OF WICHITA)
STATE OF KANSAS) SS

I do solemnly swear that the above amount is correct, reasonable and just.

Gary Janzen, P.E., City Engineer

Sworn to and subscribed before me this _____.
(DATE)

_____
City Clerk

490303 (766285) 472-85061

Page _____ EXHIBIT ____

**City of Wichita**
**City Council Meeting**
**January 15, 2013**

**TO:** Mayor and City Council

**SUBJECT:** Hold Harmless Agreement **(**Easement Encroachment) (District VI)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

---

**Recommendation:** Approve the Hold Harmless Agreement.

**Background:** The Young Men's Christian Association (YMCA) has vacated a portion of a platted alley at its new building located between Market and Broadway, from Central to 3rd Street. The vacated alley was retained as easement due to a sanitary sewer main and other utilities located in that alley. There are a number of encroachments into the easement that are detailed in Exhibit A of the agreement.

**Analysis:** The agreement allows the City to be held harmless from any and all claims resulting from leaking, cave-in or failure of the public sanitary sewer within the easement, and from claims resulting from replacement or upgrade of lines, manholes, and/or other City property in the easement. The YMCA waives all rights of action in law arising out of the encroachments into the easement.

**Financial Considerations:** There are no financial considerations.

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

**Recommendations/Actions:** It is recommended that the City Council approve the agreement and authorize the necessary signatures.

**Attachment:** Hold Harmless Agreement with Exhibit A.

HOLD HARMLESS AGREEMENT

THIS AGREEMENT made this 3rd day of December 2013, BY AND BETWEEN THE CITY OF WICHITA, KANSAS, hereinafter called "CITY" and The Young Men's Christian Association of Wichita, Kansas, a Kansas not-for-profit corporation, of Sedgwick County, in the State of Kansas, hereinafter called "OWNER"

WITNESSETH:

Whereas, the public has been granted an Easement 20.0 feet in width, in the area described as follows:

The platted (vacated) alley bound by even Lots 146 to 172 inclusive, Market Street, and the south half of Lot 174, Market Street, and Odd Lots 145 to 171 inclusive, Lawrence (now Broadway) Avenue, and the south half of Lot 173, Lawrence (now Broadway) Avenue, all within Greiffenstein Original Town of Wichita Addition, Wichita, Sedgwick County, Kansas;

and

Whereas, the Owner desired to occupy and construct improvements over, on and across said easement as shown on the attached Exhibit "A

NOW, THEREFORE, in consideration of the premises and the several mutual and reciprocal promises of the parties, it is agreed as follows:

(1) The City hereby agrees to permit the Owner to occupy improvements, over and across the aforesaid utility easement, and specifically waives any and all rights of action in law or equity against Owner, arising out of the Owner's occupancy and encroachment on and over said easement.

(2) The Owner agrees that it will not begin construction of the improvement on, over and across the said easement without first obtaining the City's approval of any and all plans and specifications for such improvements.

(3) In the event of an emergency or situation in which extensive notice is not feasible, that requires a repair and/or maintenance of the sanitary sewer line or other public utility within the easement, and the same repair and/or maintenance is determined by the City to be impossible or impractical due to the presence of the encroachment described as Tract "A", the City may remove or damage any structure on the easement, with the Owner being responsible to pay the costs to replace that portion of the structure within the easement. In any other event that a sanitary sewer line or other public utility within the easement is planned or requires repair and/or maintenance and the same construction or repair is determined by the City to be impossible or impractical due to the presence of the encroachment described as Tract "A", the owner shall be obligated to either (a) allow the City to remove or damage any structure on the easement, with the owner being responsible to pay the costs to replace that portion of the structure within the easement; (b) remove the said encroachment and clear the easement; or (c) pay the costs of tunneling under the encroachment to permit repair and/or maintenance of the public utility. After being notified by the City of the planned repair, maintenance or construction, the Owner shall have thirty (30) days to notify the City of its option and, if removal of the structure was selected, to complete the removal. If the Owner fails to remove the structure or agree to pay the cost of tunneling under the encroachment within thirty (30) days, the City may remove or damage any structure on the easement, with the owner being responsible to pay the costs to replace that portion of the structure within the easement. The time to select an option or remove the structure may be extended by the City in writing.

(4) The Owner agrees to protect and indemnify the City and adjacent property owners against any

increased cost that my accrue to them due to the necessity of construction of greater distance to avoid connecting beneath any improvements that may be built on, over and across said easement. In the event the owner fails to provide such indemnification, the Owner agrees that the City may assess any cost incurred by it against the property of the Owner. Such assessment shall be in the manner described in K.S.A. 12-6a 17, as amended from time to time.

(5) The Owner agrees to indemnify and hold harmless the City from any and all claims for personal injury and/or property damage resulting from the leaking, cave-in or failure of that portion of said structure within said easement area and which injury and/or damage is caused by the presence of the encroachment into said easement area. The Owner hereby releases the City from any and all claims that it might have for property damage caused by work performed by the City, or its employees, agents and contractors, in connection with the inspection, repair and/or maintenance of the utility within the above described easement.

(6) The agreement may be terminated by the City upon the failure of the Owner to comply with all of the terms of this agreement.

(7) The provisions contained herein are to be construed as covenants running with the land and may be enforced against any titleholder of the within described premises, so long as the structure contemplated by this agreement is in existence.

(8) This document creates a temporary, non-exclusive interest in real property and is not a construction contract governed by K.S.A. 12-121 as amended.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their names the day and year first above written.

**The Young Men's Christian Association of Wichita, Kansas**
a Kansas not-for-profit corporation, of Sedgwick County, in the State of Kansas

_____
Dennis Schoenebeck, President

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this 3rd day of December, 2012, before me a Notary Public in and fore said county and state, came Dennis Schoenebeck, President, The Young Men's Christian Association of Wichita, Kansas, a Kansas not-for-profit corporation, of Sedgwick County, in the State of Kansas to me personally known to be same person(s) who executed the within and foregoing instrument and duly acknowledged the execution of the same as the authorized act and deed of the Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

_____
Notary Public
My Commission Expires: 01/24/2012

CITY OF WICHITA, KANSAS

By_____
Carl Brewer, Mayor
City

ATTEST:

_____
City Clerk

STATE OF KANSAS, SEDGWICK COUNTY, ss:

BE IT REMEMBERED, that on this _____ day of _____, 2012, before me a Notary Public, I and fore said county and state, came Carl Brewer, Mayor of the City of Wichita, Kansas, to me personally known to be the same person who executed the within and foregoing instrument, and duly acknowledged the execution of the same, for and on behalf, and as the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, the day and year last written.

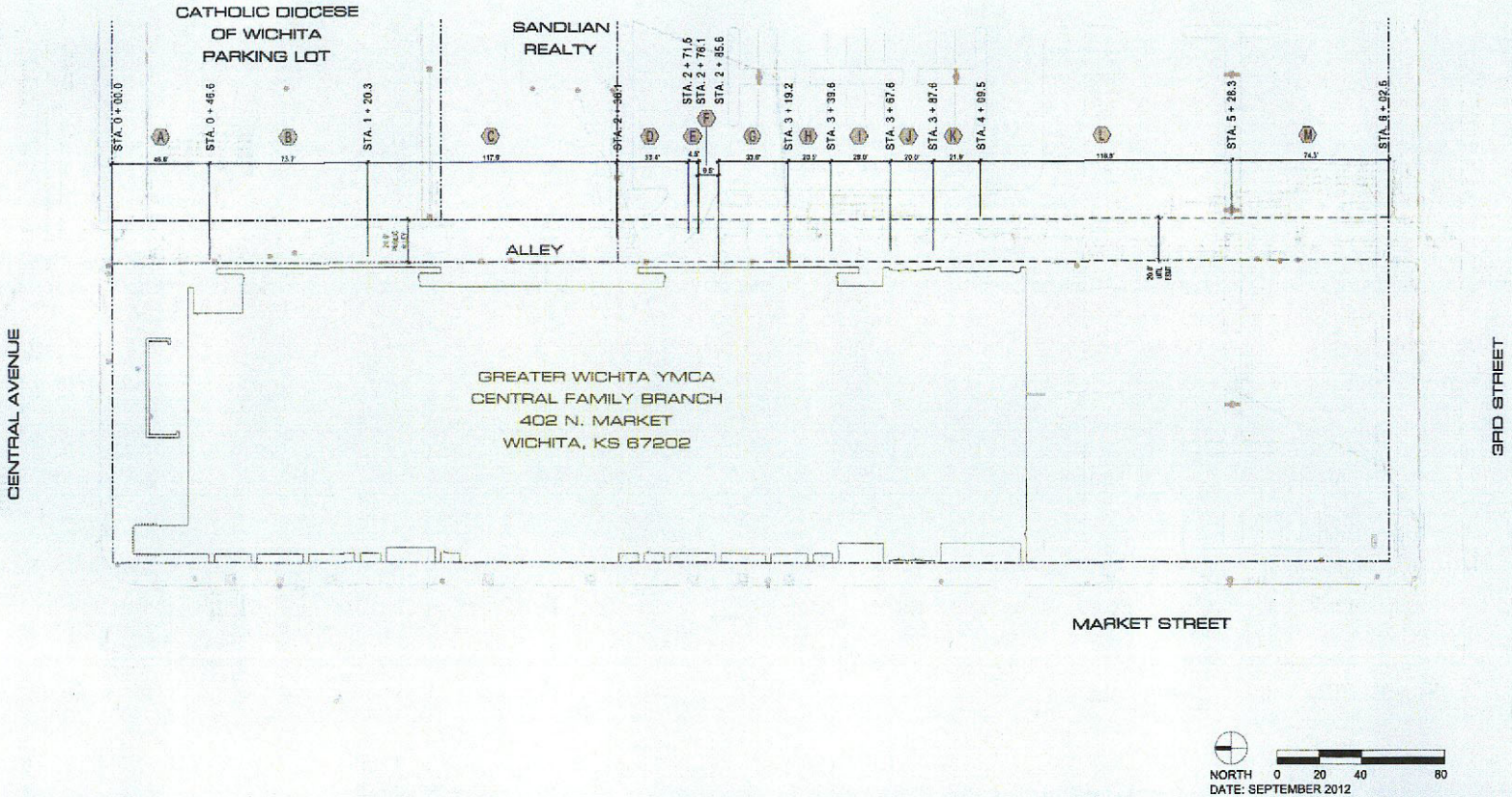
_____
Notary Public
My Commission Expires:_____

Approved as to form:

_____
Director of Law

## KEYED SITE NOTES

A. STA. 0 + 46.6 DISTANCE FROM PROPERTY LINE ALONG CENTRAL AVENUE TO GAS SERVICE.
B. STA. 1 + 20.3 DISTANCE TO ROOF DRAIN CONNECTION TO STORM WATER MAIN IN ALLEY.
C. STA. 2 + 38.1 DISTANCE TO 4" PVC IRRIGATION SLEEVING..
D. STA. 2 + 71.5 DISTANCE TO 12" PVC BACKWASH WATER LINE.
E. STA. 2 + 76.1 DISTANCE TO 3" PVC BACKWASH WATER LINE.
F. STA. 2 + 85.6 DISTANCE TO 1" BUNDLE ELECTRICAL SLEEVE INTO BUILDING.
G. STA. 3 + 19.2 DISTANCE TO 12" RAIN LEADER CONNECTION TO STORM WATER MAIN IN PARKING LOT.
H. STA. 3 + 39.6 DISTANCE TO 4" PVC IRRIGATION SLEEVING.
I. STA. 3 + 67.6 DISTANCE TO START OF BUILDING CANOPY OVERHANG 4'-0" INTO WEST EDGE OF ESMT. (10'-0" CLEARANCE)
J. STA. 3 + 87.6 DISTANCE TO END OF BUILDING CANOPY OVERHANG 4'-0" INTO WEST EDGE OF ESMT. (10'-0" CLEARANCE)
K. STA. 4 + 09.5 DISTANCE TO 4" PVC IRRIGATION SLEEVING.
L. STA. 5 + 28.3 DISTANCE TO 1" ELECTRICAL SLEEVE.
M. STA. 6 + 02.5 DISTANCE TO PROPERTY LINE ALONG 3RD STREET.




NORTH 0 20 40 80
DATE: SEPTEMBER 2012

# WICHITA CENTRAL FAMILY YMCA - Exhibit 'A'

SCHAFER JOHNSON COX FIET ARCHITECTURE

**City of Wichita**
**City Council Meeting**
**January 15, 2013**

**TO:** Mayor and City Council Members

**SUBJECT:** Street Resurfacing Project on US-54 from 111th Street West to 119th Street West and K-42 from the Floodway Bridge to North of the I-235 On Ramp (Districts IV and V)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

---

**Recommendation:** Approve the Agreement.

**Background:** The Kansas Department of Transportation (KDOT) has available a street resurfacing (KLINK) program for cities which have highway connecting links within the city limits. The KLINK program is intended for resurfacing improvements on the connecting links, which are maintained by the cities.

KDOT has advised the City of Wichita that KLINK Fiscal year 2014 funds in the amount of $200,000 have been allocated for a resurfacing project on westbound US-54 Highway from 111th Street West to 119th Street West, and northbound Highway K-42 from the floodway bridge to north of the Interstate-235 on ramp.

**Analysis:** The estimated total cost of this project is $400,000. The attached agreement provides that KDOT will reimburse the City in the amount of 50% of the approved construction cost, including construction engineering and contingencies, but not to exceed a maximum of $200,000.

**Financial Considerations:** The Capital Improvement Program (CIP) includes $500,000 annually in General Obligation funding for street rehabilitation, a portion of which is to be used for the City's portion of the cost of the project.

**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.

PROJECT NO. 54-87 U-0149-01
KLINK RESURFACING PROJECT
CMS CONTRACT NO. _____
CITY OF WICHITA, KANSAS

# A G R E E M E N T

This Agreement is between **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the "Secretary") and the **City of Wichita, Kansas** ("City"), **collectively**, the "Parties."

## RECITALS:

A. The City has applied for and the Secretary has approved a KLINK Resurfacing Project.

B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City.

C. The City desires to construct a street resurfacing Project on US-54 and K-42, city connecting links, in the City.

D. The Secretary desires to enter into an Agreement with the City to participate in the cost of the Project by use of State Highway funds.

**NOW, THEREFORE**, the Parties agree as follows:

## ARTICLE I

**DEFINITIONS:**

As used in this Agreement, the capitalized terms below have the following meanings:

**1.** **City Connecting Link** - a route inside the city limits of a city which: (1) connects a state highway through a city; (2) connects a state highway to a city connecting link of another state highway; (3) is a state highway which terminates within such city; (4) connects a state highway with a road or highway under the jurisdiction of the Kansas Turnpike Authority; or (5) begins and ends within a city's limits and is designated as part of the national system of Interstate and defense highways.

**2.** **KLINK Resurfacing Program** - a city connecting link (KLINK) resurfacing program that is a part of the KDOT Local Partnership Program with cities and counties. The state's participation in the cost of construction and construction engineering will be seventy-five percent (75%) for cities with a population of less than 10,000 or fifty percent (50%) for cities with a population of 10,000 or greater, up to a maximum of $200,000.00 per fiscal year of state funds. The KLINK Resurfacing Program is for contract maintenance only.

**3.** **Project** - mill and overlay, reconstruction, minor patching, joint repair, slurry seal, microsurfacing, and any other pre-approved resurfacing methods for the KLINK Resurfacing Program for US-54 West Bound, from 111th Street West to 119th Street West; and K-42 North Bound, from floodway bridge to North of I-235 on ramp.

**4.** **Eligible/Participating Bid Items** - all bid items that pertain to Project resurfacing and striping along the connecting link only. Items eligible for KLINK funding include manhole adjustments, milling, overlays, aggregate or paved shoulders (if already existing), concrete pavement, thin bonded concrete overlays, joint repair, slurry seals, bituminous seals, ultra thin bonded overlay, concrete and asphalt pavement patching, subgrade improvement, reconstruction, traffic control, transporting of salvageable material (millings), striping, traffic signal loops on the state highway and that portion of the traffic signal loops that lie inside the return on side streets, and pavement marking on the connecting link. Video-detection systems are participating, except on side streets; however, such systems will require pre-approval, as well as additional details, and a bill of materials to be included in the final design plans. Resurfacing work is participating out to the curb returns on side streets.

**5.** **Non-Eligible/Non-Participating Bid Items** - items typically non-eligible for KLINK funding include but are not limited to: bridge deck patching, utility adjustments, curb and gutter, overlay of curb and gutter, adjustment or reestablishment of survey markers, drainage appurtenances, driveways, entrances, sidewalks, sidewalk ramps, construction warranties, traffic loop construction outside the return on a side street, video detection on side streets, and construction outside of the curb and gutter. Work performed outside the Project limits on side streets, or outside the city limits is non-eligible for state participation, items with unit price changes from the let price (other than items with price adjustment specification in the bid documents) and any other items deemed non-eligible by the Secretary.

**6.** **Fiscal Year (FY)** - the state's fiscal year begins July 1 and ends on June 30 of the following calendar year.

## ARTICLE II

### SECRETARY RESPONSIBILITIES:

**1.** **Reimbursement of Project Costs.** The Secretary agrees to reimburse the City fifty percent (50%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering, but not to exceed $200,000.00, as the Secretary's total share of the cost to construct the Project. The Secretary shall not be responsible for the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering that exceeds $400,000.00. The Secretary shall not be responsible for the total actual costs of preliminary engineering, utility adjustments, or items not participating in the KLINK Resurfacing Program.

**2.** **Reimbursement Payments.** The Secretary will make such payment to the City as soon as reasonably possible after construction of the Project is completed, after receipt of proper billing, and attestation by a licensed professional engineer employed by the City that the Project was constructed within substantial compliance of the final design plans and specifications.

## ARTICLE III

**CITY RESPONSIBILITIES:**

**1. Limited Scope.** The Project is limited to roadway resurfacing along the Project location. The Project roadway resurfacing may include all eligible items as defined above. Roadway resurfacing does not include such non-eligible items as defined above and any other items deemed non-eligible by the Secretary.

**2. Secretary Authorization.** The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current KLINK Resurfacing Program for this Project.

**3. General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City will defend, indemnify, hold harmless, and save the Secretary 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 arising out of or in connection with the provisions or performance of this Agreement by the City, the City's employees, agents, or subcontractors. The City shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or his or her authorized representatives or employees.

**4. Indemnification by Contractors.** The City will require the contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act of omission of the contractor, the contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

**5. Design, Letting, and Administration.** To prepare or contract to have prepared, the design plans, specifications, and cost estimate (PS&E) for the Project, to let the contract, and award the contract to the lowest responsible bidder. The City agrees to construct or have constructed the Project in accordance with the final design plans and specifications; inspect or have inspected the construction; administer the Project; and make the payments due the contractor, including the portion of cost borne by the Secretary. The City shall design the Project or contract to have the Project designed in conformity with the current version of Section 16.0 City Connecting Links (KLINK) Resurfacing Program of the LPA Project Development Manual.

**6. Responsibility for Adequacy of Design.** The City and any consultant retained by the City shall have the sole responsibility for the adequacy and accuracy of the design plans, specifications, and estimates. Any review of these items that may be performed by the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the City's and its consultant's duty to provide adequate and accurate design plans, specifications, and estimates. Such reviews are not done for the benefit of the consultant, the construction contractor, the City, or other political subdivision, nor the traveling public. The Secretary makes no representation, expressed or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, and estimates or any other work performed by the consultant or the City.

**7. Design Schedule and Submission to Secretary.** The City will follow a schedule for design and development of plans that will allow the Project to be let to contract in the programmed fiscal year; otherwise, the City agrees the Secretary has the right to withdraw the Secretary's participation in the Project. If the City's Project preliminary plans, specifications, and a cost estimate (PPS&E) are submitted to KDOT's Bureau of Local Projects later than May 1 of the programmed fiscal year, at the Secretary's discretion, the Project may be moved into a future fiscal year.

**8. Movement of Utilities.** The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipelines, meters, and other utilities, publicly or privately owned, which may be necessary for construction of the Project in accordance with the final design plans. The expense of the removal or adjustment of the utilities and encroachments located on public right of way or easement shall be borne by the owner or the City.

**9. Future Encroachments.** The City will prohibit future erection, installation or construction of encroachments either on or above the right of way, and it will not in the future permit the erection of fuel dispensing pumps upon the right of way of the connecting link. The City further agrees it will require any fuel dispensing pumps erected, moved or installed along the connecting link be placed no less than twelve (12) feet back of the right of way line.

**10. Legal Authority.** The City will adopt all necessary ordinances and/or resolutions and take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

**11. Temporary Traffic Control.** It is understood the City (or the City's consultant) shall determine the manner in which traffic is to be handled during construction in accordance with the latest version, adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD).

**12. Permanent Traffic Control.** The City shall conform the location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by an public authority, or other agency as authorized by K.S.A. 8-2005, shall conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference, and shall be subject to the approval of the Secretary.

**13. Access Control.** The City will maintain control of access rights and prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final design plans, unless prior approval is obtained from the Secretary.

**14. Final Design Plans.** The final design plans will depict the entire Project location. The eligible/participating bid items must be shown separated and listed apart from the non-eligible/non-participating bid items on the final design plans, bid documents, and on the detailed billing provided by the City. The City shall have the final design plans signed and sealed by a licensed professional engineer. The City will furnish to KDOT's Bureau of Local Projects an electronic set of final design plans and specifications. The City further agrees the specifications will require the contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

**15. Program Administration.** In addition to complying with all requirements contained in Section 16.0 City Connecting Links (KLINK) Resurfacing Program of the LPA Project Development Manual:

(a) The City acknowledges that funding for the Project may be cancelled if the City proceeds to advertise, let, or award a contract for the Project, prior to receipt of notification from KDOT's Bureau of Local Projects of its completion of the final review of the plans, specifications, and estimates (PS&E).

(b) The City acknowledges that funding for the Project may be cancelled if the City awards the contract for the Project prior to its receipt of an "Authority to Award" notification from KDOT's Bureau of Local Projects.

(c) The City will provide to KDOT's Bureau of Local Projects an electronic copy of the executed contract, the completed tax exemption form (PR-76 or PR-74a) and the City's Notice of Award.

(d) After the contract for the Project is awarded, the City will promptly notify both the Project Manager of KDOT's Bureau of Local Projects and the KDOT Area Engineer to communicate the date the contractor is anticipated to begin work on the Project.

(e) The City acknowledges that any costs for work completed prior to receipt of a Notice of Actual Start Date from the KDOT Area Engineer are ineligible for participation in the Program, will be deemed non-participating costs, and shall be the responsibility of the City.

**16. Discrimination Laws.** The City will: (a) 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 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) include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; and (d) include those provisions in (a) through (c) in every contract, subcontract or purchase order so they are binding upon such contractor, subcontractor or vendor. If the City fails to comply with any applicable requirements of (a) through (d) above or if the City is found guilty of any violation by federal or state agencies having enforcement jurisdiction for those Acts, such violation will constitute a breach of this Agreement. If the Secretary determines the City has violated applicable provisions of the ADA, the violation will constitute a breach of this Agreement. If any violation under this paragraph occurs, this Agreement may be cancelled, terminated or suspended in whole or in part.

**17. Prevailing Wages.** The City will require the contractor to pay prevailing wages. The City will incorporate into the construction contract the current general wage decision for the county in which the Project is being constructed. The City can obtain the current wage decision from the KDOT Bureau of Construction and Maintenance website.

**18. Inspections.** The City will provide the construction engineering/inspection necessary to determine substantial compliance with the final design plans, specifications, and this Agreement. The City will require at a minimum all personnel, whether City or consultant to comply with the high visibility apparel requirements of the *KDOT Safety Manual*, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for inspection, the agreement must contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

**19.** **Corrective Work.** The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of the funding participation in the KLINK Resurfacing Program. The Secretary does not undertake (for the benefit of the City, the contractor, the consultant, or any third party) the duty to perform day-to-day detailed inspection of the Project or to catch the contractor's errors, omissions or deviations from the final design plans and specifications.

**20.** **Attestation.** Upon completion of the Project the City shall have a licensed professional engineer employed by the City attest in an email to the KDOT Area Engineer and the Project Manager for KDOT's Bureau of Local Projects, that the Project was completed in substantial compliance with the final design plans and specifications.

**21.** **Final Acceptance.** Prior to issuing final payment to the contractor, the City must obtain final acceptance of the Project from the KDOT Area Engineer.

**22.** **Accounting.** Upon request by the Secretary, the City will provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of KDOT and costs incurred by the City not to be reimbursed by KDOT for preliminary engineering, utility adjustments, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

**23.** **Reimbursement Request.** The City will request payment from the Secretary after the City has paid the contractor in full, and a licensed professional engineer has attested in writing the Project has been completed in conformance with the plans and specifications.

**24.** **Audit.** The City will participate and cooperate with the Secretary in an annual audit of the Project. The City shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments have been made with state funds by the City for items considered non-participating, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

## ARTICLE IV

**GENERAL PROVISIONS:**

**1.** **Existing Right of Way.** The Project will be constructed within the limits of the existing right of way.

**2.** **Incorporation of Final Plans.** The final design plans and specifications are by this reference made a part of this Agreement.

**3.** **Compliance with Federal and State Laws.** The Parties agree to comply with all appropriate state and federal laws and regulations applicable to this Project.

**4.** **Project Modification.** Any of the following Project changes require the City to send a formal notice to the Secretary for approval:

a. Fiscal year the Project is to be let

b. Project length
c. Project location
d. Project scope

**Items b, c, and d require an attached map to scale.**

It is further mutually agreed during construction, the City shall notify the Secretary of any changes in the plans and specifications.

**5.** **Civil Rights Act.** The Special Attachment No. 1, pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

**6.** **Contractual Provisions.** The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part hereof.

**7.** **Termination.** If, in the judgment of the Secretary, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, the Secretary may terminate this Agreement at the end of its current fiscal year. The Secretary will participate in all costs approved by the Secretary incurred prior to the termination of the Agreement.

**8.** **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement are binding upon the Secretary and the City and their successors in office.

**9.** **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement, nor do the Parties authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

**10.** **Headings.** The captions of the various articles and sections of this Agreement are for convenience and ease of reference only, and do not alter the terms and conditions of any part or parts of this Agreement.

**11.** **Effective Date.** This Agreement will become effective as of the date signed by the Secretary or designee.

***The signature page immediately follows this paragraph.***

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be signed by their duly authorized officers.

ATTEST: THE CITY OF WICHITA, KANSAS

_____ _____ _____

CITY CLERK (Date) MAYOR

(SEAL)

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

By:_____ _____

Jerome T. Younger, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

# KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

## NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

## CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

## Nondiscrimination Clauses

During the performance of this contract, the Consultant, or the Consultant's assignees and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.

2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.

5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.

6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,

   (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or

   (b) cancellation, termination or suspension of the contract, in whole or in part.

7) Disadvantaged Business Obligation

   (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.

   (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.

   (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

8) Executive Order 12898

   (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.

9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

State of Kansas
Department of Administration
DA-146a (Rev. 06-12)

**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. 06-12), 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. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue**: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in 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 the 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**: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined 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.

   Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

   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 of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the 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 and its agencies 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 and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor 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."

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

**City of Wichita**
**City Council Meeting**
**January 15, 2013**

**TO:** Mayor and City Council Members

**SUBJECT:** Supplemental Design Agreement No. 4 for Lincoln Street Bridge and Dam Improvements (District III and IV)

**INITIATED BY:** Department of Public Works & Utilities

**AGENDA:** Consent

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**Recommendation:** Approve Supplemental Agreement No. 4.

**Background:** On April 20, 2010, the City Council approved a design concept by MKEC Engineering Consultants, Inc. (MKEC) which provided for reconstruction of the Lincoln Street Bridge and construction of a new dam downstream from the bridge. The City Council also approved final design funding for the separate structures. On December 14, 2010, the City Council approved a construction contract with Dondlinger & Sons Construction Company, Inc. for improvements to the Lincoln Street Bridge and Dam. Construction was completed on September 30, 2012.

Supplemental Agreement No. 1, in the amount of $339,166, was approved by the City Council on October 16, 2007, and provided a more detailed evaluation of rehabilitation and redesign options in the concept phase of the project. Supplemental Agreement No. 2, in the amount of $364,847, was approved by the City Council on May 11, 2010, and provided additional design services based on the concept option chosen by the City Council, as well as the addition of a boat and fish passage. Supplemental Agreement No. 3, in the amount of $50,000, was approved by the City Council on October 19, 2010, and provided the design of aesthetic improvements.

**Analysis:** Supplemental Agreement No. 4 will provide a final survey of the new dam as required by the Kansas Department of Agriculture's Division of Water Resources permit. The supplemental agreement will also provide a report of the survey's findings. The specific requirements of the permit were unknown until just prior to opening bids and the specialized work is best completed by the design consultant.

**Financial Considerations:** Payment to MKEC for Supplemental Agreement No. 4 is on a lump sum basis in the amount of $8,240. The approved design fee to-date is $762,513. With this supplemental agreement, the total design fee will be $770,753. Funding is available within the existing project budget.

**Legal Considerations:** Supplemental Agreement No. 4 has been approved as to form by the Law Department.

**Recommendation/Action:** It is recommended that the City Council approve Supplemental Agreement No. 4 and authorize the necessary signatures.

**Attachments:** Supplemental Agreement No. 4.

SUPPLEMENTAL AGREEMENT NO. 4

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 84883).

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 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"

**Final Survey for**
**Lincoln Street Bridge and Dame**
(see Exhibit "A-1")

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 will increase the total contract by $**8,240.00**.

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by the 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 _____, 2013.

BY ACTION OF THE CITY COUNCIL

_____
Carl Brewer, Mayor

ATTEST:

_____
Karen Sublett, City Clerk

APPROVED AS TO FORM

_____
Gary E Rebenstorf, Director of Law

MKEC ENGINEERING CONSULTANTS, INC.

_____
(Name & Title)

ATTEST:

_____

# CONTRACTS & AGREEMENTS
# BLANKET PURCHASE ORDERS RENEWAL OPTIONS
# DECEMBER 2012

| COMMODITY TITLE | EXPIRATION DATE | VENDOR NAME | DEPARTMENT | ORIGINAL CONTRACT DATES | RENEWAL OPTIONS REMAINING |
|---|---|---|---|---|---|
| Actuarial Services for Post Employment Benefits Other Than Pensions | 12/31/2013 | The Nyhart Company | Finance | 1/1/2012 - 12/31/2012 | 3 - 1 year options |
| Actuarial Services for Self-Funded Automobile Liability, General Liability & Workers Compensation (2010) | 12/31/2013 | Pinnacle Actual Resources, Inc. | Finance | 1/1/2010 - 12/31/2010 | 1 - 1 year option |
| Anhydrous Ammonia (Bulk Delivery) | 12/31/2013 | Airgas Specialty Products Inc. | Public Works & Utilities | 1/1/2012 - 12/31/2012 | 1 - 1 year option |
| Animal Bags | 12/31/2013 | Massco, Inc. | Police | 1/1/2011 - 12/31/2011 | Last option |
| Asbestos Abatement - Primary Contractor | 12/31/2013 | Enviro Remediation, Inc. | Public Works & Utilities | 1/24/2012 - 12/31/2013 | 1 - 1 year option |
| Asbestos Abatement - Secondary Contractor | 12/31/2013 | F & H Abatement Services, Inc. | Public Works & Utilities | 1/24/2012 - 12/31/2013 | 1 - 1 year option |
| Asphalt, Hot & Cold Mix - Group 1 | 12/31/2013 | Lafarge North America, Inc. | Various | 1/1/2012 - 12/31/2012 | 1 - 1 year option |
| Asphalt, Hot & Cold Mix - Group 2 | 12/31/2013 | Cornejo & Sons, LLC | Various | 1/1/2012 - 12/31/2012 | 1 - 1 year option |
| Cafeteria Concession Privileges - Wichita City Hall Kitchen | 12/31/2012 | The Petroleum Club DBA City Hall Café | Finance | 1/3/2011 - 12/31/2011 | 1 - 1 year option |
| City Maps | 12/31/2013 | Kansas Blue Print | Various | 1/1/2003 - 12/31/2003 | Annual basis |
| Diamond Saw Blades | 12/31/2013 | National Diamond LLC | Public Works & Utilities | 1/1/2012 - 12/31/2012 | 1 - 1 year option |
| Education Services for WER and Fire | 12/31/2013 | Nestegg Consulting, Inc. | Finance | 10/1/2001 - 9/30/2002 | Annual extension |
| Grounds Maintenance Services (Airfield) | 12/31/2012 | Florence Bergkamp dba Fab Mowing | Airport | 1/1/2008 - 12/31/2010 | Last option |
| False Alarm Registration & Management Services | 12/31/2013 | AOT Public Safety Corporation | Police | 1/1/2009 - 12/31/2009 | Last option |
| Horse Boarding Services | 12/31/2013 | Aces High Acres | Police | 1/1/2009 - 12/31/2009 | Last option |
| Insurance, 2010 Property, Liability & Excess Workman's Comp Placement Services | 12/31/2013 | Lockton Companies, LLC | Finance | 1/12/2010 - 12/31/2010 | 1 - 1 year option |
| Investment Consulting Services for WER and Fire | 12/31/2012 | Callan Associates Inc. | Finance | 1/1/2012 - 12/31/2012 | 4 - 1 year options |
| Legal Services for City Worker's Compensation Claims | 12/31/2013 | Edward D Heath Jr. | Law | 1/1/2012 - 12/31/2012 | 3 - 1 year options |
| Outsourcing Print Shop and Mail Room Services - Options 2 & 3 | 12/31/2013 | Tarrant, Inc. dba Quik Print | IT / IS | 7/1/2009 - 12/31/2010 | 1 - 1 year option |
| Outsourcing Water Bills - Option 1 | 12/31/2013 | High Cotton USA, Inc. dba High Cotton | IT / IS | 7/1/2009 - 12/31/2010 | 1 - 1 year option |
| Polymer for Use in the Wastewater Solids Dewatering Facility | 12/31/2013 | Polydyne, Inc. | Public Works & Utilities | 1/1/2012 - 12/31/2012 | 1 - 1 year option |
| Record Keeping Services | 12/31/2012 | Northeast Retirement Services, Inc. | Finance | 1/1/2011 - 12/31/2011 | 3 - 1 year options |
| Uniform Shirts, Pants and Lab Coats Rental for Water Utilities - Sewage Treatment Division | 12/31/2013 | Aramark Uniform & Career Apparel LLC DBA Aramark Uniform Services | Public Works & Utilities | 1/16/2012 - 12/31/2012 | 1 - 1 year option |
| Wichita Retirement Systems Trust/Custody Bank Search (Custodian Services for WER) | 12/31/2012 | State Street Bank and Trust Company | Finance | 1/1/2011 - 12/31/2011 | 3 - 1 year options |

# PROFESSIONAL CONTRACTS UNDER $25,000
# DECEMBER 2012

| VENDOR NAME | DOCUMENT NO | DOCUMENT TITLE | AMOUNT | | |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |

# ANNUAL MAINTENANCE CONTRACTS OVER $25,000
# DIRECT PURCHASE ORDERS FOR DECEMBER 2012

| VENDOR NAME | DOCUMENT NO | DOCUMENT TITLE | AMOUNT | | |
|---|---|---|---|---|---|
| Flightview Inc. | PO240880 | Information Highway Electronic Services | $28,920.00 | | |
| Taser International | DP240955 | Software Maintenance/Support | $25,846.57 | | |
| | | | | | |
| | | | | | |

**CITY OF WICHITA**
**City Council Meeting**
January 15, 2013

**TO:** Mayor and City Council Members

**SUBJECT:** Sale of Remnant at Southeast Corner of Kellogg and Tyler (District IV)

**INITIATED BY:** Office of Property Management

**AGENDA:** Consent

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**Recommendation:** Approve the sale.

**Background:** The City acquired a parcel at the southeast corner of Kellogg and Tyler as part of the Kellogg-Tyler/Maize project. The project required the west 25 feet of the property and complete access control. The remaining parcel has 13,155 square feet of which 8,897 square feet are impacted by utilities leaving 4,258 square feet unencumbered. The City sold this piece in 2009 for $5,000. The parcel and other land at the corner have been assembled and are in the process of being replatted. The plat includes a small strip of land that is owned by the City, approximately five feet wide by 256 feet long and containing 1,281.61 square feet. The developer has requested that the City sell this parcel to facilitate the plat.

**Analysis:** The parcel has been reviewed by City departments and is not required for right of way. Due to the small size and lack of access the parcel has no value by itself. The developer has offered $1,281.61 ($1 per square foot) for the tract. Based on previous sales, this offer approximates fair market value for a nonbuildable remnant with arterial exposure but not access. The site is being replatted for auto sales. The parcel will be subject to a utility easement and will be access controlled from Tyler.

**Financial Considerations:** The City will receive cash consideration for the sale of the property, less any marketing costs. In addition, the sale of this property to a private party will place additional value into the tax base and relieve the City of any maintenance costs.

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

**Recommendation/Action:** It is recommended that the City Council approve the Real Estate Purchase Contracts and authorize all necessary signatures.

**Attachments:** Real estate agreement and survey.

## REAL ESTATE SALE CONTRACT

THIS AGREEMENT, Made and entered into this 27th day of December, 2012 by and between the City of Wichita, a municipal corporation, party of the First Part, hereinafter referred to as "Seller," whether one or more, and Kolbee Enterprises, Inc., 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 quit claim deed the following described real property, situated in Sedgwick County, Kansas, to-wit:

   That part of Lots 25 and 26 Fairlawn Acres, Sedgwick County, Kansas, described as Commencing at the S.W. Corner of said Lot 26; thence East, along the South line of said Lot 26, 45 feet to the Point of Beginning; thence North, parallel with and 45 feet East of the West line of said Lot 26, 223.23 feet to a point on the South Right-of-Way line of Kellogg as recorded on Condemnation Case A-38302; thence Northeasterly, along said Condemnation Case 5.47 feet to a point 50 feet East of the West line of said Lot 26; thence South, parallel with and 50 feet East of the West line of said Lot 26, 109.45 feet to a point on the Common Lot line between said Lot 25 and 26; thence Southwesterly, 46.28 feet to a point 45 feet East and 45.98 feet South of the N.W. corner of said Lot 25; thence North, parallel with and 45 feet East of the West line of said Lot 25, 45.98 feet to the point of beginning.

2. The Buyer hereby agrees to purchase, and pay to the Seller, as consideration for the conveyance to him of the above-described real property, the sum of One Thousand Two Hundred Eighty-one Dollars and Sixty-one Cents ($1,281.61) in the manner following to-wit: cash at closing.

3. The Seller, at his option, agrees to furnish to Buyer, either 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. The Title Evidence shall be sent to the Buyer 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 further agreed by and between the parties hereto that all rentals, insurance (if policies acceptable to Buyer), and interest, if any shall be adjusted and prorated as of the date of closing. Taxes and specials shall be pro-rated for calendar year on the basis of taxes levied, or for the prior year.

6. The Seller further agrees to convey the above-described premises with all the improvements located thereon and deliver possession of the same in the same condition

as they now are, reasonable wear and tear excepted.

7. 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 December 31, 2012.

8. Possession to be given to Buyer at closing

9 . In the event an Owner's title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy shall be paid 50% by Buyer and 50% by Seller.

10. The parties covenant and agree that except for closing, title insurance and commissions referenced elsewhere herein, each is solely responsible for the payment of any fee for brokerage, technical or other professional services relating to the execution and performance of this Contract incurred by such party.

11. Seller makes no warranty or guarantee as to the suitability of the real property proposed for trade for the intended use of Buyer. Therefore, Buyer covenants and agrees that Buyer at Buyer's own expense, shall examine the real property in order to determine such suitability including but not limited to:
    A. Soils data and geology, drainage, hydrology and topographical features that would affect any present or future intended use;
    B. The presence or absence of any contamination by any hazardous substance;
    C. The quality and quantity of water available by on-site water wells, and the availability of a permit or permits therefore;
    D. The nature, extent, and cost of public utilities needed to serve all or a portion of such real property;
    E. The extent and cost of compliance with subdivision regulations, building codes and other applicable rules and regulations involving public improvements, private improvements, access, building setbacks, public dedications, platting and replatting requirements of such real property;
    F. The nature and extent of zoning and subdivision statutes, laws, ordinances and regulations affecting the present use, and the ease or difficulty involved in the zone-change and subdivision approval procedures necessary or desirable to allow for the Buyer's intended use or uses.

12. Buyer also covenants and agrees that Buyer, his agents, successors and assigns any future use of the property as described above for the following uses shall be prohibited:

    A. Adult Book and Video Stores
    B. Community Correctional Facilities
    C. Half-way Houses
    D. Drug or Alcohol Rehabilitation Facilities
    E. Multi-game, Casino-style Gambling Facilities
    F. Commercial Billboards

13. The covenants and agreements contained in Paragraphs 11 and 12 shall survive the closing of the sale intended hereby, and they shall bind the buyer as fully after the sale as

they do before.

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

**BUYER**
Kolbee Enterprises, Inc.

Janet Cervantes Sec, Treasure

~~Leslie A. Eck, President~~

Janet Cervantes, Sec/Treas/CFO

**SELLER**
By Direction of the City Council

Carl Brewer, Mayor

**ATTEST:**

Karen Sublett, City Clerk

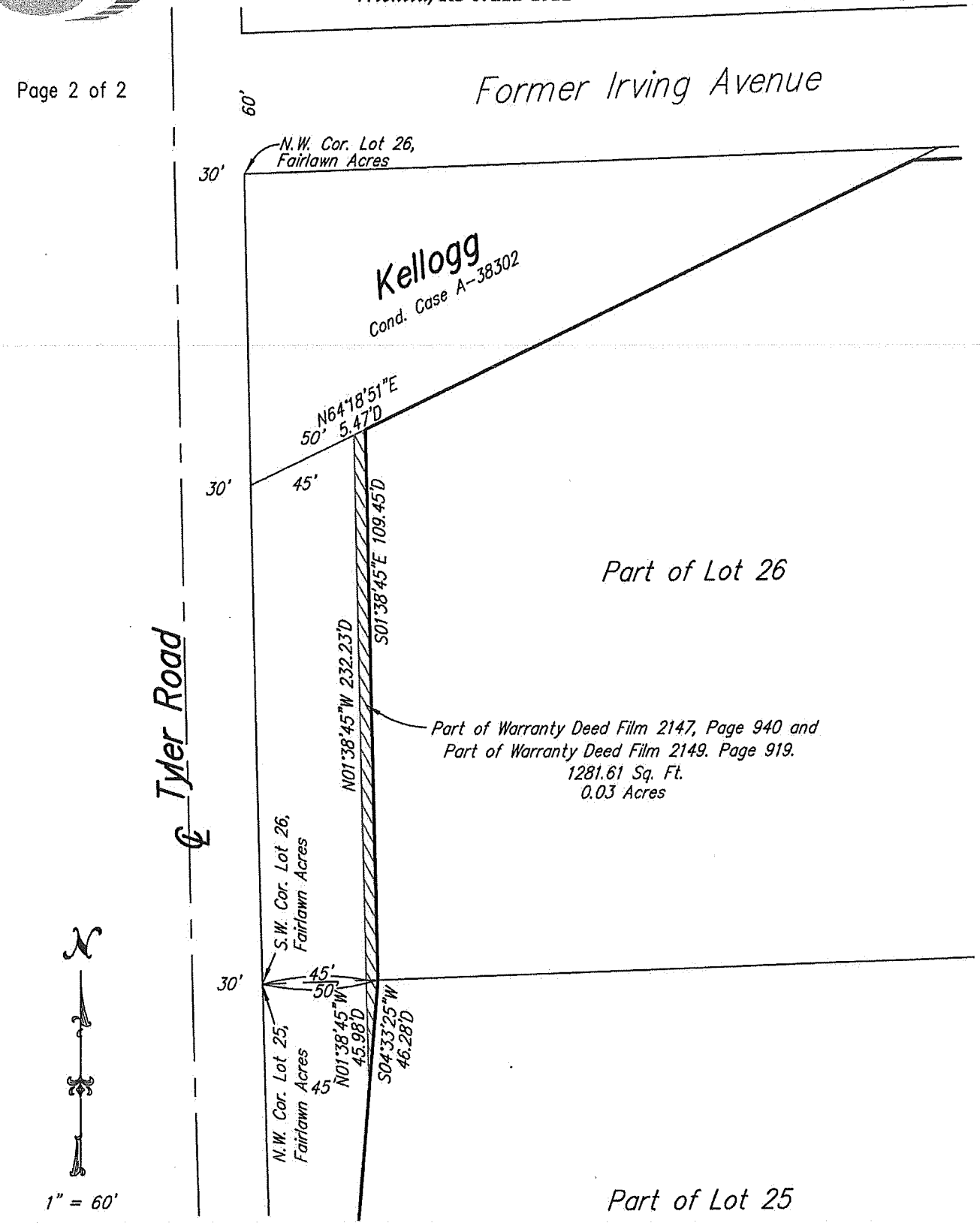
**APPROVED AS TO FORM:**

Gary E. Rebenstorf, Director of Law

**Savoy Company, P.A.**
433 S. Hydraulic
Wichita, KS 67211-1911

PH (316) 265-0005
FAX (316) 265-0275
www.savoyco.com






November 2, 2012

January 15 – City Council Meeting

Proposed Assessment Rolls

Proposed Assessment Rolls have been prepared for two (2) water, two (2) sewer, four (4) storm water and twelve (12) paving projects and it is necessary to set a public hearing date. Informal hearing with City personnel will be held February 4, 2013 at 11:00 a.m. Notification of both the informal and formal public hearings regarding the proposed special assessments will be mailed to affected property owners on January 18, 2013.

| | |
|---|---|
| RECOMMENDED ACTION: | Set the hearing on the Proposed Assessment Rolls for 9:30 a.m., Tuesday, March 5, 2013, and publish the notices of hearing at least once not less than 10 days prior to the date of the hearing. |

**Second Reading Ordinances for January 15, 2013 (first read on January 8, 2013)**

**A. <u>Ordinance to Terminate the Maize 54 Redevelopment District, Tax Increment Financing.</u> (District IV)**

ORDINANCE NO. 49-427

An ordinance of the City of Wichita, Kansas repealing Ordinance No. 49-395 of said City.

**B. <u>Improvements to 135th Street West from Maple to Central.</u> (District V)**

ORDINANCE NO. 49-428

An ordinance amending Ordinance No. 46-843 of the City of Wichita, Kansas declaring 135th St. West, between Maple and Central (472-84308) 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.

**C. <u>Nuisance Abatement Assessments.</u> (Districts I, II, III, IV and VI)**

ORDINANCE NO. 49-429

An ordinance making a special assessment to pay for the cost of abating certain public health nuisances (Lot clean up) under the provision of section 7.40.050 of the code of the City of Wichita, Kansas. Be it ordained by the governing body of the City of Wichita, Kansas.

**D. <u>SUB2012-00036 – Plat of Tyler Pointe Addition located on the southeast corner of 13th Street North and Tyler.</u> (District V)**

ORDINANCE NO. 49-430

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.

**Agenda Item No. II-9**

**City of Wichita**
**City Council Meeting**
January 15, 2013

**TO:** Mayor and City Council

**SUBJECT:** SUB2012-00030 -- Plat of Cottonwood Corner Addition located south of 29th Street North, west of Broadway. (District VI)

**INITIATED BY:** Metropolitan Area Planning Department

**AGENDA:** Planning (Consent)

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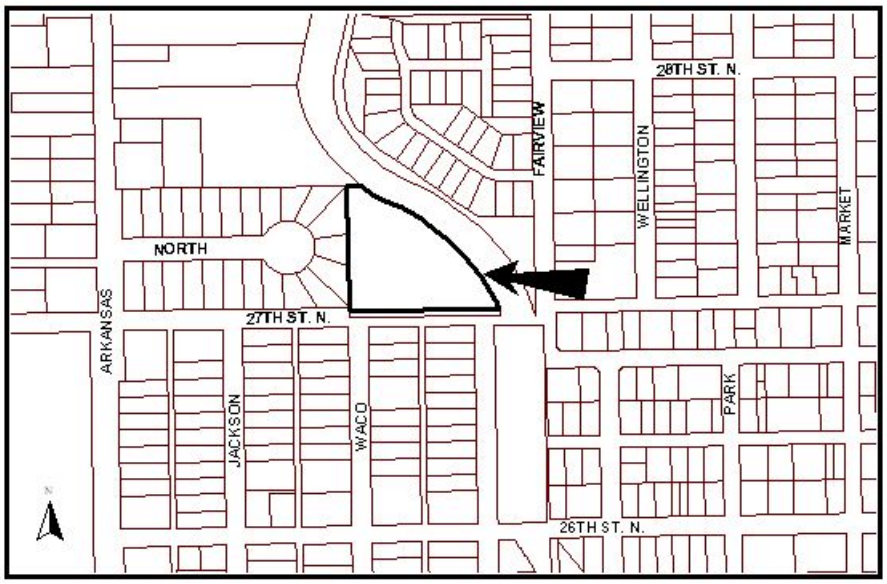
**Staff Recommendation:** Approve the plat.

**MAPC Recommendation:** Approve the plat. (11-0)




**Background:** The site, consisting of eight lots on 2.37 acres, is zoned SF-5 Single-family Residential.

**Analysis:** The applicant has submitted a 100 percent Petition and a Certificate of Petitions for paving, sewer and water improvements. The applicant has provided a restrictive covenant restricting the use of a 15-foot street, drainage and utility easement adjoining a narrow street right-of-way.

The plat has been reviewed and approved by the Metropolitan Area Planning Commission subject to conditions.

**Financial Considerations:** There are no financial considerations associated with the plat.

**Legal Considerations:** The Law Department has reviewed and approved the Certificate of Petitions, Restrictive Covenant and Resolution as to form and the documents will be recorded with the Register of Deeds.

**Recommendations/Actions:** It is recommended that the City Council approve the documents and plat, authorize the necessary signatures, and adopt the Resolutions.

**Attachments:** Certificate of Petitions
Restrictive Covenant
Resolutions

COPY

**CERTIFICATE**

CITY OF WICHITA )
SEDGWICK COUNTY) SS
STATE OF KANSAS )

I, Laurie Walker, Operations Director for Wichita Habitat for Humanity, owner of Cottonwood Corner, an Addition to Wichita, Sedgwick County, Kansas, do hereby certify that petitions for the following improvements have been submitted to the City Council of the City of Wichita, Kansas:

1. Street Improvements
2. Sanitary Sewer Improvements
3. Water Distribution System (Interior)

As a result of the above-mentioned petitions for improvements, lots or portions thereof within Cottonwood Corner, an Addition to Wichita, Sedgwick County, Kansas may be subject to special assessments assessed thereto for the cost of construction the above-described improvements.

Signed this 20TH day of DECEMBER, 2012.

Wichita Habitat for Humanity

Laurie Walker
Laurie Walker, Operations Director

CITY OF WICHITA )
SEDGWICK COUNTY) SS
STATE OF KANSAS )

The foregoing instrument was acknowledged before me this 20TH day of DECEMBER 2012, Laurie Walker, Operations Director for Wichita Habitat for Humanity, owner of Cottonwood Corner, an Addition to Wichita, Sedgwick County, Kansas.

Seal or Stamp

William K. Clevenger, Notary Public
(signature of notary officer)

WILLIAM K. CLEVENGER
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 11/15/16

My appointment expires: _____ 20 _____.

Approved as to form:

Gary E. Rebenstorf, Director of Law

COPY

**RESTRICTIVE COVENANT**

THIS DECLARATION made this 20TH day of DECEMBER, 2012, by Wichita Habitat for Humanity, Inc., hereinafter called "Declarant",

WITNESSETH

WHEREAS, Declarant is the owner of the following described property:

Cottonwood Corner, an Addition to Wichita, Sedgwick County, Kansas.

WHEREAS, the Declarant is desirous in connection therewith that various restrictions be placed of record on the 15-foot street, drainage and utility easement.

NOW, THEREFORE, Declarant hereby declares and covenants that retaining walls, change of grade, fences, earth berms, and mass plantings shall be prohibited within the said easement. Furthermore, the Declarant hereby agrees that any planting within the said easement shall be reviewed by the City Forestry Division, prior to installation.

This covenant shall be binding on the owner, their heirs, or successors or assigns and is a covenant running with the land, and is binding on all successors in title to all Lots, as platted in said Cottonwood Corner, an Addition to Wichita, Sedgwick County, Kansas.

The covenants, conditions, and restrictions on the property created and established in this instrument may be waived, terminated, or modified only upon written consent of the City of Wichita and/or County. No such waiver, termination or modification shall be effective until such written consent is recorded in the office of the Register of Deeds for Sedgwick County, Kansas.

EXECUTED the date and year first above written.

Wichita Habitat for Humanity, Inc.

Laurie Walker

Laurie Walker, Operations Director

CITY OF WICHITA )
SEDGWICK COUNTY) SS
STATE OF KANSAS )

The foregoing instrument was acknowledged before me this 20TH day of DECEMBER 2012, by Linda Laurie Walker, Operations Director of Wichita Habitat for Humanity, Inc., owner of Cottonwood Corner, an Addition to Wichita, Sedgwick County, Kansas.

Seal or Stamp

William K. Clevenger, Notary Public
(signature of notary officer)

WILLIAM K. CLEVENGER
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 11/15/16

My appointment expires: 11/15/16.

Approved as to form:

Gary E. Rebenstorf, Director of Law

**132019**

**First Published in the Wichita Eagle on January 18, 2013**

**RESOLUTION NO. 13-015**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTION OF **LATERAL 39, DISTRICT T, SANITARY SEWER NO. 20 (SOUTH OF 29TH, WEST OF BROADWAY) 468-84862** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF THE CONSTRUCTION OF **LATERAL 39, DISTRICT T, SANITARY SEWER NO. 20 (SOUTH OF 29TH, WEST OF BROADWAY) 468-84862** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to construct **Lateral 39, District T, Sanitary Sewer No. 20 (south of 29th, west of Broadway) 468-84862.**

Said sanitary sewer shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **Sixty-Two Thousand Dollars ($62,000)** exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **December 1, 2012** exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

**COTTONWOOD CORNER**
Lots 1 through 8, Block 1

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis:

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: That the following described lots shall each pay 1/8 of the total cost payable by the improvement district:

**COTTONWOOD CORNER**
Lots 1 through 8, Block 1

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 15th of January, 2013.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF, DIRECTOR OF LAW

**132019**

**First Published in the Wichita Eagle on January 18, 2013**

**RESOLUTION NO. 13-016**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING THE IMPROVEMENT OF **WATER DISTRIBUTION SYSTEM NUMBER 448-90580 (SOUTH OF 29TH, WEST OF BROADWAY)** IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF IMPROVING **WATER DISTRIBUTION SYSTEM NUMBER 448-90580 (SOUTH OF 29TH, WEST OF BROADWAY)** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to improve **Water Distribution System Number 448-90580 (south of 29th, west of Broadway).**

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **Forty-One Thousand Dollars ($41,000)** exclusive of the cost of interest on borrowed money, with **100** percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **December 1, 2012**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

**COTTOWNWOOD CORNER**
Lots 1 through 8, Block 1

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: That the following lots shall each pay 1/8 of the total cost of the improvement district:

**COTTOWNWOOD CORNER**
Lots 1 through 8, Block 1

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 8. Be it further resolved that the above described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 9. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 15th day of January, 2013.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK
(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF,
DIRECTOR OF LAW

**132019**

**First Published in the Wichita Eagle on January 18, 2013**

**RESOLUTION NO. 13-017**

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON **27TH COURT NORTH, FROM THE NORTH LINE OF 27TH STREET NORTH TO AND INCLUDING CUL-DE-SAC (SOUTH OF 29TH, WEST OF BROADWAY) 472-85081** 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 **27TH COURT NORTH, FROM THE NORTH LINE OF 27TH STREET NORTH TO AND INCLUDING CUL-DE-SAC (SOUTH OF 29TH, WEST OF BROADWAY) 472-85081** IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That it is necessary and in the public interest to pave **27th Court North, from the north line of 27th Street North to and including cul-de-sac (south of 29th, west of Broadway) 472-85081.**

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 2. That the cost of said improvements provided for in Section 1 hereof is estimated to be **One Hundred Fifty-Four Thousand Dollars ($154,000)** exclusive of the cost of interest on borrowed money, with 100 Percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after **December 1, 2012**, exclusive of the costs of temporary financing.

SECTION 3. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

**COTTOWNWOOD CORNER**
Lots 1 through 8, Block 1

SECTION 4. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a **fractional** basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: That the following lost shall each pay 1/8 of the total cost of the improvement district:

**COTTOWNWOOD CORNER**
Lots 1 through 8, Block 1

Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 5. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 6. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 7. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 1980 Supp. 12-6a01 et seq.

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 15th day of

January 2013.

_____
CARL BREWER, MAYOR

ATTEST:

_____
KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

_____
GARY E. REBENSTORF
DIRECTOR OF LAW

**City of Wichita**
**City Council Meeting**
**January 15, 2013**

**TO:** Wichita Airport Authority

**SUBJECT:** DAL Global Services, LLC
Commercial Operating Permit
Wichita Mid-Continent Airport

**INITIATED BY:** Department of Airports

**AGENDA:** Wichita Airport Authority (Consent)

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**Recommendation:** Approve the commercial operating permit.

**Background:** DAL Global Services, LLC (DGS) began ground handling services for Delta Airlines in early 2012. DGS desires to add additional operating services by adding a Republic Airlines charter program at Wichita Mid-Continent Airport. The charters are scheduled to begin in January 2013.

**Analysis:** A commercial operating permit authorizes a ground handling company to manage flights and provide ground and passenger services for an airline. DGS will communicate with, pay, and report directly to the Wichita Airport Authority (WAA). The term of this agreement is month-to-month.

**Financial Considerations:** The fee for a ground handling operator is 5% of the gross revenues, which is established in the published Schedule of Fees and Charges. The revenue will be based on the amount of activity generated by the charter program and is estimated to be $350 annually.

**Legal Considerations:** The commercial operating permit has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the Wichita Airport Authority approve the commercial operating permit and authorize the necessary signatures.

**Attachments:** Commercial Operating Permit.

# WICHITA MID-CONTINENT AIRPORT
# COMMERCIAL OPERATIONS AGREEMENT

This Operating Agreement ("Agreement") is made and entered into by and between The Wichita Airport Authority ("Authority") and DAL Global Services, LLC organized and existing under the laws of the State of Delaware ("Operator").

In consideration of the rights, privileges, and mutual obligations contained in this Agreement, Authority and Operator agree as follows:

## 1. Term and Cancellation Provisions

The term of this Agreement shall commence January 15, 2013, and shall continue on a month-to-month basis. This Agreement may be cancelled by either party, without cause, by giving a 30-day written notice. In the event the Director of Airports determines that termination is necessary to protect public health, safety or welfare, this Agreement may be terminated by the Director of Airports upon such notice as the Director of Airports deems appropriate under the circumstances. Termination or expiration of this Agreement shall not relieve the parties of any liabilities or obligations hereunder which shall have accrued on or prior to the date of termination. Upon the termination of this Agreement, Operator shall cease forthwith all operations upon the Airport and shall pay in full all fees and other amounts payable to Authority as set forth in this Agreement, then due and owing.

## 2. Services Provided by Operator

Subject to all terms of this Agreement, the Operator is hereby granted a NON-EXCLUSIVE right to perform above and below wing ground handling including customer service and ramp services for commercial passenger air carriers using Wichita Mid-Continent Airport attached hereto as Exhibit "A". In the event Operator desires to provide other services to the commercial passenger air carriers, Operator shall provide the Director of Airports with written notice of any such arrangement prior to entering into same and Operator shall provide the Director of Airports with written notice as and when any such arrangements are terminated.

Prior to performing any services for any commercial passenger air carrier, the Operator shall notify the Authority of its agreement to perform such service for such commercial passenger air carrier. The Operator shall provide to and maintain with the Authority at all times, an up-to-date list of all commercial passenger air carriers that it performs services for as authorized by this Agreement.

## 3. Operational Requirements

Operator shall provide such services as are necessary to adequately meet all demands for its services at the Airport and shall conduct such hours of business as may be necessary to provide this service. Such service shall be furnished on a fair; equal and non-discriminatory

basis for all users thereof, and charges shall be fair, reasonable and non-discriminatory for each unit of sale or service. All of the services enumerated herein shall be limited to certificated commercial passenger air carriers that have the authority from the appropriate regulatory department of the United States of America, or other competent authority, to operate in and out of the Airport. It is understood and agreed that such commercial passenger air carriers shall at all times have the right to provide any of the services herein provided for, for their own operations. None of the services which the Operator is authorized to perform under this Agreement shall involve the operation of aircraft by the Operator.

Operator shall maintain sufficient equipment, tools, accessories, and supplies, and employ a sufficient number of personnel to handle the operations and respond to customer inquiries and furnish good, prompt and efficient service adequate to meet all reasonable demands and needs of the business herein authorized. All equipment, tools, and vehicles to be used in the operation of Operator's business at the Airport will be in excellent, safe operating condition and will be kept in an orderly and clean manner at all times. All equipment and vehicles will be operated by Operator and its employees, agents, and/or representatives in a safe and orderly manner at all times. Upon objection from Authority to Operator concerning the operation of such equipment and vehicles, or the unsafe and unclean condition of the equipment and vehicles, Operator will immediately remedy the cause of the objection.

Questions or complaints regarding the quality of services, whether raised by users, Authority or otherwise, may be submitted to Operator for response. At Authority's request, Operator shall meet with the Authority to review any complaints or concerns and to promptly correct any deficiencies. The Authority's determination as to the quality of operation or services shall be conclusive, and curative measures shall be implemented by Operator as expeditiously as possible.

Failure on the part of the Operator to correct, modify or rectify any deficiencies within thirty (30) days, following written notice from the Authority, or to commence and diligently proceed to cure or remedy any such situation over a greater period of time than what would be reasonably required, may be a material breach of this Agreement and a cause for the exercise of any remedies, including the cancellation of the Agreement.

Operator will not block any areas used for ingress and egress by Airport traffic and will not interfere with the activities of Authority, its agents, employees or other Airport tenants.

Operator must, at its own expense, maintain in force any and all licenses and permits required for the legal operation of all aspects of this Agreement.

## 4. Handling Arrangements

In the event Operator agrees to ground handle any portion of the operations of other aircraft operators operating on Mid-Continent Airport which do not have an agreement with Authority, Operator shall provide Authority advance written notice of such proposed activities, including a description of the type and extent of services to be provided, and shall

coordinate with Authority the use of any unleased gates or aircraft parking. Fee collections and reporting shall be as set out in Section 11, Fee Collections.

## 5. Representation

It is understood and agreed that Operator shall at all times be deemed to be an independent contractor to the Authority. Nothing in this Agreement shall be construed or considered to create the relationship of employer and employee between the parties. Operator is not an agent or employee of the Authority, and shall not be entitled to any of the benefits of Authority's employees.

All persons providing customer service and ground handling services pursuant to this Agreement shall represent themselves as representatives of an independent contractor. Under no circumstances shall any of Operator's personnel represent themselves as employees of the Authority. No person providing customer service and ground handling services shall be an agent or employee of the Authority, and shall not be entitled to any of the benefits of Authority's employees.

## 6. Assignment and Subletting

Operator shall not assign, sublet, mortgage or otherwise transfer, in whole or in part, any of the rights granted in this Agreement without the prior written approval of the Authority.

## 7. Equipment Staging

Operator may stage equipment at the location designated by Authority. It is understood and agreed that the rental rate set out in the Schedule of Fees and charges is paid to the Authority. It is understood and agreed that if Authority requires the premises for Airline purposes or Authority purposes, that Authority may reclaim the premises and will find other space for Operator.

## 8. Reservations

It is understood that the issuance of this Agreement does not guarantee the availability of any space at the Airport. Further, Operator agrees to be diligent and to do all those things necessary and proper to serve the public fairly and in such manner that will not reflect discredit upon the Authority or cause the Authority loss or damage, and without limiting the foregoing, Operator covenants and agrees to furnish good, prompt and efficient service adequate to meet all demands for such service at the Airport, and shall furnish such service on fair, equal and nondiscriminatory basis to all users thereof.

## 9. Parking

The Operator and its employees shall have no right hereunder to park vehicles at the Airport except in common parking areas designated by the Authority for terminal employees.

## 10. Percentage of Gross Revenues

Operator shall pay a commercial operator's fee for airline ground handling and/or passenger services provided for signatory airlines and their affiliates and non-signatory commercial air carriers serving Wichita Mid-Continent Airport other than for Delta Air Lines, Inc. ("Delta") or affiliates of Delta, which shall be in such amounts as may be set by the Authority from time to time, pursuant to the Schedule of Fees and Charges. Operator shall pay to Authority a percentage of gross revenues equal to two and one-half percent (2 ½%) of gross revenues for services provided to signatory airlines and their affiliates and five per cent (5%) of gross revenues for services provided to non-signatory commercial airlines. Immediately upon Operator's receipt of revenue from services by Operator, the percentages of the revenue belonging to Authority shall immediately vest in and become the property of Authority. Operator shall be responsible as trustee for the revenue until the revenue is delivered to the Authority.

Authority reserves the right to adjust the Percentage of Gross Revenues Fee specified in this Agreement annually in accordance with the Schedule of Fees and Charges.

Operator agrees to pay Authority monthly, the percentage of gross revenues fee for the preceding month's serviced performed. The percentage of gross revenues fee is due and payable without invoice, no later than the fifteenth ($15^{th}$) day of each month for the preceding month, and shall be reported on the Monthly Statement of Gross Revenues Form attached hereto as Exhibit "B".

In the event Operator fails to make payment within ten (10) days of the dates due as set forth in this Section, then Authority, after providing Operator written notice and a five (5) business day cure period from the receipt of the notice, may charge Operator, if the Agreement payment still remains unpaid, a monthly service charge of 18% annual interest on any such overdue amount from the date the payment was originally due until paid, plus reasonable attorneys' and administrative fees incurred by Authority in attempting to obtain payment.

All payments in a form acceptable to Authority as required of Operator by this Agreement shall be made at the office of The Wichita Airport Authority, 2173 Air Cargo Road, Wichita Mid-Continent Airport, Wichita, Kansas 67209, or to such other address as may be substituted therefore. ACH direct deposit is preferred. Bank account and routing information is available upon request.

## 11. Fee Collections

Operator agrees to collect on behalf of Authority landing fees, terminal use fees (including, but not limited to use of ticket counter, hold room, joint use space, and passenger boarding bridge), and aircraft parking fees as imposed by Authority in its "Schedule of Fees and Charges" from aircraft operators operating on the premises which do not have an Agreement with Authority, and are handled by Operator. Operator shall provide a copy of its applicable Monthly Statistical Report (Exhibit "C") and Monthly Landed Weight/Fee Report (Exhibit

"D") for these aircraft operators. In consideration for this service, Authority agrees to reimburse Operator, by a credit document, 30% of fees collected.

Collection of fees from aircraft operators operating on the air carrier ramps shall be consistent with the established policies of Authority. Operator agrees to provide sufficient notice to aircraft operators that fees and charges may be applicable. All fees and charges incurred or collected for this purpose shall be paid to the Authority on or before the 15th day of each calendar month following the month in which they were incurred or collected.

## 12. Gross Revenues Defined

Gross revenues shall mean the total amount of money or the value of other considerations received from the performance of the Operator's services anticipated under this Agreement, whether for cash or credit, whether collected or not.

Gross Revenues include but are not limited to the following:

(a) the total amount of money or the value of other consideration received whether payment is for cash or on credit and whether or not such amount is collected;

(b) all credit losses, credit charges, or credit deductions incurred by Operator or imposed on Operator by reason of Operator's acceptance or use of credit cards or other credit or charge arrangements.

Excluded or deducted from Gross Revenues are the following:

(a) federal, state, municipal or other government excise taxes (except Federal manufacturer's excise taxes), use, sales, privileges or retailer's occupation taxes now or hereafter imposed and required to be collected by Operator directly from patrons or customers or as part of the price of any goods, wares, merchandise, services or displays and required to be paid over in turn by Operator to any governmental agency;

(b) receipts from the sale or trade-in value of any equipment used on the Airport and owned by Operator;

(c) the value of any merchandise, supplies or equipment exchanged or transferred from or to other locations of business of Operator where such exchanges or transfers are not made for the purpose of avoiding a sale by Operator which otherwise would be made from or at the Airport;

(d) receipts in the form of refunds for the value of merchandise, supplies or equipment returned to shippers, suppliers, or manufacturers;

(e) receipts with respect to any sale where the subject of such sale, or some part thereof, is thereafter returned by the purchaser to and accepted by Operator, to the extent of any

refund actually granted or adjustment actually made, either in the form of cash or credit;

(f) receipts from the sale to Operator's employees of uniforms or clothing where such uniforms or clothing are required to be worn by such employees as a condition of their employment;

(g) revenues derived from customers not generated through the Airport, or by Airport-related business activities of the Operator not included in this Agreement.

**13. Reporting Requirements**

(a) Monthly Statement of Gross Revenues. Monthly, Operator must submit the percentage of gross revenues fee payment with the monthly statement of gross revenues form. This statement shall be signed by a responsible accounting officer of Operator. The Authority shall have the right to change the format of the Monthly Statement of Gross Revenues Form and to require Operator to submit other information pertaining to its gross revenues, and Operator agrees to use such form and provide such additional information.

(b) Annual Reporting. Not later than ninety (90) days following the end of each full calendar year (January 1 through December 31) or partial calendar year, Operator shall furnish to Authority a certified or reconciled Annual Statement of Gross Revenues for that calendar year.

Operator's Annual Statement must itemize, for each month of the calendar year, Operator's Monthly Gross Revenues as previously reported to Authority. If such Annual Statement indicates an underpayment of the required Percentage of Gross Revenues Fee due to Authority, Operator shall submit payment for such underpayment to Authority with the Annual Statement. If a credit is issued, it shall be taken in the month immediately following such notification.

(c) Accounting Records. Operator shall keep true and accurate accounts, books, records and data which shall, among other things, show all sales made and services performed by Operator for cash or credit or otherwise, without regard to whether paid or not; the gross revenues of said business in the aggregate amount of all sales, services and orders; all Operator's business performed upon or within the Airport premises.

(i) Operator agrees to keep its books and records in accordance with generally accepted accounting principles and agrees to maintain such other records as the Authority may request, showing gross revenues, sales made and services rendered for cash and/or credit.

(ii) Sales, invoices, orders, cash receipts, and all other books and records of Operator pertaining to its operations on the premises of the Airport and pertaining to the reports (and backups therefore) it provides Authority pursuant to this operating

Agreement shall be located in Wichita, Kansas; and shall be open to inspection by authorized representatives of the Authority upon request.

(iii) Such books and records shall be kept and maintained during the period of time of this Agreement and for a period of three years after the termination of this Agreement, or if any audit has been initiated and audit findings have not been resolved at the end of the three years, the books and records shall be retained until resolution of the audit findings.

(iv) If, as a result of any audit, it is established that the Operator has understated the gross revenues received by it by three percent (3%) or more of the amount paid to the Authority during the previous annual reporting period under this Agreement, the entire expense of said audit shall be borne by the Operator. Any additional fees due shall forthwith be paid by Operator to the Authority with interest thereon at six (6%) per annum from the date such additional fees become due.

## 14. Impositions

Operator shall, during the term of this Agreement, bear, pay and discharge, before the delinquency thereof, any and all lawful impositions, including all lawful taxes and assessments imposed on the premises or Operator's possessory right therein.

## 15. Insurance

The Operator agrees to maintain appropriate liability insurance during the Term hereof, equal to or in excess of the following amounts:

| Type of Coverage | Limits Per Occurrence | Limits General Aggregate |
|---|---|---|
| Commercial General Liability | $2,000,000 | $5,000,000 |
| Automobile Liability | $1,000,000 | $2,000,000 |
| Airport Premises Liability | $2,000,000 | |

In addition, the Operator shall maintain a Worker's Compensation and Employer's liability policy for limits of not less than the statutory requirement for Worker's Compensation, and $500,000 Employer's Liability.

Operator agrees that upon notice by the Authority, the minimum levels of insurance required by this paragraph may be increased within the bounds of commercial reasonableness to the amount that may be required to provide coverage of the events of this Section.

Operator agrees, prior to the commencement of the Agreement, to provide Authority with copies of all policies or certificates evidencing that such insurance is in full force and effect, and stating the terms thereof, and shall name the City of Wichita and the Authority as additional insureds.

Operator shall be solely responsible for obtaining insurance policies that provide coverage

for losses of Operator-owned property. Authority shall not be required to provide such insurance coverage or be responsible for payment of Operator's cost for such insurance.

## 16. Subrogation of Insurance

Authority hereby waives any and all rights of recovery against Operator for or arising out of damage or destruction of the building, or the premises, or any other property of Authority, from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of such policies, whether or not such damage or destruction shall have been caused by the negligence of Operator, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver. The Authority does not waive subrogation on any self insured risk.

Operator hereby waives any and all rights of recovery against Authority for or arising out of damage to or destruction of any property of Operator from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of Authority, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

## 17. Maintenance

The Operator, at Operator's sole cost, shall remove trash, garbage and other debris from the staging area occupied by Operator.

## 18. Portable Storage Containers/Structures

Unless specifically approved in writing, and under conditions specified by Authority, Operator shall not place or allow to be placed within the staging area, any type of portable storage container, trailer, unit, box, or barrel which is used to store merchandise and/or equipment and supplies. Authority will not unreasonably withhold approval of such container if such is of a temporary nature, or at the discretion of Authority.

Unless specifically approved, and under conditions specified by Authority, Operator shall not place or allow to be placed within the staging area, any type of portable or temporary structure or device.

## 19. Third Party Rights

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

## 20. Damage to Airport Facilities

Operator shall be responsible for any and all damage to the Airport caused by the negligence of Operator, its agents, employees, contractors, subcontractors or invitees including, but not limited to, damage to terminal areas, ramp and taxiway areas, engine run-up areas, runways, hangar facilities and any and all areas where any activities are performed by Operator.

## 21. Surrender of Possession

Operator shall yield and deliver to Authority possession of the premises at the expiration of this Agreement in good condition in accordance with its express obligations hereunder. Operator shall deliver the staging area in good order and condition, including cleaning and hauling away all supplies and trash.

Operator, at Operator's expense, shall remove during the term hereof or at the expiration of such term all trade fixtures, equipment and personal property placed by Operator on or about the staging area, subject to Operator's repairing any damage thereto caused by such removal and subject to any valid lien which Authority may have thereon for unpaid fees.

In the event Operator does not remove all of said property within ten (10) days after the termination of this Agreement, the same shall be considered abandoned and Authority may dispose of said property without any further responsibility or liability to Operator. Operator shall be liable to Authority for the costs of removal and disposal of said property, and for an additional administrative expense equal to twenty percent (20%) of the costs incurred.

## 22. Rules and Regulations

Operator, its agents and employees, shall be subject to any and all applicable rules, regulations, standard operating procedures, orders and restrictions which are now in force or which may hereafter be adopted by the Authority, the City of Wichita, Kansas, or the Transportation Security Administration, in respect to the operation of the Airport; and shall also be subject to any and all applicable laws, statutes, rules, regulations or orders of any governmental authority, federal or state, lawfully exercising authority over the Airport or Operator's operations conducted hereunder.

Authority shall not be liable to Operator for any diminution or deprivation of its rights hereunder on account of the exercise of any such authority as in this section provided, nor shall Operator be entitled to terminate this Agreement by reason thereof unless the exercise of such authority shall so interfere with Operator's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas.

Operator shall hold Authority harmless for any and all breaches of Federal Aviation Administration, Transportation Security Administration, or Authority's security rules or regulations caused by the Operator, its agents or employees, except to the extent caused by Authority.

## 23. Non-discrimination EEO/AAP

The Operator agrees that it will not discriminate or permit discrimination against any person on the basis of race, color, sex, religion, national origin or ancestry, disability, or age, except where age is a bona fide occupational qualification, in its operations or services being provided at the premises, and its use or occupancy of the premises under this Agreement. The Operator agrees to comply with all applicable provisions of the Civil Rights Act of 1964, as amended; the Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375 and 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Kansas Act Against Discrimination, K.S.A. 44-1000, et seq.; the Code of the City of Wichita Section 2.12.950; and any laws, regulations or amendments as may be promulgated thereunder, including any Ordinance of the City of Wichita, Kansas, presently, existing or hereafter enacted, which pertains to civil rights and equal employment opportunity.

## 24. FAA Requirements

Authority and Operator further agree that the requirements of the Federal Aviation Administration set out below are approved by both parties, and if applicable, Operator agrees to comply with all FAA requirements with respect to its operations, use of the Airport and this Agreement.

(a) The Operator, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained or otherwise operated on said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the Operator shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(b) The Operator, for itself and its representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Operator shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

(c) The Operator assures that it will undertake an affirmative action program as required by

14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The Operator assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Operator assures that it will require that its covered suborganizations provide assurances to the Operator that they similarly will undertake affirmative action programs, and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

(d) It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958.

(e) Operator agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users thereof, and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED, that Operator may make reasonable and nondiscriminatory discounts, rebates or other similar types of price reductions to volume purchasers.

(f) Authority reserves the right (but shall not be obligated to Operator) to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together with the right to direct and control all activities of Operator in this regard.

(g) Authority reserves the right further to develop or improve the landing area and all publicly-owned air navigation facilities of the Airport as it sees fit, regardless of the desires or views of Operator, and without interference or hindrance.

(h) Authority reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Operator from erecting, or permitting to be erected, any building or other structure on the Airport which, in the opinion of Authority, would limit the usefulness of the Airport or constitute a hazard to aircraft.

(i) During time of war or national emergency Authority shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the landing area, the publicly-owned air navigation facilities and/or other areas or facilities of the Airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the Government, shall be suspended.

(j) It is understood and agreed that the rights granted by this agreement will not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of the Airport.

(k) There is hereby reserved to Authority, its successors and assigns, for the use and benefit

of the public, a free and unrestricted right of flight for the passage of aircraft in the air space above the surface of the premises herein conveyed, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on or about the Airport.

(l) This Agreement shall become subordinate to provisions of any existing or future agreement or regulatory obligation between the Authority and the United States of America or any agency thereof relative to the operation, development or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport.

## 25. Modifications for Granting FAA Funds

In the event that the Federal Aviation Administration requires modifications or changes to this Agreement as a condition precedent to granting of funds for the improvement of the Airport, Operator agrees to consent to such reasonable amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this Agreement as may be reasonably required to enable the Authority to obtain said Federal Aviation Administration funds, provided that in no event shall such changes materially impair the rights of Operator hereunder or materially increase its obligations.

## 26. Airport Security Program

Operator must obtain Airport Security Identification and Access Media (I.D. Media) for its employees, subcontractors, suppliers, agents, and representatives requiring access to the sterile areas, secured air operations area (AOA), and security identification display area (SIDA), or other secured areas as may be identified in the Airport Security Program, and pay any related costs associated with this privileges as set forth under this Section. With respect to the issuance, maintenance, and administration of I.D. Media, the Operator shall pay or cause to be paid to the Authority all such charges as may be established from time to time by the Authority. Such costs may include, but are not limited to: (i) the initial issuance of I.D. Media; (ii) the replacement of lost or stolen I.D. Media; (iii) administrative costs with respect to those I.D. Media not returned to the Authority.

Said I.D. Media will be valid as set forth under the Airport Security Program, and must be returned to the Airport Public Safety Division, at 2193 Air Cargo Road within twenty-four (24) hours after expiration, suspension, and/or termination of this Agreement. Said I.D. Media will be valid for no longer than the period of this Agreement. The Operator shall be responsible for requesting the Authority issue I.D. Media to all employees or other persons who are authorized access to Security Identification Display Areas ("SIDA") on the Airport as designated in the Airport Security Program. In addition, Operator shall be responsible for the immediate reporting of all lost or stolen I.D. Media and the immediate return of the I.D. Media of Operator's personnel transferred from the Airport, or terminated from the employ of Operator.

Operator covenants that it will at all times maintain the integrity of the Airport Security Program and comply with all applicable provisions of 49 CFR Parts 1500, 1544, 1546, 1548, and 1550 as promulgated, and that it will always maintain the security of the Airport, Premises, and/or any AOA access which Operator maintains. The Authority shall have the right to require the Operator to conduct background investigations and to furnish certain data on such employees or other persons before the issuance of I.D. Media, which data may include the fingerprinting of any and all of its employees, subcontractors, suppliers, agents, and/or representatives. Operator also hereby agrees that it shall be responsible for any and all of the actions of its employees, subcontractors, suppliers, agents, and/or representatives and shall provide any and all necessary escorts, as outlined in the Airport Security Program. Operator hereby agrees that it will immediately implement any and all security changes that are directed either directly or indirectly by the Transportation Security Administration ("TSA"), Federal Aviation Administration ("FAA"), or Authority. Operator further agrees to rectify any security deficiency or other deficiency as may be determined as such by the Authority, or the Department of Transportation ("DOT"), the FAA, or the TSA, or any other federal or state agency with jurisdiction. In the event Operator fails to remedy any such deficiency, the Authority may do so at the sole cost and expense of Operator. The Authority reserves the right to take whatever action is necessary to rectify any security deficiency or other deficiency. When the Authority takes actions to remedy deficiencies of any kind, it shall be done in a reasonable and cost-conscious manner.

Should Operator, its employees, subcontractors, suppliers, agents, and/or representatives cause any security violations, and should Authority be cited for a civil fine or penalty for such security violation, Operator agrees to reimburse Authority for any monetary civil fine or penalty, which may be imposed on Authority by FAA or TSA, however, nothing herein shall prevent the Operator from contesting the legality, validity or application of such fine or penalty to the full extent Operator may be lawfully entitled. Operator may have I.D. Media/access privileges immediately suspended and/or revoked by Authority for failure to adhere to the Airport Security Program, or for failure to return all I.D. Media within the time-frames specified herein. Such actions may also be grounds for termination of this Agreement for non-compliance at the sole discretion of Authority, if such failure by Operator is not cured by Operator within thirty (30) days after receiving notice from Authority of such failure.

Before the Operator shall permit any employee to operate a motor vehicle of any kind or type on the AOA (unless such employee is escorted by a Authority-approved escort), the Operator shall ensure that all such vehicle operators possess current, valid, and appropriate Kansas driver's license, I.D. Media, and Vehicle Ramp Permit. Operator company vehicles prominently displaying a permanent company name and/or logo on vehicles and equipment are excluded from the requirement of displaying a Vehicle Ramp Permit.

The Operator agrees that its vehicles, cargo, goods, and other personal property are subject to being inspected and searched when attempting to enter or leave and while on the AOA. Operator acknowledges and understands that the foregoing requirements are for the protection of users of the Airport and are intended to reduce incidents of cargo tampering, aircraft sabotage, thefts, and other unlawful activities at the Airport.

## 27. Environmental

(a) Operator shall have the right at its expense to conduct such environmental testing respecting the premises as is necessary to satisfy itself that the premises are environmentally sound and free of hazardous or toxic substances or waste of any kind, not caused by the Operator. In the event such testing is positive for such pre-existing substances, and Authority or a third party fails to remediate within 120 days of written notice from Operator of such positive test results, Operator shall have the right to terminate and cancel this Agreement without any liability for either party hereunder. If the Operator terminates the lease under these provisions after the commencement of construction, Operator shall restore the premises in a manner reasonably acceptable to Authority.

(b) The Operator hereby covenants that it will not cause or permit any hazardous substances to be placed, held, located or disposed of, on, under or at the premises, other than in the ordinary course of business and in compliance with all applicable laws.

(c) In furtherance and not in limitation of any indemnity elsewhere provided to the Authority hereunder, the Operator hereby agrees to indemnify and hold harmless the Authority and the City of Wichita from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the Authority or the City of Wichita by any person or entity for or arising out of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the premises during the term of this Agreement of any hazardous substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws, or any other applicable statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning, any hazardous substance) if such presence, escape, seepage, leakage, spillage, discharge, emission was caused by the Operator, or persons within the control of the Operator, its officers, employees, agents, and/or licensees, or if such hazardous substance was owned by, or located on the premises by, the Operator (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release).

(d) If, during the term of this Agreement, the Operator receives any notice of (i) the happening of any event involving the use (other than in the ordinary course of business and in compliance with all applicable laws), spill, release, leak, seepage, discharge or cleanup of any hazardous substance on the premises or in connection with the Operator's operations thereon or (ii) any complaint, order, citation or notice in connecting with Operator's conduct of its business at the Airport with regard to air emissions, water discharges, or any other environmental, health, or safety matter affecting the Operator (an "Environmental Complaint") from any persons or entity

(including, without limitation), the United States Environmental Protection Agency (the "EPA") or the Kansas Department of Health and Environment ("KDHE"), the Operator shall immediately notify the Authority in writing of said notice.

(e) The Authority shall have the right, but not the obligation, and without limitation of the Authority's other rights under this Agreement, to enter the premises or to take such other actions as deemed necessary or advisable to inspect, clean up, remove, resolve or minimize the impact of, or to otherwise deal with, any hazardous substance or environmental complaint following receipt of any notice from any person, including, without limitation, the EPA or KDHE, asserting the existence of any hazardous substance or an environmental complaint pertaining to the premises or any part thereof which, if true, could result in an order, suit or other action against the Operator and/or which, in the reasonable judgment of the Authority, could jeopardize its interests under this Agreement. If such conditions are caused by circumstances within the control of the Operator or if such circumstances result from a hazardous substance owned by, or located on the premises by, the Operator (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release) then in such event, Authority shall allow Operator to perform any actions required under applicable environmental laws with respect to such environmental complaint or hazardous substances within a reasonable time under the circumstances, to include consideration for the safety and convenience of the Authority's tenants and the traveling public. In the event Operator fails or refuses to take such actions, Authority shall take such actions and all reasonable costs and expenses incurred by the Authority in the exercise of any such rights shall be payable by the Operator, within 30 days of written demand by the Authority.

(f) If Operator defaults in connection with its obligations pursuant to this Section 27, and fails to correct such default promptly following receipt of written notice of such default from Authority or any agency, the Operator at the request of the Authority shall periodically perform (at the Operator's expense) an environmental audit and, if reasonably deemed necessary by the Authority, an environmental risk assessment (each of which must be reasonably satisfactory to the Authority) of the premises, or the hazardous waste management practices and/or hazardous waste disposal sites used by the Operator with respect to the premises. Such audit and/or risk assessment shall be conducted by an environmental consultant satisfactory to the Authority. Should the Operator fail to perform any such environmental audit or risk assessment within 90 days of the written request of the Authority, the Authority shall have the right, but not the obligation, to retain an environmental consultant to perform any such environmental audit or risk assessment. All costs and expenses incurred by the Authority in the exercise of such rights shall be payable by the Operator on demand.

(g) Neither Operator nor Authority shall install or permit to be installed in the premises friable asbestos, electrical equipment containing polychlorinated biphenyls (PCBs), or any substance containing asbestos and deemed hazardous by federal or state regulations applicable to the premises and respecting such material. The Operator shall defend, indemnify, and save the Authority and the City of Wichita harmless from all costs and

expenses (including consequential damages) asserted or proven against the Operator by any person, as a result of the presence of said substances, and any removal or compliance with such regulations, if said substance was installed by the Operator, or persons within its control.

(h) Subject to any limitations or restrictions imposed by the Kansas Budget Law or Cash Basis Law, the Authority hereby agrees to indemnify and hold harmless the Operator from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against, the Operator by any person or entity for, arising out of, the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the premises during the term of this Agreement and the period prior to the term of this Agreement of any hazardous substance (including, without limitation, any losses, liabilities, reasonable attorneys' fees, costs of any settlement or judgment or claims asserted or arising under the Comprehensive Environmental Response, Compensation and Liability Act, any federal, state or local so-called "Superfund" or "Super lien" laws, or any other applicable statute, law, ordinance, code, rule, regulation, order of decree regulating, relating to or imposing liability, including strict liability, or standards of conduct concerning any hazardous substance) unless such presence, escape, seepage, leakage, spillage, discharge, emission or release was caused by the Operator, or persons within the control of the Operator, its officers, employees, agents, business invitees and/or licensees, or if such hazardous substance was owned by, or placed upon the premises by, the Operator (without regard to the actual cause of any escape, seepage, leakage, spillage, discharge, emission or release except to the extent such was caused by the Authority).

## 28. Indemnity

Operator shall protect, defend and hold Authority and the City of Wichita and its officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court cost and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the Operator's use or occupancy of the premises or the acts or omissions of Operator's officers, agents, employees, contractors, subcontractors, or licensees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of the City of Wichita or Authority's officers, agents, employees, contractors, subcontractors, or licensees, regardless of where the injury, death or damage may occur. The Authority shall give to Operator reasonable notice of any such claim or actions. The provisions of this section shall survive the expiration or early termination of this Agreement.

Authority shall protect, defend and hold Operator and its officers, agents and employees completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any

property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court cost and expert fees), of any nature whatsoever arising out of or incident to this Agreement and/or the Authority's operation of the Airport or the acts or omissions of Authority's officers, agents, employees, contractors, subcontractors, or licensees, regardless of where the injury, death or damage may occur, except to the extent such injury, death or damage is caused by the negligence of the Operator. The Operator shall give to Authority reasonable notice of any such claim or actions. The provisions of this section shall survive the expiration or early termination of this Agreement.

## 29. Authority's Right to Develop Airport

Authority reserves the right to further develop or improve the Airport and all landing areas and taxiways as it may see fit, regardless of the desires or views of Operator and without interference or hindrance.

(a) Operator acknowledges that the Authority is seeking governmental approvals for the expansion of the Airport. Operator agrees to cooperate with Authority in connection with Authority's efforts to obtain such approvals. From and after the date of execution of this Agreement, Operator agrees (i) to support the Authority's efforts to obtain such approvals; and (ii) to execute any document(s) or instrument(s) reasonably requested by Authority in order to assist Authority in obtaining such approvals, provided that Operator shall not be required to bear any expense in connection therewith and the Operator shall not be deemed an agent of the Authority as a result of any such signature.

(b) This Agreement shall vest in Operator no right, title or interest whatsoever in or to any of the Authority lands or any adjacent lands or roadways, other than the right of using the same for the purpose of this Agreement and upon the terms and conditions set forth.

## 30. Construction Inconvenience

Operator agrees that from time to time during the Term, Authority shall have the right to initiate Airport construction, including but not limited to terminal facilities, roadways, parking areas for aircraft and ground vehicles, runways, and taxiway areas. Operator agrees that it shall not hold Authority, including its officers, agents, employees and representatives, liable for damages, of any nature whatsoever to it due to the Airport construction except to the extent due to the negligence or willful misconduct of Authority, its officers, directors, agents or employees. Operator shall hold Authority harmless for all damages arising out of or caused by inconveniences and/or interruptions of its activities at the Airport, and personal injury, including death, and property damage due to the Airport constructions.

## 31. No Airport Hazard

Operator expressly agrees to prevent any use of the premises from which it operates which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute a hazard.

## 32. Contract Interpretation

(a) Invalid Provisions. It is expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained; provided, however, that the invalidity of any such covenant, condition or provision does not materially prejudice either the Authority or the Operator in their respective rights and obligations contained in the valid covenants, conditions or provisions in this Agreement.

(b) Non-Waiver. The waiver by Authority of any breach of the Operator of any term, covenant, provision, or condition hereof shall not operate as a waiver of any subsequent breach of the same or a waiver of any breach of any other covenant, term, provision, or condition hereof, nor shall any forbearance by Authority to seek a remedy for any breach by Operator be a waiver by Authority of its rights and remedies with respect to such or any subsequent breach of the same or with respect to any other breach.

(c) Entire Agreement. This Agreement represents the entire contract between the parties and, except as otherwise provided herein, may not be amended, changed, modified, or altered without the written consent of the parties hereto. This Agreement incorporates all of the conditions, agreements, and understandings between the parties concerning the subject matter of this Agreement, and all such conditions, understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

(d) Applicable Law. This Agreement and the terms and conditions herein contained shall at all times be governed, interpreted and construed in accordance with the laws of the State of Kansas, and the laws, rules and regulations of the City.

(e) Successors. All covenants, representations, stipulations, and agreements in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

(f) Governmental Rights and Powers. Nothing in this Agreement shall be construed or interpreted as limiting, relinquishing or waiving any rights of ownership enjoyed by the Authority in the Airport; except as specifically provided in this Agreement; or impairing, exercising or defining governmental rights and the police powers of the Authority.

(g) Relation to Other Operators. This Agreement is separate and distinct from, and shall be construed separately from any other agreement between Authority and any other Operators at the Airport. The fact that such other agreement contains provisions, which differ from those contained in this Agreement, shall have no bearing on the construction of this Agreement.

(h) Authority to Execute. The individuals executing this Agreement on behalf of Operator personally warrant that they have the full authority to execute this Agreement on behalf of the Operator for whom they are acting herein.

(i) Headings. The sections and paragraph headings are inserted only as a matter of convenience and for references, and in no way define, limit or describe the scope or intent of any provision of this Agreement.

(j) Consent. Whenever the consent or approval of either party is required under this Agreement, such consent or approval shall not be unreasonably withheld or delayed.

**33. Notices**

Notices to Authority provided for herein shall be sufficient if sent by registered or certified mail, postage prepaid, addressed to:

The Wichita Airport Authority
2173 Air Cargo Road
Wichita, Kansas 67277-0130

Notices to Operator provided for herein shall be sufficient if sent by registered or certified mail, postage prepaid, addressed to:

DAL Global Services, LLC
4th Floor, Dept. 937
980 Virginia Ave.
Atlanta, GA 30354

ATTN: Joyce Lee

or to such other respective addresses as the parties may designate in writing from time to time.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

ATTEST:

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By _____
Karen Sublett, City Clerk

By _____
Robert Layton, City Manager
"AUTHORITY"

By _____
Victor D. White, Director of Airports

ATTEST:

DAL GLOBAL SERVICES, LLC

By _____

Title _____

By _____

Title _____
"OPERATOR"

APPROVED AS TO FORM: _____ Date: 1-8-13
Director of Law

Exhibit "A"

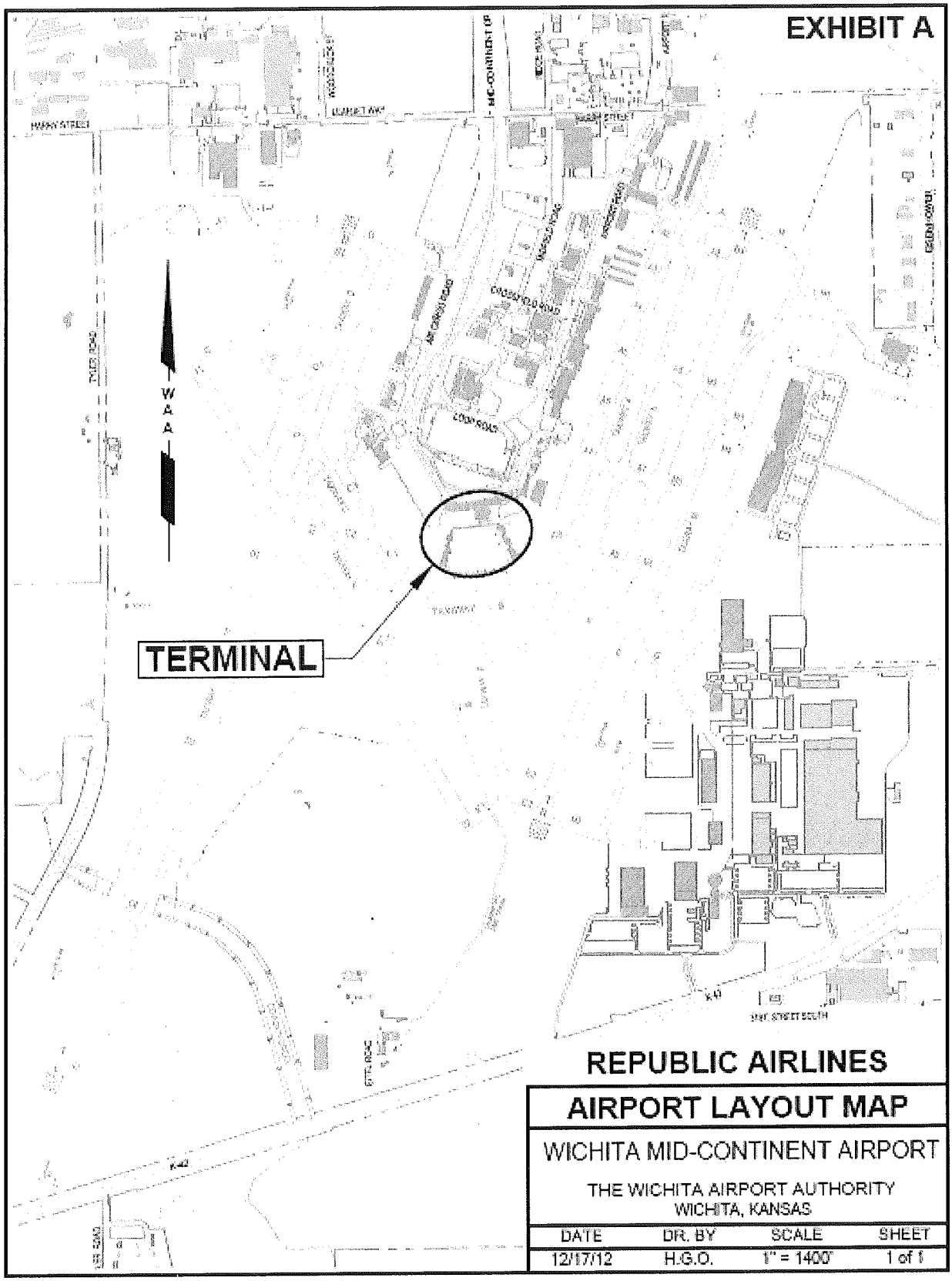
EXHIBIT A
TERMINAL
W
A
A
REPUBLIC AIRLINES
AIRPORT LAYOUT MAP
WICHITA MID-CONTINENT AIRPORT
THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS
DATE
DR. BY
SCALE
SHEET
12/17/12
H.G.O.
1" = 1400'
1 of 1

Exhibit "B"

**Monthly Statement of Gross Revenues**
**Signatory Airlines and Affiliates**

For the Month of _____(month/year)
(Due on the 15th day of the following month.)

Company Name _____

1. **GROSS REVENUES:** $_____

2. Less (allowable deductions as listed in Section 10 of the Agreement):

   (a) Deductible taxes $_____

   (b) Equipment sales/trade-in $_____

   (c) Equipment or merchandise exchanged $_____

   (d) Supplies/merchandise/equipment refund $_____

   (e) Refunds to customers $_____

   (f) Sale of uniforms to employees $_____

   (g) Non-Airport business $_____

   **TOTAL DEDUCTIONS** $(_____)

3. **REPORTABLE REVENUE THIS MONTH** $_____
   (Line 1 less Line 2)

4. **PERCENTAGE FEE: 2 ½ % OF LINE 3** $_____

REMIT AMOUNT ON LINE 4 WITH THIS STATEMENT. MAKE CHECK PAYABLE TO:

Wichita Airport Authority
2173 Air Cargo Road
P. O. Box 9130
Wichita, KS 67277-0130

The undersigned states that the gross revenues detailed on this statement are true, and the percentage fee shown is due the Wichita Airport Authority in accordance with the Agreement.

_____ _____ _____
Authorized Officer Signature Date

**Monthly Statement of Gross Revenues**
**Non-Signatory Airline**

For the Month of _____(month/year)
Due on the 15th day of the following month.

Company Name _____

5. **GROSS REVENUES:** $_____

6. Less (allowable deductions as listed in Section 10 of the Agreement):

   (h) Deductible taxes $_____

   (i) Equipment sales/trade-in $_____

   (j) Equipment or merchandise exchanged $_____

   (k) Supplies/merchandise/equipment refund $_____

   (l) Refunds to customers $_____

   (m) Sale of uniforms to employees $_____

   (n) Non-Airport business $_____

   **TOTAL DEDUCTIONS** **$(_____)**

7. **REPORTABLE REVENUE THIS MONTH** **$_____**
   (Line 1 less Line 2)

8. **PERCENTAGE FEE: 5 % OF LINE 3** **$_____**

REMIT AMOUNT ON LINE 4 WITH THIS STATEMENT. MAKE CHECK PAYABLE TO:

Wichita Airport Authority
2173 Air Cargo Road
P. O. Box 9130
Wichita, KS 67277-0130

The undersigned states that the gross revenues detailed on this statement are true, and the percentage fee shown is due the Wichita Airport Authority in accordance with the Agreement.

_____ _____ _____
Authorized Officer Signature Date

Exhibit "C"

**Monthly Statistical Report**

For the Month of _____(month/year)
(Due on the 15th day of the following month.)

**AIRLINE NAME**_____
(A separate Exhibit should be submitted for each airline.)

1. **PASSENGERS**

| | Enplaned | Deplaned | Total |
|---|---|---|---|
| Revenue | _____ | _____ | _____ |
| Non-Revenue | _____ | _____ | _____ |
| Total | ========== | ========== | ========== |

2. **CARGO & MAIL (Pounds)**

| | Enplaned | Deplaned | Total |
|---|---|---|---|
| Cargo* | _____ | _____ | _____ |
| Mail | _____ | _____ | _____ |
| Total | ========== | ========== | ========== |

*Cargo includes freight plus express.

I certify that the above information is correct to the best of my knowledge and belief.

Signature: _____ Title: _____

Printed Name: _____ Date: _____

SUBMIT TO:
The Wichita Airport Authority
Wichita Mid-Continent Airport
2173 Air Cargo Road
P. O. Box 9130
Wichita, KS 67277-0130

Exhibit "D"

MONTHLY LANDED WEIGHT/FEE REPORT
(Due on the 15th day of the following month.)

FOR THE MONTH OF _____, _____

AIRLINE NAME _____
(A separate Exhibit should be submitted for each airline.)

1. AIRCRAFT LANDINGS

| Aircraft Type | FAA Certified Maximum Gross Landing Weight | Number of Landings | Total Landed Weight |
|---|---|---|---|
| | | _____ | _____ |
| Total | | _____ | _____ |

Divided by 1,000

Landed Weight (lbs): _____

Multiplied by the Landing Fee Rate of $ _____

Total Landing Fee Charges: $ _____

2. TERMINAL USE CHARGES

| | Unleased Ticket Counter | Unleased Terminal Holdroom | Unleased Loading Bridge |
|---|---|---|---|
| Number of Times Used | _____ | _____ | _____ |
| Current Fee | $_____ | $_____ | $_____ |
| Total Terminal Use Charges | $_____ | $_____ | $_____ |

(Joint Use Charge is calculated based on number of landings.)

3. AIRCRAFT PARKING CHARGES (other than at leased gates)

| | Parking Occurrences | Total Hours in Excess of 24 Hours Each Occurrence |
|---|---|---|
| Quantity | _____ | _____ |
| Current Fee | $_____ | $_____ |
| Total Parking Charges | $_____ | $_____ |

The undersigned certifies that the above information, according to the books and records of the Airline, is correct and that he/she is a corporate officer of Airline or has been authorized to provide the above information by a corporate officer.

Signature: _____ Title: _____

Printed Name: _____ Date: _____

SUBMIT TO:
The Wichita Airport Authority
Wichita Mid-Continent Airport
2173 Air Cargo Road
Wichita, KS 67209

**City of Wichita**
**City Council Meeting**
**January 15, 2013**

**TO:** Wichita Airport Authority

**SUBJECT:** Republic Airlines
Non-Signatory Agreement
Wichita Mid-Continent Airport

**INITIATED BY:** Department of Airports

**AGENDA:** Wichita Airport Authority (Consent)

---

**Recommendation:** Approve the non-signatory agreement.

**Background:** Republic Airlines (Republic) is desirous of operating a charter program on behalf of Caesars Entertainment at Wichita Mid-Continent Airport. The charters are scheduled to begin in January and will occur intermittently throughout the year.

**Analysis:** A non-signatory airline use agreement authorizes an airline to operate at the Airport without having to lease space. However, in accordance with the Airport's standard schedule of rates and charges, a non-signatory airline will incur 25% higher fees and charges compared to a signatory airline as well as any per turn charges assessed for the use of ticket counter and gate hold room areas. As a non-signatory airline, Republic will communicate, pay to, and report directly with the Wichita Airport Authority (WAA). The term of this agreement is month-to-month.

**Financial Considerations:** The new revenue to the WAA will be based on the activity from the charter program beginning in January 2013 and is estimated to be $7,000 annually.

**Legal Considerations:** The non-signatory agreement has been approved as to form by the Law Department.

**Recommendations/Actions:** It is recommended that the Wichita Airport Authority approve the non-signatory agreement and authorize the necessary signatures.

**Attachments:** Non-Signatory Agreement.

# NON-SIGNATORY AIRLINE AIRPORT USE AND LEASE AGREEMENT

**BY AND BETWEEN**

**WICHITA AIRPORT AUTHORITY**

**AND**

**REPUBLIC AIRLINE INC.**

**FOR**

**WICHITA MID-CONTINENT AIRPORT**

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**NON-SIGNATORY AIRLINE AIRPORT USE AND LEASE AGREEMENT (01-31-10)**

**BETWEEN**

**WICHITA AIRPORT AUTHORITY**

**AND**

**REPUBLIC AIRLINE INC.**

THIS AGREEMENT, made and entered into this _____, by and between the WICHITA AIRPORT AUTHORITY, Wichita, Kansas (hereinafter referred to as "Authority") and Republic Airline Inc., an airline holding company organized and existing under and by virtue of the laws of the State of Indiana (hereinafter referred to as "Airline") acting by and through its designated officers pursuant to its bylaws or a resolution of its Board of Directors;

WITNESSETH:

WHEREAS, Authority owns and operates the Wichita Mid-Continent Airport (hereinafter referred to as "Airport"); and

WHEREAS, Authority has the right to lease and license the use of property on Airport and has full power and authority to enter into this Agreement in respect thereof; and

WHEREAS, Airline is a corporation primarily engaged in the business of air transportation by aircraft for the carriage of persons, property, and mail; and

WHEREAS, Airline desires to use certain premises and facilities, and to exercise certain rights and privileges at Airport in connection with the operation of its Air Transportation System, and Authority is willing to agree to such use, rights and privileges as set forth herein; and

WHEREAS, the intent of the parties hereto is to enter into an agreement which will more definitively specify the rights and obligations of the parties with respect to the operation of Airport by Authority and the use and occupancy of Airport by Airline, and this Agreement is responsive to and in accordance with that intent;

NOW, THEREFORE, Authority and Airline for, and in consideration of, the covenants and mutual agreements hereinafter contained, do hereby covenant and agree as follows:

## ARTICLE I
## DEFINITIONS

### Section 1.1 - Definitions

The following words, terms and phrases wherever used in this Agreement shall, for the purposes of this Agreement, have the following meanings:

**Affiliate** shall mean an Air Transportation Company that (1) shares a reservation code with or is a wholly-owned subsidiary of Airline or otherwise under contract with Airline, and (2) operates under essentially the same trade name at the Airport, and (3) uses essentially the same livery as Airline, and (4) is a part of and feeds into the Airline's connection system.

**Agreement** shall mean this Non-Signatory Airline Airport Use and Lease Agreement between Authority and Airline, as the same may be amended from time to time.

**Air Transportation Company** shall mean a company engaged in the business of scheduled or nonscheduled commercial transportation by air of persons, property, mail, and/or cargo.

**Aircraft Parking Apron** shall mean that part of Ramp Area immediately adjacent to Terminal that is used for the parking of aircraft and support vehicles and the loading and unloading of passengers, baggage, and other mail or cargo, the boundaries of which are shown in Exhibit "B" attached hereto.

**Airfield** shall mean those portions of Airport provided for the landing, take-off and taxiing of aircraft, including without limitation approach and turning zones, aviation or other easements, runways, taxiways, runway and taxiway lights, and other appurtenances in connection therewith.

**Airline Premises** shall mean Exclusive Use Premises, Preferential Use Premises and Joint Use Premises as hereinafter defined.

**Airport** shall mean the Wichita Mid-Continent Airport owned and operated by The Wichita Airport Authority, the current boundaries of which are shown on Exhibit "A" attached hereto.

**Airport System** shall mean Wichita Mid-Continent Airport and Colonel James Jabara Airport.

**Air Transportation System** shall mean that system operated by Airline for the commercial transportation of persons, property and mail by air.

**Director** shall mean the Director or Acting Director of Airports, and shall include such person or persons as may from time to time be authorized in writing by the Director to act for the Director with respect to any or all matters pertaining to this Agreement.

**Enplaned Passengers** shall mean all (i) originating; (ii) on-line transfer; and (iii) off-line transfer revenue passengers boarded at the Airport.

**Exclusive Use Premises** shall mean Terminal space leased to Airline for its exclusive use as shown on Exhibit "B," attached hereto, as such may be amended from time to time.

**Gate Position** shall mean Airline's passenger gate(s), including Airline's Aircraft Parking Apron, holdroom, passenger loading bridge(s), if any, and appurtenant furnishings in and about the Terminal that are reasonably necessary for the use thereof; provided, however, Gate Position shall specifically exclude any space leased by Airline under the Terminal concourses.

**Host Airline** shall mean a Signatory Airline accommodating an Affiliate within its Airline Premises.

**Joint Use Premises** shall mean those Terminal areas assigned to two or more Scheduled Air Carriers, as shown on Exhibit "B," attached hereto.

**Maximum Gross Landed Weight** shall mean the maximum gross certificated landing weight in one thousand pound units for which each aircraft operated by Airline is certified by the Federal Aviation Administration ("FAA"), or any successor agency thereto.

**Non-Participating Airline** shall mean an Air Transportation Company which does not have an Agreement with the Authority for use of the Airport in the provision of commercial air transportation services.

**Non-Revenue Landing** shall mean any aircraft landing by Airline at Airport for which Airline receives no revenue, and shall include irregular and occasional ferry, test, courtesy, inspection, or other similar flights.

**Non-Signatory Airline** shall mean any airline using the Airport which executed a Non-Signatory Airline Airport Use and Lease Agreement.

**Preferential Use Premises** shall mean Aircraft Parking Apron(s), hold room(s) and Authority owned passenger loading bridge(s), if any, assigned to Airline, as set forth in Section 3.1, and to which Airline shall have preferential use, defined herein as the unrestricted higher and continuous priority over all other users, subject to the provisions of Article XIV herein. The Director may, with notice appropriate under the circumstances, authorize another Air Transportation Company pursuant to Article XIV to utilize Airline's hold rooms, loading bridges, and Aircraft Parking Apron when such use does not conflict with Airline's scheduled flight activities, including a period of forty-five (45) minutes after any of Airline's scheduled departure times and forty-five (45) minutes prior to any of Airline's scheduled arrival times and during Airline's aircraft parking overnight, or for the scheduled flight activities of an airline with which Airline has a Code Share Airline agreement, approved subleases, or handling agreements.

**Ramp Area** shall mean the aircraft parking and maneuvering areas adjacent to Terminal, and shall include within its boundaries all Aircraft Parking Aprons.

**Requesting Airline** shall mean a Scheduled Air Carrier desiring to provide new or expanded commercial passenger air transportation service to and from Airport, and which is unable to obtain adequate Aircraft Parking Apron and/or Terminal space from Authority.

**Revenue Landing** shall mean an aircraft landing by Airline at Airport in conjunction with a flight for which Airline makes a charge or for which revenue is derived for the transportation by air of persons, property or mail, but Revenue Landings shall not include any landing of an aircraft which, after having taken off from Airport and without making a landing at any other airport, returns to land at Airport because of meteorological conditions, mechanical or operating causes, or any other reason of emergency or precaution.

**Scheduled Air Carrier** shall mean an Air Transportation Company performing or desiring to perform scheduled commercial air transportation service over specified routes to and from Airport, and holding any necessary authority to provide such transportation from the appropriate federal and state agencies. Affiliates of Host Airlines providing scheduled air transportation to and from Airport, together with the Host Airline, shall be considered as one Air Carrier for the sole purpose of calculating and assessing fees and charges hereunder.

**Signatory Airlines** shall mean those airlines which provide scheduled air transportation to and from the Airport and which have executed substantially similar agreements to this Agreement, including term, with Authority for the lease, use, and occupancy of facilities at the Airport, including the lease of at least one (1) holdroom and associated Aircraft Parking Apron.

**Terminal** shall mean the airline terminal building owned and operated by Authority at Airport, as shown on Exhibit "A" hereof.

**Section 1.2 – Construction**

1.2.A. Additional words and phrases used in this Agreement but not defined herein shall have their usual and customary meaning.

1.2.B. Unless the context clearly indicates otherwise, words used in the singular include the plural, and words used in the plural include the singular.

## ARTICLE II
## TERM

**Section 2.1 - Initial Term**

The term of this Agreement shall become effective on the Effective Date and shall continue on a month-to-month basis thereafter until terminated as provided in this Agreement.

**Section 2.2 – Termination by Either Party.**

This Agreement may be terminated with or without cause by either party upon not less than thirty (30) calendar days written notice to the other. In addition, (a) this Agreement may be terminated pursuant to Article X, and (b) in the event the Director determines that termination is necessary to protect the public health, safety, or welfare, this Agreement may be terminated by the Director upon such notice as the Director deems appropriate under the circumstances.

**Section 2.3 – Ongoing obligations and Liabilities.**

Termination of this Agreement shall not relieve the Airline of any obligations or liabilities that shall have accrued on or prior to the effective termination date. Upon the expiration or termination of this Agreement, Airline shall: (i) immediately cease all operations at the Airport; and (ii) pay in full all fees and other amounts then due and owing to Authority pursuant to the terms of this Agreement.

**Section 2.4 – Airline's Cessation of Business.**

In the event that Airline ceases to operate at the Airport or fails to respond within five (5) calendar days to written notice from the Authority requesting confirmation of Airline's intent to continue operating at the Airport, then the Director shall have the right to immediately terminate this Agreement without further notice.

## ARTICLE III
## PREMISES

### Section 3.1 - Airline Premises

3.1.A. Authority does hereby lease and demise to Airline, and Airline does hereby lease and accept from Authority, Exclusive Use Premises, Preferential Use Premises, and Joint Use Premises, as set forth on Exhibit "B".

3.1.B. Authority and Airline may, from time to time, by written agreement, add to or delete space from Airline Premises. Authority shall not permit deletion of space unless needed by Airport for its own use or for lease to another tenant requesting such space. Exhibit "B" shall be revised as of the effective date of such additions or deletions to reflect agreed upon additions or deletions of space.

3.1.C. Notwithstanding the above Paragraph 3.1.B., Authority shall also have the right upon 30 days advance written notice or such other timeframe which may be reasonable and agreed to by Airline and Authority to relocate Airline to comparable, alternative premises that are ready for beneficial occupancy if such relocation is necessary to ensure the efficient use of all Terminal areas, with due recognition of the specific needs of each carrier, including Airline, operating at the Airport. In the event Airline is relocated, in whole or in part, appropriate changes to Exhibit "B" shall be made.

3.1.D. All space added to, or deleted from, Airline Premises pursuant to this Section 3.1 shall be subject to all the terms, conditions, and other provisions of this Agreement and Airline shall pay to Authority all rentals, fees and charges applicable to such additional Airline Premises in accordance with the terms of this Agreement.

3.1.E.(1) The Authority and Airlines recognize that the use of certain Joint Use Space as set forth in Exhibits "B" of the Agreement require ingress and egress through Airline Preferential Use Premises. Airline shall make ingress and egress to such Joint Use Space available to passengers, other Airline personnel, and Authority personnel when reasonably required for the efficient and convenient movement of passengers, personnel, and objects. In recognizing the right to such use by others, the parties agree that the Airline shall retain the reasonable and unrestricted higher and continuous priority over other users on its Preferential Use Premises.

3.1.E.(2) During the ingress and egress of Airline Preferential Use Premises by passengers, other Airline personnel and Authority personnel pursuant to this Section, Airline shall be relieved of its obligation under this Agreement to indemnify and save harmless Authority, its agents and employees, its successors and assigns, with regard to any claim for damages or personal injury arising out of or in connection with said passenger, other Airline personnel and Authority's personnel using Airline's Preferential Use Premises unless such damage or personal injury is proximately caused by the negligence of Airline, its agents, employees, licensee, or those under its control who have come upon Airline Preferential Use Premises in connection with Airline's occupancy hereunder.

**Section 3.2 - Employee Parking**

Authority shall make available or cause to be developed an area or areas at the Airport as common parking facilities for personnel employed at the Terminal, including Airline personnel, subject to applicable charges for such parking facilities as set forth in Paragraph 6.4.C. herein. All areas as designated for Terminal employee's common parking facilities are subject to relocation at any time during this Agreement. Both parties anticipate that one or more such relocations will occur due to Terminal construction requirements. However, no such justification shall be required to relocate the common parking facilities for Terminal personnel.

**Section 3.3 - Authority Fuel Facilities**

Airline shall have the right to utilize the fueling facilities, equipment, and appurtenances, including the tank farm owned by the Authority, for the receiving, storing, and dispensing of aviation fuel, subject to (i) reasonable rules and regulations established by the Director; (ii) the payment of charges for such use as set forth in Paragraph 6.4.A. of this Agreement; (iii) the terms of existing agreements between the Authority and any designee operating the Authority's facilities; and (iv) the execution of a separate agreement with Authority if Airline directly utilizes the Authority fuel facilities without engaging the services of Authority or its designee.

## ARTICLE IV
## USE OF AIRPORT AND RELATED FACILITIES

### Section 4.1 - Airline Rights and Privileges

Airline shall have the right, in addition to all rights granted elsewhere in this Agreement, to use areas of Airport as designated in this Agreement for the following purposes:

4.1.A. The operation of its Air Transportation System for the carriage of persons, property and mail, including all activities reasonably necessary to such operations.

4.1.B. The landing, taking off, flying over, taxiing, towing, parking, loading and unloading, conditioning and servicing of aircraft of Airline; and, in areas designated by Authority, the extended parking, servicing, loading or unloading, storage or maintenance of Airline's aircraft, subject to availability of space and to such reasonable charges and regulations as Authority may determine for areas not part of Airline Premises. Such rights shall extend to the aircraft or other equipment of any other aircraft operator with which Airline has an agreement in accordance with Article XIII.

4.1.C. The sale of air transportation tickets and services, the processing of passengers and their baggage for air travel, and the sale, handling, and providing of mail, freight, and express services.

4.1.D. The training at Airport of personnel in the employ of or to be employed by Airline, and the testing of aircraft and other equipment being utilized on the Airport in the operation of its Air Transportation System, provided that such training and testing is incidental to the use of Airport in the operation by Airline of its Air Transportation System, does not include flight training between the hours of 10:00 p.m. and 7:00 a.m., and will not unreasonably hamper or interfere with the use of Airport and its facilities by others entitled to use of the same. In the event the number of training and testing flights by Airline exceeds ten (10) percent of Revenue Landings by Airline in any one calendar month, then Airline shall pay for such excess flights landing fee charges calculated using the then current rates established in this Agreement for Revenue Landings.

4.1.E. The sale, disposition or exchange of Airline's aircraft, engines, accessories, gasoline, oil, grease, lubricants, fuel and other equipment, or supplies, subject to any limitations contained herein, and provided that such rights shall not be construed as authorizing the conduct of a separate business by Airline, but shall only permit Airline to perform such functions as are incidental to the operation of its Air Transportation System. Airline shall not sell aviation fuels or propellants except (i) to a wholly owned subsidiary company, parent company, or a successor company; (ii) for use in aircraft of others which are being used solely in the operations of Airline; or (iii) to others when a comparable grade and type of fuel desired by others is not available at Airport except from Airline.

4.1.F. The purchase at the Airport or elsewhere, of fuels, lubricants and any other supplies and services, from any person or company, subject to paragraph 4.1.E. and to the Authority's right to require that each provider of services and/or supplies to Airline secures a permit from Authority

to conduct such activity at the Airport, pays required fees, and abides by all reasonable rules and regulations established by Authority. No discriminatory limitations or restrictions shall be imposed by Authority that interfere with such purchases; provided, however, nothing herein shall be construed to permit Airline to store aviation fuels at the Airport. The granting of the right to store aviation fuels shall be subject to the execution of a separate agreement between Airline and Authority.

4.1.G. The servicing by Airline, or its suppliers, of aircraft and other equipment being utilized at the Airport on Aircraft Parking Aprons or such other locations as may be designated by the Director.

4.1.H. The loading and unloading of persons, property, and mail by motor vehicles or other means of conveyance as Airline may desire or require in the operation of its Air Transportation System, at locations designated by Authority. Airline may designate the particular carrier or carriers which are legally authorized to conduct such services in the City of Wichita and which may transport Airline's employees, property, and mail to, from, and on Airport; provided, however, Authority reserves the right to require such carrier or carriers to secure a permit from Authority to conduct such activity at Airport and to abide by all reasonable rules and regulations established by Authority.

4.1.I. The installation and maintenance at its sole cost and expense of identifying signs in Airline's Exclusive Use Premises. The general type and design of such signs shall be harmonious and in keeping with the pattern and decor of the Terminal areas; provided, however, that Authority shall permit Airline to install on the walls behind ticket counters leased by Airline, if any, identifying and company logo signs customarily installed by Airline in such areas at comparable airport facilities. All such signs of whatever number, size, design, color, nature or location shall require the written approval of Director, not to be unreasonably withheld prior to their installation.

4.1.J. The installation, maintenance and operation of such radio, communication, computer, meteorological and aerial navigation equipment and facilities, in, on and about the Airline Premises as may be necessary or convenient in the opinion of Airline for operation of its Air Transportation System; provided, however, that the location and installation of such equipment and facilities shall require the prior written approval of Director, not to be unreasonably withheld, and further provided that the placement and type of installations authorized hereunder shall not interfere with Airport navigational aids or with similar rights granted to other tenants or governmental agencies. In the event of such interference, the Director may require removal, relocation, or modification at the sole cost of Airline to eliminate such interference.

4.1.K. Such rights of way as may reasonably be required by Airline for communications, computer equipment, teletype, telephone, interphone, pneumatic tubes, conveyer systems and power and other transmission lines in and between the Terminal and other areas of Airport. The location of such rights of way shall be designated by Director.

4.1.L. The installation of personal property, including furniture, furnishings, supplies, machinery and equipment, in Airline Premises as Airline may deem necessary or prudent for the

operation of its Air Transportation System, with title to such personal property to remain with Airline in accordance with the terms of this Agreement.

4.1.M. The construction of modifications, finishes and improvements in Airline Premises as Airline may deem necessary or prudent for the proper operation of its Air Transportation System, in accordance with Article VII of this Agreement.

4.1.N. Ingress to and egress from the Airport and Airline Premises for Airline's officers, employees, agents, invitees, passengers, suppliers of materials, furnishers of services, aircraft, equipment, vehicles, machinery and other property. Such rights shall be subject to TSR Part 1542, and the Authority's right to establish rules and regulations governing (i) the general public, including Airline's passengers, and (ii) access to non-public areas at the Airport by Airline's employees, suppliers of materials and furnisher of services; provided, however, any such rules and regulations of the Authority shall not unreasonably interfere with the operation of Airline's Air Transportation System. Further, Authority reserves the right to, from time to time, temporarily or permanently restrict the use of any roadway or other area at the Airport. In the event of such restrictions, and if necessary, Authority shall ensure the availability of a reasonable equivalent means of ingress and egress.

4.1.O. The installation of a limited number of soft drink vending machines and snack vending machines, subject to the prior written approval of Director, in the non-public, Exclusive Use Premises of Airline for the exclusive use of Airline's employees and agents.

4.1.P. The rights and privileges granted to Airline pursuant to this Article IV may be exercised on behalf of Airline by other Signatory Airlines or contractors authorized by Authority to provide such services at the Airport, subject to the prior written approval of Authority and further subject to all laws, rules, regulations and fees and charges as may be applicable to the activities undertaken.

4.1.Q. Airline may, on behalf of any other Air Transportation Company or any Affiliate Airline, exercise any of the rights granted Airline herein, so long as Airline is concurrently exercising those same rights in the operation of Airline's own Air Transportation System at the Airport. This right is subject to other provisions of this Agreement with respect to Authority rules and regulations.

**Section 4.2 - Exclusions and Reservations**

4.2.A. Authority reserves the right to install or cause to be installed advertising and revenue generating devices, including vending machines, in Joint Use Premises; provided, however, that such installation shall not unreasonably interfere with Airline's operations authorized hereunder or substantially diminish the square footage contained in Airline Premises. Authority further reserves the right to install pay telephones in any part of Terminal. Authority shall be entitled to all income generated by such telephones and devices and to reasonable access upon Airline Premises to install or service such telephones and devices.

4.2.B. Director may prohibit the use of the Landing Area by any aircraft operated or controlled by Airline which exceeds the design strength or capability of the Landing Area as described in the current Federal Aviation Administration approved Airport Layout Plan or other engineering evaluations performed subsequent to the then current Airport Layout Plan.

4.2.C. Airline shall use its best efforts to promptly remove any of its disabled aircraft from runways, taxiways, aprons and Aircraft Parking Apron (the latter only if needed by Authority for operational purposes in accordance with Article XIV) and shall place any such disabled aircraft only in such storage areas as may be designated by Authority and may store such disabled aircraft only upon such terms and conditions as may be established by Authority. In the event Airline shall fail to remove any of its disabled aircraft as expeditiously as possible, Authority may, but shall not be obligated to, cause the removal of such disabled aircraft at Airline's cost, which shall include an administrative fee equal to 20% of expenses incurred.

4.2.D. Airline shall not do or permit to be done anything that may interfere with the effectiveness or accessibility of the drainage, sewerage, water, communications, or fire protection systems or any other part of the utility, electrical, or other systems installed or located from time to time at Airport.

4.2.E. Airline shall not, within its reasonable control, do or permit to be done anything either by act or failure to act that shall cause the cancellation or violate the provisions of any policy of insurance for Airport, or any part thereof, or that shall cause a hazardous condition so as to increase the risks normally attendant upon operations permitted by this Agreement. If Airline shall do or permit to be done anything either by act or failure to act that shall cause an increase in the premiums for insurance for Airport, or any part thereof, then Airline shall immediately upon demand by Director pay the amount of such increase. If such Airline act or failure to act shall cause cancellation of any policy, then Airline shall immediately upon notification by Director take such action as is necessary to cause reinstatement of said insurance.

4.2.F. The rights and privileges granted to Airline under this Article to contract with third parties for obtaining services and materials are subject to restrictive agreements, franchises, licenses, and other rights previously granted by Authority to fixed base operators, ground transportation carriers and other providers of services and materials.

4.2.G. No services are permitted by Airline in the Aircraft Parking Apron other than those incidental to the immediate preparation of aircraft for departure and servicing after arrival, such services to include: loading and unloading of passengers; baggage and supplies; fueling; inspection, and interior cleaning. Minor and emergency maintenance service may be performed by Airline or vendors selected by Airline only when it can be performed within the time permitted by the rules and regulations of Authority relating to the use of the Aircraft Parking Apron area.

4.2.H. Airline shall not be prohibited from providing customary in-flight catering services to its passengers and flight crews for consumption aloft.

4.2.I. Authority reserves the right to establish rules and regulations governing access of the general public, including Airline's passengers, to public areas in the Terminal; provided,

however, any such rules and regulations shall not unreasonably interfere with the operation of Airline's Air Transportation System, or alter the access rights provided for elsewhere in this Agreement.

4.2.J. The rights granted by this Agreement shall not be exercised in such a way as to interfere with or adversely affect the use, operation, maintenance or development of Airport.

4.2.K. Any and all rights and privileges not granted to Airline in this Agreement are hereby reserved for and to Authority.

**Section 4.3 – Curbside Check-In**

Airline, either alone or in conjunction with other Scheduled Air Carriers or through a nominee, may provide curbside check-in. Authority will consider a vendor arrangement, in the event one or more Airlines execute a written agreement to pay for the cost of facilities and services related to curbside check-in.

## ARTICLE V
## MAINTENANCE AND OPERATION OF AIRPORT

### Section 5.1 - General

5.1.A. Authority agrees that it (i) will with reasonable diligence prudently develop, improve, and at all times reasonably maintain and operate Airport with adequate qualified personnel and keep Airport in reasonably good repair including, without limitation, the Terminal (except as set forth in Paragraphs 5.1.B. and 5.1.C.), Landing Area, Ramp Area, and all appurtenances, facilities and services now or hereafter connected therewith as the same relate to Airline's Air Transportation System; (ii) will use its best efforts to keep Airport and its aerial approaches free from obstruction and interference for the safe and proper use thereof by Airline; and (iii) will develop, maintain and operate Airport in all respects in a manner at least equal to comparable United States airports of substantially similar size, use and activity except for conditions beyond the control of Authority. Notwithstanding the above, Authority shall not be responsible for snow and debris removal within the building safety line in the Terminal area. Authority shall not be liable to Airline for temporary failure to furnish all or any of such services to be provided by Authority, whether due to mechanical breakdown or for any other causes beyond the reasonable control of Authority.

5.1.B. Airline will at all times maintain in a neat, orderly, sanitary, and presentable condition, and will provide custodial services in designated areas of Airline Exclusive Use Premises and in accordance with the maintenance and operation responsibilities provided for herein. Airline shall cause to be removed from such spaces designated herein, at Airline's own expense, all waste, garbage and rubbish and agrees not to deposit same on any part of Airport, except that Airline may deposit same temporarily in its Exclusive Use Premises or in space designated by Authority in connection with collection for removal. Should Airline refuse or neglect to maintain designated areas as herein provided, Authority, upon notice to Airline providing a reasonable amount of time for Airline to remedy such problem, shall have the right to perform such maintenance on behalf of and for Airline. Any costs for such maintenance shall be paid for by Airline no later than twenty (20) days following demand by Director for such payment at Authority's costs plus twenty (20) percent.

5.1.C. Responsibilities for maintenance, cleaning and operation of facilities shall be as set forth on Exhibit "C".

## ARTICLE VI
## RENTALS, FEES, AND CHARGES

Airline shall pay Authority rentals for use of Airline Premises, and fees and charges for the other rights, licenses, and privileges granted hereunder during the term of this Agreement, and shall file periodic reports as specified herein.

### Section 6.1 - Landing Fee Charges and Per Turn Charges

6.1.A. Airline shall pay to Authority within twenty (20) days following the end of each calendar month, without demand or invoicing, landing fee charges for Revenue Landings for the preceding month and per turn charges, including payment for any Non-Participating Airlines handled by the Airline, at the rates and in the amount calculated in accordance with the Authority's Schedule of Fees and Charges.

6.1.B. As set out in Section 6.7.A., Airline shall provide a copy of its applicable Monthly Statistical Report (Exhibit "D") and Monthly Landed Weight/Fee Report (Exhibit "E"), showing the basis for its landing fee and per turn charges, including those of the Non-Participating Airlines.

### Section 6.2 - Rentals for Exclusive Use Premises

6.2.A. Airline shall pay to Authority in advance, on the first day of each month, without demand or invoicing rentals for Airline's Exclusive Use Premises at the rates and in the amounts calculated in accordance with the Authority's Schedule of Fees and Charges.

### Section 6.3 - Rentals for Preferential Use Premises

Airline shall pay to Authority in advance, on the first day of each month, without demand or invoicing, rentals for Preferential Use Premises at the rates and in the amounts calculated in accordance with the Authority's Schedule of Fees and Charges.

### Section 6.4 - Other Charges

Other charges payable by Airline, which shall be paid by Airline to Authority within twenty (20) days following receipt by Airline of billing therefore, in addition to those specified elsewhere in this Agreement, shall be as follows:

6.4.A. Fuel Facility Charges. In the event Airline purchases or otherwise obtains fuels or lubricants pumped or processed through facilities, equipment, or appurtenances owned or operated by Authority or its designee, including the tank farm owned by Authority, then in such event Airline shall pay charges as determined by Authority's Schedule of Fees and Charges.

6.4.B. Equipment Parking Charges. Charges for apron space on which Airline parks or stores equipment utilized in the operation of Airline's air carrier operations.

6.4.C. Other Fees and Charges. In addition to the foregoing, Authority expressly reserves the right to assess and collect the following:

(a) Airport shall have the right, pursuant to FAR Part 158, to collect and expend passenger facility charges (PFCs).

(b) Reasonable and non-discriminatory fees for concessions and other services provided by Airline for others or for Airline by others if such services or concessions would otherwise be available from a concessionaire or licensee of Authority.

(c) Reasonable and non-discriminatory fees and charges for services or facilities not enumerated in this Agreement, but provided by Authority and accepted by Airline.

(d) Reasonable and non-discriminatory fees and charges for use of the common use areas within the Terminal.

(e) A pro rata share of any charges for the provision of any services or facilities which Authority is required to provide by any governmental entity having jurisdiction over the Airport.

(f) A reasonable fee for any employee parking area or areas provided at the Airport.

(g) A reasonable fee for the use of any Authority owned property or equipment or the provision of services or facilities provided by Authority at the request of Airline.

(h) Charges for items or activities such as badges, extraordinary electrical usage and ramp permit fees shall be assessed by Authority and paid by Airline. To the extent practical, the Authority shall directly meter electrical usage.

(i) Any other reasonable and non-discriminatory fee or charge established by Authority from time to time.

**Section 6.5 - Partial Month Charges**

In the event the beginning or termination date with respect to any of the premises and facilities leased hereunder falls on any date other than the first and last days, respectively, of a calendar month, the applicable rentals, fees and charges for that month shall be paid for said month on a pro rata basis according to the number of days actually occupied during that month.

**Section 6.6 - Late Payments**

In the event Airline fails to make payment within twenty (20) days of the dates due as set forth in this Article VI, then Airline shall pay to Authority a monthly service charge from the date each payment was originally due equal to eighteen (18%) percent per annum on any such overdue amount, and if Airline fails to make payment within ten (10) days after written notice from Authority to Airline that such payments are late. Airline shall also pay reasonable administrative

costs and attorneys' fees incurred by Authority in attempting to obtain payment if Airline fails to make payment within thirty (30) days after written notice referenced above.

**Section 6.7 - Information to be Supplied by Airline**

6.7.A. Not later than five (5) working days after the end of each month, Airline shall file with Authority a written report on forms provided by Authority (Exhibit "D") for activity conducted by Airline during said month.

6.7.B. Not later than five (5) working days after the end of each month, separate reports shall be filed by Airline with Authority for any aircraft flights, scheduled or nonscheduled, handled by Airline for Non-Participating Airlines.

6.7.B. In the event Airline fails to submit the reports required by this Section 6.7 for the then current month by the tenth (10th) day of the succeeding month, Authority shall base its current rentals, fees and charges upon the most recent data transmitted by Airline to Authority, with such charges to be adjusted as necessary on the next succeeding payment date. If statistical data to be submitted by Airline continues to be unavailable in the next succeeding month, Authority shall develop estimates as to Airline's monthly activity for use in the calculation of Airline's rentals, fees and charges.

6.7.C. Airline shall at all times maintain and keep books, ledgers, accounts or other records at the Airport or at its headquarters offices reflecting the traffic statistics to be reported hereunder. Such books, ledgers, accounts and records shall be available for examination by Authority or its duly authorized representative during all reasonable business hours. If such books, ledgers, accounts or other records are not maintained at the Airport, Airline shall promptly furnish the Authority or its duly authorized representative with all information reasonably requested.

6.7.D. The acceptance by Authority of any Airline payment shall not preclude Authority from verifying the accuracy of Airline's reports on which Airline's rentals, fees and charges are based, and shall not be construed as a waiver of interest penalty due, if any.

**Section 6.8 - Security for Payment**

6.8.A. To provide security for the rentals, fees and charges due hereunder, Airline shall comply with either of the following two options within fourteen (14) days following the execution of this Agreement.

6.8.A.(1) Post with the Authority a surety bond, to be maintained throughout the term hereof. Such bond shall be issued by a sound indemnity company and shall be in a form and content satisfactory to Authority.

6.8.A.(2) Deliver to Authority an irrevocable letter of credit drawn in favor of Authority upon a bank satisfactory to Authority. Said irrevocable letter of credit shall be kept in force throughout the term of this Agreement and shall contain terms and conditions satisfactory to Authority.

6.8.B. For purposes of this Section 6.8, any surety bond posted by Airline, or irrevocable letter of credit provided by Airline, shall be conditioned on the satisfactory performance of all terms, conditions and covenants contained herein with respect to rentals, fees and charges during the term hereof.

6.8.C. The security for payments shall be in an amount equal to two months' rentals for Exclusive Use Premises and Preferential Use Premises, plus estimated landing fees and per turn charges for the same period, all as reasonably estimated by the Director. The Authority may, upon ten business days notice to the Airline, require an increase in the amount of security deposit up to four additional months anticipated payments if, upon a review of the Airline's payment or performance history at the Airport, the authority determines an increase should be required.

6.8.D. In the event of any failure by Airline to pay when due any amounts payable under this Agreement, or upon any other default hereunder, then in addition to any other rights and remedies available to Authority at law or in equity, Authority shall be entitled to draw against the full amount of the Security Deposit and apply same to all amounts owed. Upon notice of any such draw, Airline shall immediately replenish or replace the Security Deposit with cash, a new Letter of Credit or a new Bond, as applicable, up to the full amount of the Security Deposit required hereunder. If a Letter of Credit is posted, then the term and all renewal terms of the Letter of Credit shall be for a period of not less than one year, and the Letter of Credit shall be kept in full force and effect throughout the term of this Agreement, and for a period of six months following the termination date of this Agreement. If a Bond is posted, then the Bond shall be kept in full force and effect throughout the term of this Agreement and for a period of six months following the termination date of this Agreement.

6.9.E. Not less than 60 calendar days prior to any expiration date of the Letter of Credit or Bond, the Airline shall submit evidence in form satisfactory to Authority that said security instrument has been renewed. A failure to renew the Letter of Credit or Bond, as applicable, or to increase the amount of same if required by the Authority shall (i) entitle the Authority to draw down the full amount of such Security Deposit, and (ii) constitute an Event of Default of this Agreement, entitling Authority to exercise all available remedies.

## ARTICLE VII
## AIRPORT IMPROVEMENTS

### Section 7.1 - General

The parties hereto recognize that capital expenditures to preserve, protect, enhance, expand, or otherwise improve Airport or any part thereof, may be required during the term of this Agreement. Any such capital expenditures shall be subject to the provisions of this Article VII.

### Section 7.2 - Alterations and Improvements by Airline

7.2.A. Whenever consistent with this Agreement, Airline shall have the right to construct and install, at its sole expense, improvements in its Airline Premises as Airline deems to be necessary for its operations; provided, however, that the plans and specifications, location, and construction schedule for such improvements shall be approved by Director in writing prior to the commencement of any and all such construction or installation. Additionally, prior to the commencement of any such improvements, Airline shall obtain insurance and/or other protection of such types and in such amounts as reasonably deemed necessary by Director and shall submit evidence that such insurance has been obtained to Director. Any work associated with such construction or installation shall not interfere with the operation of the Terminal or Ramp Area. Airline shall deliver to Director reproducible "as builts", in electronic form, of Airline improvements and additions no later than thirty (30) days following the substantial completion of any such improvements and additions.

7.2.B. Any construction or installation shall be at the sole risk of Airline and shall be in accordance with all applicable state and local codes and laws and subject to inspection by Director.

7.2.C. All improvements made to Airline Premises and additions and alterations thereto made by Airline shall immediately become the property of Authority; provided, however, that any trade fixtures, signs and other personal property of Airline not permanently affixed to Airline Premises shall remain the property of Airline unless otherwise specified according to the provisions of Article XII.

7.2.D. Airline shall require contractors to furnish satisfactory evidence of statutory Workers' Compensation insurance, comprehensive general liability insurance, comprehensive automobile insurance, and physical damage insurance, on a Builder's Risk form with the interest of Authority endorsed thereon, in such amounts and in such manner as Director may reasonably require. Director may require additional insurance for any alterations or improvements approved hereunder, in such limits as Director reasonably determines to be necessary.

7.2.E. Any removal by Airline of property installed by Airline under the terms of this Agreement shall be accomplished pursuant to Article XII and shall require the written consent of Director prior to such removal, which shall not be unreasonably withheld.

## ARTICLE VIII
## DAMAGE OR DESTRUCTION

**Section 8.1 - Damage to Airport Facilities.**

Airline shall be responsible for all damage to the Airport caused by the Airline, its agents, employees, contractors, subcontractors, or invitees, including but not limited to, damage to terminal areas, ramp and taxiway areas, engine run-up areas, runways, and all areas where any activities are conducted by Airline.

**Section 8.2 - Authority not Liable for Damage to Airline's Property.**

Authority shall not be liable to Airline for damage to Airline's property from any cause whatsoever, including without limitation, any act of negligence of any tenants, occupants, or other users of the Airport or any other person or from any cause whatsoever unless caused by the sole negligence of Authority, its agents, servants or employees. Airline shall have the right, however, to claim and recover its damages from any third party who may be liable therefor.

## ARTICLE IX
## INDEMNIFICATION AND INSURANCE

### Section 9.1 – Indemnification

9.1.A. Airline agrees to indemnify, save, hold harmless, and defend Authority, its Council persons, its officials, agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all reasonable expenses incidental to the investigation and defense thereof, in any way arising out of or resulting from any acts, omissions or negligence of Airline, its agents, employees, licensees, successors and assigns, or those under its control; in, on or about Airline Premises or upon Airport Premises; or in connection with its use and occupancy of Airline Premises or use of Airport; provided, however, that Airline shall not be liable for any injury, damage, or loss occasioned by the negligence or willful misconduct of Authority, its agents or employees. When acknowledgment of any action becomes known by the Airline or Authority, they shall give prompt written notice to the other party.

9.1.B. Airline shall indemnify, save, hold harmless, and defend Authority, its Council persons, its officials, agents and employees, its successors and assigns, individually or collectively, from and against all liability for any claims and actions and all expenses incidental to the investigation and defense thereof, in any way arising from or based upon the violation of any federal, state, or municipal laws, statutes, ordinances, or regulations, by Airline, its agents, employees, licensees, successors and assigns, or those under its control.

9.1.C To the fullest extent permitted by law, Airline shall indemnify, save, hold harmless, and defend Authority, its Council persons, its officials, agents, and employees, its successors and assigns, individually or collectively, from and against any claim, action, loss, damage, injury, liability, and the reasonable cost and expenses (including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees; unless defended by Airline) of any environmental claim arising out of or resulting from Airline's use and occupancy of Airline Premises or use of the Airport, including, but not limited to any claim for (i) discharge of pollutants, hazardous materials, hazardous substances or solid waste, hazardous wastes or toxic materials at or on the Airport, including the air, surface water, ground water, or soil from any source, including underground storage tanks, (ii) generation, handling, treatment, storage, disposal, or transportation of solid, gaseous, or liquid waste at the Airport or at any other site, facility or location, (iii) electromagnetic or other radiation or noise, (iv) exposure of any person to any hazardous material, (v) manufacture, processing, distribution, use, or storage of any hazardous material, (vi) the release or threatened release of any contamination or hazardous material to, from or through the Airport, or (vii) any of the foregoing, related to, caused by or arising from Airline's Airport-related activities, but with respect to non-Airport property, including the air, surface water, ground water, or soil. Notwithstanding the above, Airline shall not be liable for any environmental claim solely and directly attributable to a pre-existing condition on any Airport Area not caused or previously occupied by Airline or any corporate predecessor to Airline at any prior time. Airline shall not be liable for any environmental claim arising out of or resulting from the Authority's conduct.

9.1.D The provisions of this Section 9.1 shall survive the expiration or termination of this Agreement, with respect to occurrences during the term of this Agreement.

**Section 9.2 – Insurance**

9.2.A. Without limiting Airline's obligation to indemnify Authority, as provided for in Section 9.1, Airline shall procure and maintain in force at all times during the term of this Agreement an occurrence form, comprehensive airport premises liability and aviation insurance to protect against personal injury and bodily injury liability and property damage liability. The limits for Airlines operating aircraft larger than sixty (60) seats shall be in an aggregate amount of not less than $100,000,000 per occurrence, combined single limit; provided, however, coverage for non-passengers shall be not less than an aggregate amount of $25,000,000 per occurrence. The limits for Airlines operating aircraft with sixty (60) seats or less shall be in an aggregate amount of not less than $50,000,000 per occurrence, combined single limit. In addition, Airline shall procure and maintain in force during the Term of this Agreement, liability insurance applicable to the ownership, maintenance, use, or operation of any automobile, mobile equipment or other ground vehicle at the Airport (including owned, non-owned, or hired) in an amount not less than $5,000,000 per occurrence; statutory Workers' Compensation insurance; and other policies of insurance reasonably required by Authority.

9.2.B. The aforesaid insurance amounts and types of insurance shall be reviewed from time to time by Authority and may be adjusted by Authority if Authority reasonably determines such adjustments are necessary to protect Authority's interests. Airline shall furnish Authority no later than thirty (30) days following the execution of this Agreement a certificate or certificates of insurance as evidence that such insurance is in force. Authority reserves the right to require a certified copy of such certificates upon request. Airline shall name Authority as an additional insured on such insurance policy or policies to the extent of contractual liability assumed by Airline under Section 9.1 herein. Said policies shall be in a form and content satisfactory to Authority and shall provide for thirty (30) days written notice to Authority prior to the cancellation of or any material change in such policies.

**Section 9.3 - Subrogation of Insurance**

9.3.A. Authority hereby waives any and all rights of recovery against Airline for or arising out of damage or destruction of the building, or the demised premises, or any other property of Authority, from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of Airline, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

9.3.B. Airline hereby waives any and all rights of recovery against Authority for or arising out of damage to or destruction of any property of Airline from causes then included under any of its property insurance policies, to the extent such damage or destruction is covered by the proceeds of said policies, whether or not such damage or destruction shall have been caused by the negligence of Authority, its agents, servants or employees or otherwise, but only to the extent that its insurance policies then in force permit such waiver.

## ARTICLE X
## CANCELLATION BY AUTHORITY: EVENTS OF DEFAULT BY AIRLINE

**Section 10.1 - Events of Default by Airline**

10.1.A. Upon the occurrence of any one of the following events of default, Authority may issue a written notice of default after providing Airline the cure period noted:

10.1.A.(1) The conduct of any business or performance of any acts at Airport not specifically authorized herein or by other agreements between Authority and Airline, and said business or acts do not cease within thirty (30) days of receipt of Authority's written notice to cease said business or acts.

10.1.A.(2) The failure to cure a default in the performance of any of the terms, covenants and conditions required herein (except Contract Security requirements, insurance requirements, and payment of rentals, fees, and charges) within thirty (30) days of receipt of written notice by Authority.

10.1.A.(3) If by reason of the nature of such default referred to in Paragraph (2) above, the same cannot be remedied within thirty (30) days following receipt by Airline of written demand from Authority, and Airline fails to commence the remedying of such default, or having so commenced, shall fail thereafter to continue with diligence the curing thereof; provided, however, Airline's required performance under this Paragraph (3) shall be conditioned by the Force Majeure provisions of Section 16.16. Airline shall have the burden of proof to demonstrate (i) that the default cannot be cured within thirty (30) days, (ii) that it is proceeding with diligence to cure said default, and (iii) that such default will be cured within a reasonable period of time.

10.1.B. Upon the occurrence of any one of the following events of default, Authority may immediately issue written notice of default:

10.1.B.(1) The failure by Airline to pay any part of the rentals, fees and charges due hereunder and the continued failure to pay said amounts in full within ten (10) days of the date of Authority's written notice of payments past due. Provided, however, if a dispute arises between Authority and Airline with respect to any obligation or alleged obligation of Airline to make payments to Authority, payments under protest by Airline of the amount due shall not waive any of Airline's rights to contest the validity or amount of such payment. In the event any court or other body having jurisdiction determines all or any part of the protested payment shall not be due, then Authority shall promptly reimburse Airline any amount determined as not due. Further, throughout the duration of any appeal or contest of any fees or charges by Airline, Airline will not be held in default by reason of the instance specifically under appeal. Authority shall use due diligence in attempting to collect any past due rentals, fees, and charges from any Scheduled Air Carrier providing air service at the Airport, including Airline.

10.1.B.(2) The failure by Airline to provide and keep in force Contract Security in accordance with Section 6.8.

10.1.B.(3) The failure by Airline to provide and keep in force insurance coverage in accordance with Section 9.2.

10.1.B.(4) The appointment of a trustee, custodian, or receiver of all or a substantial portion of Airline's assets.

10.1.B.(5) The divestiture of Airline's estate herein by operation of law, by dissolution, or by liquidation.

10.1.B.(6) The insolvency of Airline; or if Airline shall take the benefit of any present or future insolvency statute, shall make a general assignment for the benefit of creditors, or shall seek a reorganization or the readjustment of its indebtedness under any law or statute of the United States or of any state thereof.

10.1.B.(7) The voluntary discontinuance for a period of at least thirty (30) consecutive days by Airline of its operations at the Airport unless otherwise approved by Authority, in advance, in writing.

**Section 10.2 - Continuing Responsibilities of Airline**

Notwithstanding the occurrence of any event of default, Airline shall remain liable to Authority for all rentals, fees and charges payable hereunder and for all preceding breaches of any covenant of this Agreement. Furthermore, unless Authority elects to cancel this Agreement, Airline shall remain liable for and promptly pay all rentals, fees and charges accruing hereunder until the expiration of this Agreement as set forth in Article II or until this Agreement is cancelled by Airline pursuant to Article XI.

**Section 10.3 - Remedies of Authority for Airline's Default**

Upon the occurrence of any event enumerated in Paragraphs 10.1.A. or 10.1.B., the following remedies shall be available to Authority:

10.3.A Authority may cancel this Agreement, effective upon the date specified in the notice of cancellation. For events enumerated in Paragraph 10.1.A., such date shall be not less than thirty (30) days from said notice. Upon such date, Airline shall have no further rights hereunder and Authority shall have the right to take immediate possession of Airline's Airline Premises.

10.3.B Authority may reenter the Airline Premises and may remove all Airline persons and property from same upon the date of reentry specified in Authority's written notice of reentry to Airline. For events enumerated in Paragraph 10.1.A., reentry shall not be less than thirty (30) days of the date of notice of reentry. Upon any removal of Airline property by Authority hereunder, Airline property may be stored at a public warehouse or elsewhere at Airline's sole cost and expense.

10.3.C Authority may relet Airline Premises and any improvements thereon or any part thereof at such rentals, fees, and charges and upon such other terms and conditions as Authority, in its reasonable judgment, may deem advisable, with the right to make alterations, repairs or improvements on said Airline Premises. In reletting the Airline Premises, Authority shall be obligated to make a good faith effort to obtain terms no less favorable to Authority than those contained herein and otherwise seek to mitigate any damages it may suffer as a result of Airline's default.

10.3.D In the event that Authority relets Airline Premises, rentals, fees, and charges received by Authority from such reletting shall be applied the following order of priority: (i) to the payment of any cost of such reletting; (ii) to the payment of any indebtedness other than rentals, fees, and charges due hereunder from Airline to Authority; and (iii) to the payment of rentals, fees, and charges due and unpaid hereunder. The residue, if any, shall be held by Authority and applied in payment of future rentals, fees, and charges as the same may become due and payable hereunder. If that portion of such rentals, fees, and charges received from such reletting and applied to the payment of rentals, fees, and charges hereunder is less than the rentals, fees, and charges payable during applicable periods by Airline hereunder, then Airline shall pay such deficiency to Authority. Airline shall also pay to Authority, as soon as ascertained, any costs and expenses incurred by Authority in such reletting not covered by the rentals, fees, and charges received from such reletting.

10.3.E No reentry or reletting of Airline Premises by Authority shall be construed as an election on Authority's part to cancel this Agreement unless a written notice of cancellation is given to Airline.

10.3.F Airline shall pay to Authority all other costs incurred by Authority in the exercise of any remedy in this Article X, including, but not limited to, reasonable attorney's fees, disbursements, court costs, and expert fees.

10.3.G Authority may exercise any other legal or equitable remedy, including but not limited to the remedies hereinafter specified.

**Section 10.4 - Remedies Under Federal Bankruptcy Laws**

Notwithstanding the foregoing, upon the filing by or against Airline of any proceeding under Federal bankruptcy laws, if Airline has defaulted in the performance of any provision of this Agreement within the six (6) months preceding such filing, Authority shall have the right to cancel this Agreement, in addition to other remedies provided under provisions of the Federal Bankruptcy Rules and Regulations and Federal Judgeship Act of 1984, or any successor statute, as such may be subsequently amended, supplemented, or replaced. Such cancellation shall be by written notice to Airline within sixty (60) days from the date of Airline's initial filing in bankruptcy court.

## ARTICLE XI
## CANCELLATION BY AIRLINE: EVENTS OF DEFAULT BY AUTHORITY

**Section 11.1. - Events of Default by Authority**

Each of the following events shall constitute an "Event of Default by Authority":

11.1.A. Authority fails after receipt of written notice from Airline to keep, perform or observe any term, covenant or condition herein contained to be kept, performed, or observed by Authority and such failure continues for thirty (30) days, or if by its nature such Event of Default by Authority cannot be cured within such thirty (30) day period, Authority fails to commence to cure or remove such Event of Default by Authority within said thirty (30) days and to cure or remove the same as promptly as reasonably practicable.

11.1.B. Authority closes Airport to flights in general or to the flights of Airline, for reasons other than weather, acts of God or other reasons beyond its control, and fails to reopen Airport to such flights within sixty (60) days of such closure.

11.1.C. The Airport is permanently closed as an air carrier airport by act of any federal, state or local government agency having competent jurisdiction.

11.1.D. Airline is unable to use Airport for a period of at least thirty (30) days due to any law or any order, rule or regulation of any appropriate governmental authority having jurisdiction over the operations of Airport, or any court of competent jurisdiction issues an injunction in any way preventing or restraining the use of Airport or any part thereof for Airport purposes, and such injunction remains in force for a period of a least thirty (30) days.

11.1.E. The United States Government or any authorized agency of the same (by executive order or otherwise) assumes the operation, control or use of Airport and its facilities in such a manner as to substantially restrict Airline from conducting its operations, and such restriction shall continue for a period of at least thirty (30) days.

**Section 11.2 - Remedies of Airline for Authority's Defaults**

Upon the occurrence of an Event of Default by Authority and after appropriate notice by Airline to Authority, Airline shall have the right to terminate this Agreement and all rentals, fees and charges payable by Airline under this Agreement shall terminate as of the effective date of the termination notice. In the event that Airline's operations at Airport should be restricted substantially by action of any governmental agency having jurisdiction thereof, then Airline shall, in addition to the rights of termination herein granted, have the right to a suspension of this Agreement, or part thereof, and abatement of an equitable proportion of the payments due hereunder, from the time of giving written notice of such election until such restrictions shall have been remedied and normal operations restored.

## ARTICLE XII
## SURRENDER OF AIRLINE PREMISES

### Section 12.1 - Surrender and Delivery

Promptly upon the termination of this Agreement, by lapse of time, or otherwise, Airline shall at once peaceably surrender and deliver to Authority Airline Premises and all improvements thereon to which Authority is entitled hereunder.

### Section 12.2 - Removal of Property

12.2.A. Airline shall have the right at any time during the term of this Agreement to remove from Airport its aircraft, tools, equipment, trade fixtures, and other personal property, title to which shall remain in Airline unless otherwise set forth in this Agreement, and shall remove such aircraft, tools, equipment, trade fixtures, and other personal property within fifteen (15) days following termination of this Agreement, whether by expiration of time or otherwise as provided herein, subject, however, to any valid lien which Authority may have thereon for unpaid rentals, fees and charges. Airline shall not abandon any portion of its property without the written consent of Authority. Any and all property not removed by Airline within thirty (30) days following termination of this Agreement shall, at the option of Authority, become the property of Authority at no cost to Authority. All Authority property damaged by or as a result of the removal of Airline property shall be restored by Airline to the condition existing before such damage at Airline's expense.

12.2.B. Notwithstanding the above, in the event that Airline desires to sell any baggage equipment to Authority upon the termination of this Agreement, or at any other time during the term of this Agreement, then in such event:

> 12.2.B.(1) Upon the prior written approval of the Director, Airline shall have the right to leave such property in place for a period not exceeding ninety (90) days following the termination of this Agreement, or the deletion, pursuant to Section 3.1, of the space on which such property is located, pending the successful completion of such a sale. During such period, Authority shall have the right to permit the use of such property by other Air Transportation Companies, without payment by Authority to Airline; provided, however, Airline shall have the right to seek payment for such use(s) directly from any such other Air Transportation Companies. In the event no such sale is completed such property must be removed immediately upon the expiration of the 90-day period.
>
> 12.2.B(2) Authority shall have the right of first refusal to purchase said property at the highest bona fide competing offer or market value.

## ARTICLE XIII
## ASSIGNMENT, SUBLETTING AND HANDLING AGREEMENTS

### Section 13.1 - Assignment and Subletting by Airline

13.1.A.(1) Airline shall not sell, convey, transfer, mortgage, pledge, or assign this Agreement, or any part thereof, or any rights created thereby or the leasing thereunder in any manner whatsoever or sublet Airline Premises or any part thereof or any of the privileges recited herein without the prior written consent of the Director. However, Airline shall have the right to assign all or any part of its rights and interests under this Agreement to an Affiliate or to any successor to its business through merger or consolidation. Consent of Authority for such assignment as expressly approved in this subsection shall not be required; provided, however, due notice of any such assignment shall be given to the Director at least thirty (30) days prior to such assignment hereunder.

13.1.A.(2) In the event Airline, using large jet-loader aircraft, intends to assign all or part of its Airline Premises to an Affiliate using smaller aircraft that cannot be served by a loading bridge, then in such an event Director may re-assign gate positions as appropriate to ensure the highest and best use of loading bridge gates and ramp safety.

13.1.A.(3) Any such successor corporation no later than thirty (30) days after the date of such merger, consolidation or succession shall acknowledge by a writing satisfactory in form and content to Authority that it has assumed all obligations of Airline and will fully honor all the terms and conditions set forth in this Agreement.

13.1.B. Airline shall not sublease Airline Premises.

### Section 13.2 - Handling Agreements

In the event Airline agrees to ground handle any portion of the operations of another Scheduled Air Carrier or of a Requesting Airline, Airline shall provide Authority advance written notice of such proposed activities, including a description of the type and extent of services to be provided. Notwithstanding the provisions of the foregoing sentence, Airline shall not commence to ground handle another Scheduled Air Carrier or a Requesting Airline without the prior written permission of the Director if such Scheduled Air Carrier or Requesting Airline does not have in force an operating agreement with Authority.

### Section 13.3 – Miscellaneous

No assignment, transfer, conveyance, or granting a nonexclusive license by Airline shall relieve in any manner Airline of its responsibility for payment of rent and performance of all other obligations provided in this Agreement, without specific written consent of the Director to such relief. The Director shall consider all relevant factors, including the financial strength of the proposed assignee in determining whether to grant such relief.

## ARTICLE XIV
## ACCOMMODATION OF A REQUESTING AIRLINE

### Section 14.1 - Declaration of Intent

The parties hereto acknowledge the objective of Authority to offer to all airlines desiring to serve Airport access to Airport and to provide adequate Gate Positions and space in the Terminal. Recognizing that physical and financial limitations may preclude timely expansion of the Terminal and Aircraft Parking Apron areas to meet the stated requests of Airline or other airlines for additional facilities, Authority hereby states its intent to accommodate such requests, if necessary, through sharing, from time to time, of Gate Positions and other Terminal facilities.

### Section 14.2 - Accommodation of Requesting Airlines

14.2.A.(1) In the event Authority cannot accommodate a Requesting Airline in areas not then leased to Scheduled Air Carriers or other Terminal tenants, then in such event Airline agrees to cooperate with Authority to accommodate the needs of a Requesting Airline on a temporary basis by permitting such Requesting Airline to utilize Gate Position(s) and other portions of Airline Premises and other necessary facilities in connection with and for the time period(s) necessary to permit passenger loading and unloading operations in conjunction with Requesting Airline's planned operations at times when the use of such facilities shall not interfere with Airline's planned operations (i.e., one (1) hour prior to a scheduled arrival, one (1) hour after the scheduled departure time, or overnight parking of aircraft of Airline. Authority shall provide Airline with as much advance notice as reasonably possible so that Airline may plan for the accommodation of a Requesting Airline.

14.2.A.(2) Airline's obligation hereunder shall be subject to execution of a written agreement between Airline and such Requesting Airline, including indemnification of Airline by Requesting Airline, setting forth mutually agreed to terms and conditions governing such use which shall include a charge by Airline for its costs plus a reasonable administrative charge not to exceed fifteen (15) percent.

14.2.A.(3) Airline agrees to make reasonable efforts to facilitate the temporary accommodation of Requesting Airline's operations, including use of ticket counter area, use of Airline's baggage facilities and use of other portions of Airline Premises and facilities reasonably available to accommodate Requesting Airline, if (1) Airline has adequate capabilities, capacity, facilities and personnel therefore, after taking into account Airline's own requirements and contractual obligations, the compatibility of said Requesting Airline's proposed operations with those of Airline, and the need for labor harmony, and (2) said Requesting Airline enters into a written agreement with Airline therefore, which agreement shall be approved in writing by Authority prior to the effective date thereof.

14.2.A.(4) In the event Requesting Airline materially defaults under the provisions of its written agreement with Airline, then in such event Airline shall no longer be required to accommodate Requesting Airline.

14.2.B. Subject to the provisions of Section 13.1, nothing contained in this Article XI shall prevent or prohibit Airline from electing to enter into an agreement with other air carriers authorized to operate at Airport and desiring to use Airline Premises as provided in Article XIII herein.

14.2.C. During the period of use of Airline Premises by a Requesting Airline at Authority's request pursuant to this Article XIV, Airline shall be relieved of its obligation under this Agreement to indemnify and save harmless Authority, its agents and employees, its successors and assigns, with regard to any claim for damages or personal injury arising out of or in connection with said accommodated Requesting Airline's use of Airline Premises unless such damage or personal injury is proximately caused by the negligence of Airline, its agents, employees, licensees, or those under its control who have come upon Airline Premises in connection with Airline's occupancy hereunder. Authority shall require such Requesting Airline to indemnify Authority and Airline in the manner and to the extent required of Airline pursuant to Article IX.

## ARTICLE XV
## GOVERNMENT INCLUSION

### Section 15.1 - Federal and Other Governmental Authority Funds

15.1.A. This Agreement shall be subordinate to the provisions of any existing or future agreements or regulatory obligations between Authority and the United States Government, or other governmental authority, relative to the operation or maintenance of Airport, the execution of which has been or will be required as a condition precedent to the granting of federal funds or other governmental authority funds for the development of Airport to the extent that the provisions of any such existing or future agreements are generally required by the United States or other governmental authority of other civil airports receiving such funds. Authority agrees to provide Airline written notice in advance of the execution of such agreements of any provisions which would modify the terms of the Agreement.

15.1.B. Authority shall not permit revenue diversion from the Airport, as such diversion is defined in the Federal Aviation Administration Act of 1994 and the Federal DOT's 1999 policy implementing the provisions of the 1994 Act.

### Section 15.2 – Nondiscrimination

15.2.A. Airline, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that in the event facilities are constructed, maintained or otherwise operated on the said property described in this Agreement for a purpose for which a Department of Transportation program or activity is extended, or for another purpose involving the provision of similar services or benefits, Airline shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

15.2.B. Airline, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of Airport; (2) in the construction of any improvements, on, over, or under Airline Premises and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) Airline shall use Airport in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

15.2.C. Airline shall use Airport in compliance with all requirements imposed by or pursuant to 14 CFR Part 152 and Title VI of the Civil Rights Act of 1964, and as said Title and Regulations may be amended, and assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities

covered in 14 CFR Part 152, Subpart E. Airline assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this Subpart. Airline assures that it will require that its covered suborganizations provide assurances to Airline that they similarly will undertake affirmative action programs, and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

15.2.D. Airline shall comply with the laws of the State of Kansas and City of Wichita prohibiting discrimination on the basis of race, color, sex, religion, national origin, age, or handicap, and as such laws may be amended or unless a waiver has been granted by the United States Government.

15.2.E. Should Airline authorize another person, with Authority's prior written consent, to provide services or benefits upon Airline Premises, Airline shall obtain from such person a written agreement to comply with Paragraphs 15.2.A. through 15.2.D. If requested, Airline shall furnish a copy of such agreement to Authority prior to said authorization.

15.2.F. In the event the breach of any of the above nondiscrimination covenants shall constitute an Event of Default by Airline, Authority shall have the right to terminate this Agreement and to reenter and repossess the Airline Premises and the facilities thereon and hold the same as if this Agreement had never been made or issued. The right granted to Authority by the foregoing sentence shall not be effective until applicable procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

## ARTICLE XVI
## MISCELLANEOUS PROVISIONS

### Section 16.1 - Rights Non-Exclusive

Notwithstanding anything herein contained that may be or appear to the contrary, the rights, privileges and licenses granted under this Agreement, except in the Exclusive Use Premises, are "non-exclusive", and nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958, as such may be amended.

### Section 16.2 - Airport Security

Airline and Authority shall comply with all applicable regulations relating to Airport security and shall cooperate in controlling the Airline Premises so as to prevent or deter unauthorized persons from obtaining access to the air operations area of Airport.

Should Airline, its employees, subcontractors, suppliers, agents, and/or representatives cause any security violations, and should Authority be cited for a civil fine or penalty for such security violation, Airline agrees to reimburse Authority for any monetary civil fine or penalty, which may be imposed on Authority by TSA, however, nothing herein shall prevent the Airline from contesting the legality, validity or application of such fine or penalty to the full extent Authority may be lawfully entitled.

### Section 16.3 - Avigation Rights

16.3.A. Authority reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of Airport, including Airline Premises, for navigation or flight in said airspace for landing on, taking off from, or operating on Airport, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft now known or hereafter used, using said airspace or landing at, taking off from, or operating on or about Airport.

16.3.B. Authority reserves the right to take any action it considers necessary to protect the aerial approaches of Airport against obstructions, including the right to prevent Airline from erecting, or permitting to be erected, any building or other structure on Airport which, in the opinion of Authority, would limit the usefulness of Airport or constitute a hazard to aircraft.

### Section 16.4 - Height Limitations

Airline expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on Airline Premises to such a height so as to comply with Federal Aviation Regulations, Part 77, as such may be amended or replaced from time to time.

**Section 16.5 - National Emergency**

During time of war or national emergency Authority shall have the right to enter into an agreement with the United States Government for use of part or all of the Landing Area, the publicly-owned air navigation facilities and/or other areas or facilities of Airport. If any such agreement is executed, the provisions of this instrument, insofar as they are inconsistent with the provisions of the agreement with the United States Government, shall be suspended.

**Section 16.6 - Compliance With Law**

16.6.A. Airline, its agents and employees, shall observe and comply with all applicable rules, regulations, orders and restrictions which are now in force or which may hereafter be adopted by Authority or the City of Wichita with respect to the operation of Airport, and shall also be subject to any and all applicable current and future laws, statutes, rules, regulations or orders of any governmental authority lawfully exercising authority over Airport or Airline's operations conducted hereunder: provided, however;

> 16.6.A.(1) Any new rules, regulations, orders or restrictions enacted by Authority during the term of this Agreement shall not be inconsistent with the terms, provisions, rights and privileges granted hereunder, unless enacted in compliance with the lawful rules, regulations, ordinances, laws grant requirements or orders of other governmental authorities having jurisdiction over the operation of the Airport.
>
> 16.6.A.(2) Airline may, at its own risk, costs and expense and at no cost to Authority, and without being considered to be in breach of this Agreement, contest by appropriate judicial or administrative proceedings the applicability or the legal or constitutional validity of such rules, regulations, ordinances, laws or orders.

16.6.B. Authority shall not be liable to Airline for any diminution or deprivation of its rights hereunder due to the exercise of any such authority as provided for in this Section 16.6, nor shall Airline be entitled to terminate this Agreement by reason thereof unless the exercise of such authority shall so interfere with Airline's exercise of the rights hereunder as to constitute a termination of this Agreement by operation of law in accordance with the laws of the State of Kansas, or permit Airline to cancel this Agreement pursuant to the provisions of Article XI.

**Section 16.7 - Agent for Service of Process**

It is expressly understood and agreed that if Airline is not a resident of the State of Kansas, or is an association or partnership without a member or partner resident of said State, or is a foreign corporation not licensed to do business in Kansas, then in any such event, Airline designates the Secretary of State, State of Kansas, its agent for the purpose of service of process in any court action between it and Authority arising out of or based upon this Agreement, and the service shall be made as provided by the laws of the State of Kansas for service upon a non-resident. It is further expressly agreed, covenanted, and stipulated that, if for any reason, service of such process is not possible, then as an alternative method of service of process, Airline may be personally served with such process out of this State by the registered mailing of such complaint and process

to Airline at the address set forth herein. Any such service out of this State shall constitute valid service upon Airline as of the date of mailing to respond thereto.

**Section 16.8 - Nonliability of Agents and Employees**

No member, officer, agent, director, elected official, or employee of Authority or Airline shall be charged personally or held contractually liable by or to the other party under the terms or provisions of this Agreement or because of any breach thereof or because of its execution or attempted execution.

**Section 16.9 - Partnership or Agency**

Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship, between the parties hereto. It is understood and agreed that neither the method of computation of rentals, fees and charges, nor any other provisions contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of Authority and Airline.

**Section 16.10 - Taxes, Assessments, and Licenses**

Airline shall at its own expense obtain all permits, licenses, approvals and certificates and pay all taxes, assessments, fees and charges required by any regulation or any law of the City of Wichita, County of Sedgwick, State of Kansas, the United States, or other governmental body with regard to the business to be conducted by Airline on Airport or within its Airline Premises pursuant to the terms of this Agreement; provided, however, that Airline may, at its own risk, costs and expense and at no cost to Authority, contest by appropriate judicial or administrative proceedings the applicability or amounts of any such taxes, assessments, fees and charges.

**Section 16.11 - Approval by Authority**

Whenever this Agreement calls for approval by Authority, such approval shall be evidenced by the written approval of the Director or his designee. Any approval required by either party to this Agreement shall not be unreasonably withheld or delayed.

**Section 16.12 – Most Favored Nation**

Each Air Transportation Company using the Airport shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities and equipment, subject to reasonable classifications such as tenants or Non-Participating Airlines and Signatory Airlines and Non-Signatory Airlines. Classification or status as tenant or Signatory Airline shall not be unreasonably withheld by the Airport, provided Air Transportation Company assumes obligations substantially similar to those already imposed on Air Transportation Companies in such classifications or status.

**Section 16.13 - Compliance by Other Tenants**

Authority shall whenever possible make reasonable efforts to obtain uniform compliance with its rules and regulations; provided, however, Authority shall not be liable to Airline for any violation or non-observance of such rules and regulations by any tenant, concessionaire or other Air Transportation Company at Airport.

**Section 16.14 - Quiet Enjoyment**

Authority agrees that on payment of the rentals, fees and charges due hereunder, and performance of the covenants and agreements on the part of Airline to be performed hereunder, Airline shall peaceably have and enjoy Airline Premises and all the rights and privileges of Airport, its appurtenances and facilities.

**Section 16.15 - Authority's Right of Entry**

Any authorized representative of Authority shall have the right to enter upon any premises and facilities of Airport at any reasonable time for the purpose of inspection or for any purpose incident to the performance of its obligations hereunder or in the exercise of any of its governmental functions. Authority shall use its best efforts to avoid disruption of Airline's operation.

**Section 16.16 - Force Majeure**

Except as herein provided, neither Authority nor Airline shall be deemed to be in default hereunder if either party is prevented from performing any of the obligations other than the payment of rentals, fees and charges hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of energy or materials, acts of God, acts of a public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, or sabotage, or any other circumstances for which it is not responsible or which are not within its control. Under no circumstances shall the occurrence of any event provided for in this Section 16.16 excuse Airline from paying the rentals, fees and charges payable to Authority by Airline pursuant to the terms of this Agreement during the term of this Agreement.

**Section 16.17 – Notices**

Notices required herein may be given by registered or certified mail by depositing the same in the the United States mail, postage prepaid. Any such notice so mailed shall be presumed to have been received by the addressee seventy-two (72) hours after deposit of same in the mail. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to Authority shall be addressed as follows:

Wichita Airport Authority
2173 Air Cargo Road
Wichita Mid-Continent Airport
Wichita, Kansas 67209

Notices to Airline shall be addressed as follows:

VP Administration
Republic Airline Inc.
8909 Purdue Road #300
Indianapolis, IN 46268

If notice is given in any other manner or at any other place, it will also be given at the place and in the manner specified above.

**Section 16.18 - Place of Payment**

All payments in a form acceptable to Authority are required of Airline by this Agreement shall be made at the office of The Wichita Airport Authority, 2173 Air Cargo Road, Wichita Mid-Continent Airport, Wichita, Kansas 67209, or to such other address as may be substituted therefore. ACH direct deposit is preferred. Bank account and routing information is available upon request.

**Section 16.19 - Nonwaiver of Rights**

No waiver of default by either party of any of the terms, covenants, and conditions herein to be performed, kept and observed by the other party shall be construed as, or shall operate as, a waiver of any subsequent default of any of the terms, covenants, or conditions herein contained, to be performed, kept, and observed by the other party.

**Section 16.20 - Governing Law**

This Agreement is to be read and construed in accordance with the laws of the State of Kansas and ordinances of the City of Wichita. The parties hereto agree that any court of proper jurisdiction sitting in Sedgwick County, Kansas shall be the proper forum for any actions brought hereunder.

**Section 16.21 – Severability**

If one or more clauses, sections, or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, by any court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby unless continued enforcement thereof would unreasonably prejudice the rights of either party to perform and/or enjoy the rights provided under this contract, in which case the party so prejudiced may terminate this Agreement upon thirty (30) days' written notice.

**Section 16.22 - Other Agreements**

Nothing contained in this Agreement shall be deemed or construed to nullify, restrict or modify in any manner the provisions of any other lease or contract between Authority and Airline authorizing the use of Airport, its facilities and appurtenances upon payment of rentals, fees and charges therein provided.

**Section 16.23 – Gender**

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**Section 16.24 - Headings and Titles**

The headings of the articles of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.

**Section 16.25 - Incorporation of Exhibits**

All exhibits referred to in this Agreement are intended to be and hereby are specifically made a part of this Agreement.

**Section 16.26 - Entire Agreement**

16.26.A. It is understood and agreed that this instrument contains the entire agreement between the parties hereto. It is further understood and agreed by Airline that Authority and Authority's agents have made no representations or promises with respect to this Agreement or the making of this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by Airline against Authority for, and Authority shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other written or parol agreement with Authority being expressly waived by Airline.

16.26.B. The parties hereto acknowledge that they have thoroughly read this Agreement, including any exhibits or attachments hereto, and have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of all rights and obligations herein.

**Section 16.27 – Amendment**

Except as provided herein, no amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

**Section 16.28 – Interpretation**

This Agreement is the result of extensive negotiations between the parties and shall not be construed against Authority by reason of the preparation of this Agreement by Authority.

**Section 16.29 - Successors and Assigns Bound**

All of the covenants, conditions and agreements contained herein shall extend to and be binding upon the legal representatives, successors and assigns of the respective parties hereto.

**Section 16.30 – Subordination to Bond Resolution**

16.30.A This Agreement and all rights of Airline hereunder are expressly subject and subordinate to the lien and provisions of any pledge, transfer, hypothecation, or assignment made at any time by Authority to secure Bond financing. This Agreement is subject and subordinate to the terms, covenants, and conditions of any Bond Resolution.

16.30.B In conflicts between this Agreement and a Bond Resolution, the Bond Resolution shall govern.

16.30.C All definitional terms that are not specifically defined herein shall have the meanings set forth in the Bond Resolution.

**Section 16.31 – Performance**

The parties expressly agree that time is of the essence in this Agreement. Failure by a party to complete performance within the time specified, or within a reasonable time if no time is specified herein, shall relieve the other party, without liability, of any obligation to accept such performance.

**Section 16.32 - Capacity to Execute**

16.32.A. Authority and Airline each warrant and represent to one another that this Agreement constitutes a legal, valid and binding obligation of that party.

16.32.B. The individuals executing this Agreement personally warrant that they have full authority to execute this Agreement on behalf of the entity for whom they are acting herein.

IN WITNESS THEREOF, Authority has caused these presents to be executed by the Wichita Airport Authority, by direction of the City Council, attested to by the City of Wichita Clerk and the seal of the Wichita Airport Authority affixed hereunto, and Airline has caused these presents to be signed by its proper corporate officers and its corporate seal hereunto affixed and attested to as of the day and year first above written.

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By:_____
Karen Sublett, City Clerk

By:_____
Carl Brewer, President

Authority"

By _____
Victor D. White, Director of Airports

ATTEST:

By: _____
JANET INMAN
Title: Mgr Contract Admin

REPUBLIC AIRLINE INC.

By: _____

Title:_____
Scott Durgin,
V.P. Administration

"Airline"

APPROVED AS TO FORM: _____ Date: 1-7-13
Director of Law

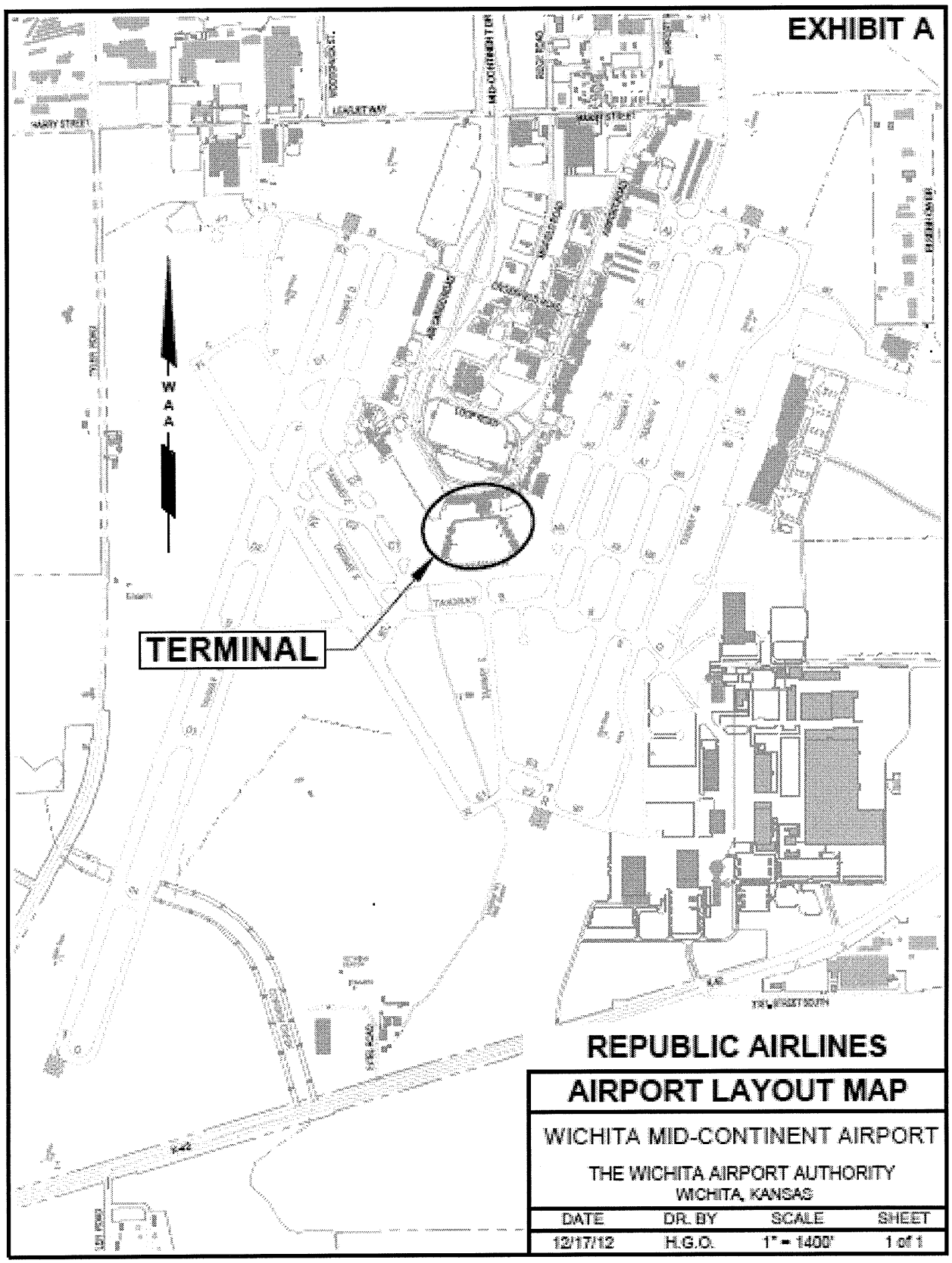
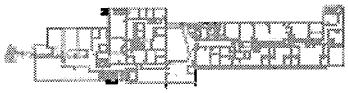


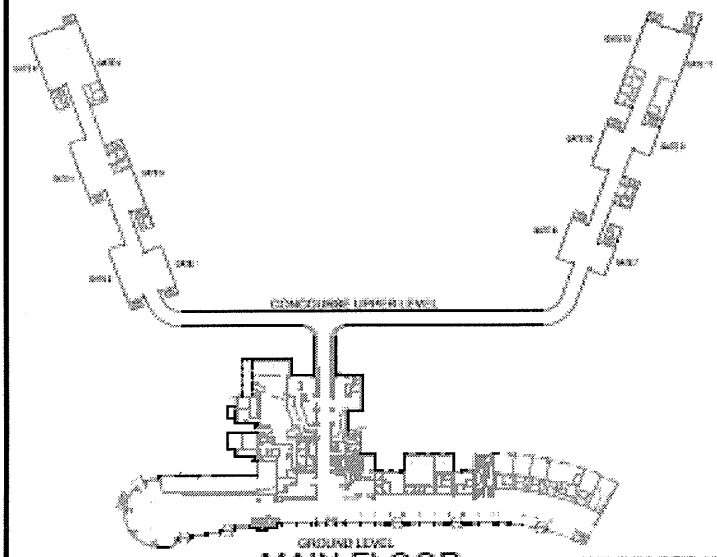
EXHIBIT A
W
A
A
TERMINAL
REPUBLIC AIRLINES
AIRPORT LAYOUT MAP
WICHITA MID-CONTINENT AIRPORT
THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS
DATE
DR. BY
SCALE
SHEET
12/17/12
H.G.O.
1" = 1400'
1 of 1

# EXHIBIT B



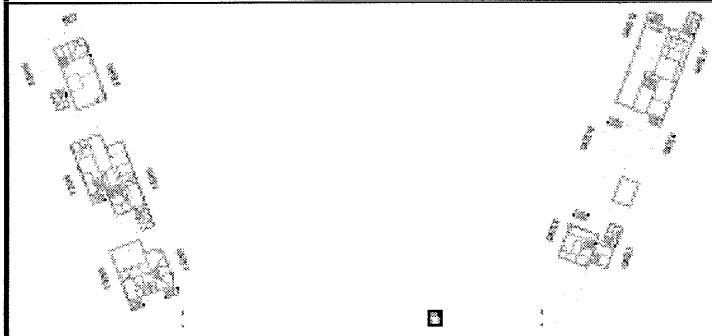
2nd FLOOR

NO SPACES USED



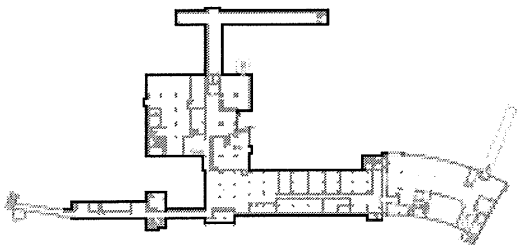

MAIN FLOOR

NO SPACES USED



OPERATIONS LEVEL

NO SPACES USED



BASEMENT

NO SPACES USED

## REPUBLIC AIRLINES

## TERMINAL LAYOUT

WICHITA MID-CONTINENT AIRPORT

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

| DATE | DR. BY | SCALE | SHEET |
|---|---|---|---|
| 12/17/12 | H.G.O. | 1" = 200' | 1 of 1 |

Exhibit "C"

RESPONSIBILITY OF AUTHORITY AND AIRLINE FOR MAINTENANCE AND OPERATION OF TERMINAL AREAS

| | Airline Exclusive Use | | | | | Airline Preferential Use | |
|---|---|---|---|---|---|---|---|
| | Ticket Counter | Offices | Bag Make-Up | Unenclosed Covered Apron | Opts Areas Other | Holdroom | Apron |
| Air Conditioning | | | | | | | |
| Maintenance | W | W | W | N/A | W | W | N/A |
| Chilled Air Distribution | W | W | W | N/A | W | W | N/A |
| Electrical | | | | | | | |
| Bulb & Tube Replacement | A | A | A | A | A | A | N/A |
| Power | W | W | W | W | W | W | N/A |
| Maintenance & Repair | W | W | W | W | W | W | N/A |
| Heating | | | | | | | |
| Maintenance | W | W | W | N/A | W | W | N/A |
| Warm Air Distribution | W | W | W | N/A | W | W | N/A |
| Water-Maintenance | | | | | | | |
| Distribution | W | W | W | W | W | W | N/A |
| Fixtures | W | W | W | W | W | W | N/A |
| General Maintenance & Repair | | | | | | | |
| Other than Structure (incl. doors) | A | A | A | A | A | A | W |
| Structure* | W | W | W | W | W | W | W |
| Exterior | W | W | W | W | W | W | W |
| Sewage & Plumbing | | | | | | | |
| Distribution | W | W | W | W | W | N/A | W |
| Fixtures | A | A | A | W | A | N/A | W |
| Public Address System | W | W | W | W | W | W | N/A |
| Custodial Service** | A | A | A | N/A | A | W | N/A |
| Window Cleaning | | | | | | | |
| Exterior | A | A | A | N/A | A | W | N/A |
| Interior | A | A | A | N/A | A | W | N/A |
| Snow & Ice Removal | | | | | | | |
| Walkways | N/A | N/A | N/A | A | A | N/A | A |
| Other | N/A | N/A | N/A | W | N/A | N/A | W |
| Pest Extermination | W | W | W | W | W | W | W |
| Flooding | W | W | W | W | W | W | W |

*Notes:*
A = Airline
W = Wichita Airport Authority
N/A = Not Available or Not Applicable

*Structure is defined as anything, which has a structural load-bearing function. This may include load-bearing walls, and horizontal and vertical beams and bracings, but may not include non-load bearing walls, ceilings, doors and door frames.

**Custodial Services includes routine vacuum, trash removal, carpet extraction, steam cleaning and other specialty cleaning.

**PUBLIC AND JOINT USE AREAS** - Both areas will be maintained by the Wichita Airport Authority.

**EXHIBIT "D"**

MONTHLY STATISTICAL REPORT

(To be submitted within 5 working days following the end of each month)

SUBMIT TO:
The Wichita Airport Authority
Wichita Mid-Continent Airport
2173 Air Cargo Road
Wichita, KS 67209

FOR THE MONTH OF _____, _____

AIRLINE NAME_____
(A separate Exhibit should be submitted for each airline.)

**1. PASSENGERS**

| | Enplaned | Deplaned | Total |
|---|---|---|---|
| Revenue | _____ | _____ | _____ |
| Non-Revenue | _____ | _____ | _____ |
| Total | ========== | ========== | ========== |

**2. CARGO & MAIL (Pounds)**

| | Enplaned | Deplaned | Total |
|---|---|---|---|
| Cargo* | _____ | _____ | _____ |
| Mail | _____ | _____ | _____ |
| Total | ========== | ========== | ========== |

* Cargo includes freight plus express.

I certify that the above information is correct to the best of my knowledge and belief.

Signature: _____ Title: _____

Printed Name: _____ Date: _____

**EXHIBIT "E"**

MONTHLY LANDED WEIGHT/FEE REPORT
(To be submitted within 5 days following the end of each month)

SUBMIT TO:
The Wichita Airport Authority
Wichita Mid-Continent Airport
2173 Air Cargo Road
Wichita, KS 67209

FOR THE MONTH OF _____, _____

AIRLINE NAME_____
(A separate Exhibit should be submitted for each airline.)

## 3. AIRCRAFT LANDINGS

### A. Landings NOT Subject to Landing Fees:

| Aircraft Type | FAA Certified Maximum Gross Landing Weight | Number of Landings | Total Landed Weight |
|---|---|---|---|
| Training & Testing* | | | |
| Return Landings | | | |
| | | _____ | _____ |
| Total | | ===== | ========== |

* Training and Testing flights in excess of 10 percent of Revenue Landings by Airline in any one calendar month shall be included under Landings Subject to Landing Fees, pursuant to Section 4.1.D of the Agreement.

**EXHIBIT "E"**

## 1. AIRCRAFT LANDINGS (continued)

### B. Landings Subject to Landing Fees:

| | Aircraft Type | FAA Certified Maximum Gross Landing Weight | Number of Landings | Total Landed Weight |
|---|---|---|---|---|
| Revenue Landings | | | | |
| Training & Testing* | | | | |
| Other Non-Revenue Landings | | | | |
| | | | _____ | _____ |
| Total | | | ===== | |

**Divided by 1,000**

**Landed Weight (lbs): _____**

**Multiplied by the Landing Fee Rate of $_____**

**Total Landing Fee Charges: $==========**

* Training and Testing flights in excess of 10 percent of Revenue Landings by Airline in any one calendar month shall be included under Landings Subject to Landing Fees, pursuant to Section 4.1.D of the Agreement.

**EXHIBIT "E"**

## 2. TERMINAL USE CHARGES

| | Unleased Ticket Counter | Unleased Terminal Holdroom | Unleased Loading Bridge |
|---|---|---|---|
| Number of Times Used | _____ | _____ | _____ |
| Current Fee | $_____ | $_____ | $_____ |
| Total Terminal Use Charges | $========= | $========= | $========= |

(Joint Use Charge is calculated based on number of landings.)

## 3. AIRCRAFT PARKING CHARGES (other than at leased gates)

| | Parking Occurrences | Total Hours in Excess of 24 Hours Each Occurrence |
|---|---|---|
| Quantity | _____ | _____ |
| Current Fee | $_____ | $_____ |
| Total Parking Charges | $========= | $========= |

The undersigned certifies that the above information, according to the books and records of the Airline, is correct and that he/she is a corporate officer of Airline or has been authorized to provide the above information by a corporate officer.

Signature: _____ Title: _____

Printed Name: _____ Date: _____